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Decision

Matter of: American Electronics, Inc.

File: B-419659; B-419659.2

Date: May 25, 2021

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Paul F. Khoury, Esq., Nicholas L. Perry, Esq., and Jennifer Eve Retener, Esq., Wiley Rein LLP, for PSI Pax, Inc., the intervenor.
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April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation is denied in part where the evaluation was reasonable and consistent with the terms of the solicitation, and dismissed in part where the protest allegation does not include sufficient information to establish the likelihood that the agency violated the terms of the solicitation.

DECISION

American Electronics, Inc. (Amelex), of California, Maryland, protests the issuance of a task order to PSI Pax, Inc., also of California, Maryland, under request for proposals (RFP) No. N0042120R3002, issued by the Department of the Navy, Naval Air Systems Command, for technical, engineering, and management services. The protester challenges various aspects of the agency's evaluation of the protester's and the awardee's proposals.

We deny the protest in part and dismiss it in part.

BACKGROUND

On July 9, 2020, the agency issued the RFP, pursuant to Federal Acquisition Regulation part 16, to woman-owned small business holders of the Navy's SeaPort Next Generation (Seaport NxG) indefinite-delivery, indefinite-quantity (IDIQ) multiple-award

contracts. Agency Report (AR), Tab 2, RFP.¹ The RFP seeks a contractor to provide technical, professional, and management support services to the Air Traffic Control Systems Division in support of the Navy and other Department of Defense programs. *Id.* at 22.

The RFP contemplates the issuance of a single task order, with cost-plus-fixed-fee and cost-reimbursement line items, for a base year, four 1-year option periods, and a possible 6-month extension. RFP at 12. The RFP provided for award to the offeror “whose proposal conforms to the solicitation’s requirements and is the most advantageous to the government,” based on three factors listed in descending order of importance: technical, past performance, and price. *Id.* at 127-128. The RFP advised that the technical and past performance factors, when combined, were significantly more important than price; and that the importance of the price factor would increase “commensurably with the degree of equality” among the results of the evaluation of the non-price factors. *Id.* at 128.

The technical factor included three subfactors, listed in descending order of importance: understanding of the work/sample tasks, workforce, and management plan. RFP at 128. Of relevance here, under the management plan subfactor, offerors were required to submit a transition plan. *Id.* at 117-118, 129. Proposals would be assigned overall technical adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 129. Among other things, proposals could also be assessed strengths, which the RFP defined as: “[a]n aspect of an offeror’s proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the government during contract performance.” *Id.* at 131.

With regard to price, the RFP noted that the total estimated cost-plus-fixed-fee portion of the task order is between \$42.9 million and \$57.4 million, which includes labor but not travel and material costs. RFP at 121. In this regard, the RFP required offerors to provide justification if they proposed labor costs outside of this range. *Id.*; see also AR, Tab 3, RFP Questions & Answers at 138.

On or before the August 25 closing date, the agency received proposals from five offerors.² The proposals submitted by Amelex and PSI Pax were evaluated as follows:

¹ The agency amended the RFP once. Citations to the RFP are to the conformed solicitation provided by the agency at Tab 2 of the agency report. Citations to pages in the record, including the RFP, are to the Bates-numbered pages provided by the agency.

² The proposals submitted by the other offerors are not relevant to this protest and are not further discussed.

	Amelex	PSI Pax
Technical	Outstanding	Outstanding
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Total Evaluated Price	\$47,905,997	\$45,327,779

AR, Tab 4, Amelex Debriefing at 141. Among the three subfactors under the technical factor, both offerors were rated “outstanding” for the first two subfactors, in addition to which Amelex was rated “good” and PSI Pax was rated “outstanding” for the third subfactor, management plan. *Id.*

The agency concluded that PSI Pax’s proposal represented the best overall value to the government based on “offer[ing] a slight technical advantage as well as a 4.23% cost savings over Amelex.” AR, Tab 4, Amelex Debriefing at 146. After the agency notified Amelex of the award and provided a debriefing, this protest followed.³

DISCUSSION

Amelex challenges the agency’s evaluation of the protester’s transition plan and price. We have reviewed all of Amelex’s arguments and, as discussed in the representative examples below, find no basis to sustain Amelex’s protest.⁴

Evaluation of Amelex’s Proposal

Amelex argues that the agency failed to assess a strength based on its proposed transition plan under the technical factor’s management plan subfactor. Amelex asserts that, as the incumbent contractor, “[i]t had no transition risk at all,” and argues that “[t]he failure to recognize this strength is inconsistent with the solicitation requirements.” Protest at 8; see *also* Comments and Supp. Protest at 6-9.

As noted above, offerors were instructed to propose a transition plan, which would be evaluated under the management plan subfactor within the technical factor. RFP

³ This procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority of Title 10 of the United States Code, where the awarded value of the task order at issue exceeds \$25 million. 10 U.S.C. § 2304c(e)(1)(B).

⁴ In its initial protest, Amelex also alleges that the awardee should have been found ineligible for award under the key personnel factor based on the assertion that “Amelex also learned that PSI Pax has been attempting since the date of award to hire Amelex’s incumbent personnel, including key personnel.” Protest at 9. In our view, the protester’s assertion fails to allege a violation of procurement statute or regulation and is therefore insufficient to establish a valid basis of protest. As such, this allegation is dismissed. 4 C.F.R. § 21.5(f); see, e.g., *Mark Dunning Indus., Inc.*, B-413321.2, B-413321.3, Mar. 2, 2017, 2017 CPD ¶ 84 at 3.

at 117-118, 129. The agency argues that it reasonably evaluated Amelex's proposed transition plan in accordance with the terms of the solicitation. The agency explains that the solicitation requirements changed "significantly" from the prior contract, and that these "significant changes yield inherent transition risk, even for the incumbent." Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 21. As explained by the technical evaluation team lead, the changes include the following: some of the requirements were "entire[ly] . . . rewritten"; "the contractor's role in schedule management is more robust with significantly more contract deliverables"; and there are "significant labor category changes." AR, Tab 7, Declaration of Technical Evaluation Team Lead at 196-198. The technical evaluation team lead then explains the following:

The [technical evaluation team] did not find that Amelex's incumbent status would be advantageous to the Navy during contract performance. As noted above . . . , there were many changes to this follow-on requirement that, even for an incumbent, would likely result in numerous personnel changes and training for the entire staff. Therefore, the [technical evaluation team] determined that an incumbent would face many of the same transition challenges that a new contractor would face on this requirement, and thus Amelex's incumbent status did not warrant a strength.

AR, Tab 7, Declaration of Technical Evaluation Team Lead at 198.

In reviewing protests challenging the evaluation of proposals in a task order competition, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. *Booz Allen Hamilton, Inc.; Leidos Inc.*, B-410032.4 *et al.*, Mar. 16, 2015, 2015 CPD ¶ 108 at 5. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Here, we find the agency's explanation for its evaluation to be reasonable. To the extent Amelex complains that the record lacks documentation of the agency's explanation, Comments and Supp. Protest at 6, we note that an agency is not required to document every aspect of its evaluation or explain why a proposal did not receive a strength for a particular feature. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 5; *InnovaSystems Int'l, LLC*, B-417215 *et al.*, Apr. 3, 2019, 2019 CPD ¶ 159 at 10.

Moreover, Amelex's contention that its incumbency status should have resulted in a strength for its proposed transition plan does not provide a basis for finding the agency's evaluation unreasonable. We note that there is no requirement that an incumbent be given extra credit for its status as an incumbent. See *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 6; see also, e.g., *Integral Consulting Servs., Inc.*, B-415292.2, B-415292.3, May 7, 2018, 2018 CPD ¶ 170 at 6-8 (denying protest where

the protester challenged the agency's consideration of risk in its transition plan and argued that it was entitled to additional strengths based on its incumbency). As a result, this protest ground is denied.

Evaluation of PSI Pax's Proposal

Amelex also argues that the agency permitted the awardee to "deviate from the solicitation's requirements" and that the agency should have rejected PSI Pax's offer as unacceptable because, in its view, "there could be nothing that would justify a lower price." Protest at 7. In this regard, Amelex questions whether PSI Pax met the requirement to provide a justification when the awardee proposed labor costs below the estimated range noted in the RFP.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Further, where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Point Blank Enters., Inc.*, B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. See *Bluehorse Corp.*, B-414809, Aug. 18, 2017, 2017 CPD ¶ 262 at 5.

As noted above, the RFP estimated that the total cost-plus-fixed-fee portion of the task order would be between \$42.9 million and \$47.4 million (including labor, but not travel and material costs), and required offerors to provide justification if they proposed outside of this range. RFP at 121. In this respect, the RFP provided the following: "Any proposal that is not in this range shall include an explanation that specifically draws the government's attention to any unique technical aspects of the proposal the offeror would like the government to consider as the justification for the deviation from the range." *Id.* In response to questions about the solicitation, the agency further explained that "[t]he justification may include cost information (strictly within the Cost Volume of the proposal) as it relates to unique technical aspects effecting rates in a way which may be driving costs up or down." RFP Questions and Answers at 138.

PSI Pax's total proposed labor costs were \$[REDACTED], just below the RFP's estimated range. The record shows that PSI Pax provided a justification in its cost narrative, and the agency explains that it found this justification acceptable. AR, Tab 6, PSI Pax Proposal, Price/Cost Volume at 154-155; COS/MOL at 14-16. Specifically, as the agency explains, PSI Pax proposed a "unique approach utilizing a [REDACTED]

percentage of [REDACTED] employees . . . which allows it to provide and retain a qualified workforce while maintaining competitive rates.” COS/MOL at 15; see AR, Tab 6, PSI Pax Proposal, Price/Cost Volume at 155.

We have considered all of the parties’ arguments and, in our view, Amelex’s protest allegation fails to establish legally sufficient grounds of protest. Amelex contends that, based on its interpretation of the solicitation’s requirements, it “cannot fathom a technical explanation that would work to justify a lower cost.” Supp. Comments at 2; see *also* Protest at 7 (arguing that, “cost could not be decreased based on any technical aspects of the proposal”). In other words, Amelex argues, without specificity, that PSI Pax must not have provided a valid justification for offering a lower price because, in Amelex’s view, it would not be possible to do so and still comply with the solicitation’s requirements. Given that the RFP expressly permitted offerors to propose costs outside of the RFP’s estimated cost range, the protester’s general disbelief in the awardee’s, or any offeror’s, technical capability to propose a cost below the RFP’s estimated cost range does not establish a legally sufficient basis for why the agency should have rejected the awardee’s proposal for proposing a lower cost.

As another example, Amelex argues the agency permitted PSI Pax to deviate from the solicitation’s requirements by presenting “a non-unique cost justification” that was, in Amelex’s view, prohibited by the solicitation. Comments and Supp. Protest at 5; see *also* Protest at 8 (arguing that “[a]ny reduction in cost had to ultimately be cost[-]based, which the solicitation prohibited”). Yet, the protester’s complaint is belied by the plain language of the solicitation, which specifically permitted that an offeror could provide a justification within the proposal’s cost volume and did not prohibit reducing labor costs. RFP at 121; RFP Questions and Answers at 138.

Under these circumstances, we conclude that Amelex’s protest, as set forth in its various filings, does not include sufficient information to establish the likelihood that the agency in this case violated the terms of the solicitation or otherwise acted improperly. This protest ground is dismissed. 4 C.F.R. § 21.5(f).

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel