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Decision

Matter of: Manhattan Strategy Group, LLC

File: B-420021; B-420021.2; B-420021.3

Date: October 26, 2021

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DIGEST

Protest that agency misevaluated protester's quotation and conducted an unequal evaluation under one subfactor is denied where the record shows the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Manhattan Strategy Group, LLC, of Bethesda, Maryland, a small business, protests the award of a federal supply schedule (FSS) task order to Safal Partners, LLC, of Houston, Texas, also a small business, under request for quotations (RFQ) No. 1605C5-21-Q-00034, issued by the Department of Labor (Labor) for operation of the National Veterans' Technical Assistance Center (NVTAC). Manhattan, the incumbent contractor, argues that Labor misevaluated both firms' quotations and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFQ, issued on June 21, 2021, sought quotations from firms with which Labor had previously established blanket purchase agreements (BPA) to provide technical assistance and education/outreach services. The scope of the requirement was to operate the NVTAC and develop innovative practices and strategies so that Labor's Veterans Employment and Training Services and Homeless Veterans' Reintegration

Programs (HVRP)¹ would improve evidence-based practices with the goal of strengthening the effectiveness of technical assistance, and ensuring broad adoption of practices that were identified as promising. Agency Report (AR), Tab 3a, RFQ at 7. The RFQ contained a performance work statement (PWS) that organized the services and deliverables into five task categories: technical assistance; content innovation and partnership; virtual and in-person technical assistance conferences; electronic resource management; and contract management, logistical, and programmatic reports. *Id.* at 20-25. The resulting time-and-materials order would have a base term of 1 year, and four 1-year options. *Id.* at 7-9.

Quotations would be evaluated under three factors: technical capability and key personnel, past performance, and price. *Id.* at 48. The two non-price factors combined were described as being significantly more important than price, but price would become “significantly more important” if the non-price factors “approached equality.” *Id.* The RFQ also stated that Labor was interested in “obtaining superior technical skill-sets [rather] than . . . making an award at the lowest overall [price].” *Id.*

The evaluation under the technical capability and key personnel factor would assess both a vendor’s approach to five tasks identified in the accompanying performance work statement (PWS) and the qualifications of its key personnel. *Id.* Quotations would be evaluated under this factor using adjectival ratings on a “meets, does not meet, [or] exceeds basis.” *Id.* The RFQ also informed vendors that the technical quotation should demonstrate a “full understanding of tasks” and should show the firm’s “ability to provide innovative ideas.” *Id.* The five tasks were technical assistance; content innovation and partnership; virtual technical assistance conference and/or meetings; electronic resource management; and contract management and logistical reports. *Id.* at 20. The key personnel subfactor of the technical factor was to assess the qualifications of the vendor’s project manager and its coach, under a set of minimum qualifications and experience for each position. *Id.* at 11-12, 45, 48-49. A rating of exceeds could be assigned “if a candidate had more than the minimum years of experience.” *Id.* at 48.

The past performance evaluation would include assessment of predecessor companies, key personnel with relevant experience, and subcontractors that would perform major or critical elements. *Id.* at 49. The evaluation would result in adjectival ratings of low, medium, or high-risk (or a neutral rating of unknown risk for a vendor that lacked a sufficient record of relevant performance). *Id.* Each vendor’s proposed pricing would be evaluated using the agency’s projected hours for each labor category and the vendor’s base labor rate as well as an “overtime rate.” The RFQ also provided for prices to be assessed for reasonableness. *Id.* at 50.

Labor received quotations from three vendors, including Manhattan and Safal. A source selection evaluation board (SSEB) evaluated each quotation, prepared a narrative assessment, and assigned an adjectival rating under both the technical capability and

¹ The HVRP administers the incarcerated veterans’ transition program and the homeless female veterans and veterans with families program. RFQ at 6.

key personnel factor and the past performance factor. The final ratings, along with the bottom-line price for each firm, were as follows:

Vendor	Technical Capability	Key Personnel	Past Performance	Price (Millions)
Manhattan	Acceptable	Exceeds	Low Risk	\$7.19
Offeror A	Acceptable	Exceeds	Low Risk	\$5.78
Safal	Exceeds	Exceeds	Low Risk	\$5.82

Contracting Officer's Statement (COS) at 10, 13.

The contracting officer, who served as the source selection authority (SSA), reviewed the evaluation and pricing and concluded that since Manhattan's quotation was no higher rated than Offeror A's, and technically lower-rated than Safal's, and more than 23 percent higher priced than either, it was the least competitive and would not be selected for award. The SSA then considered a tradeoff between Offeror A's and Safal's quotations, and determined that Safal's provided technical advantages that were worth the higher evaluated price (with no technical weaknesses or deficiencies). The SSA concluded that Safal's quotation, therefore, represented the best value to the agency, and selected Safal to receive the order. AR, Tab 12, Source Selection Decision Document at 5. After receiving notice of the selection and a brief explanation, Manhattan filed this protest.

DISCUSSION

Manhattan challenges the evaluation of both its own and Safal's quotations, as well as the rationale for the source selection decision. Labor argues that Manhattan is not an interested party due to the presence of Offeror A as a vendor with the same adjectival ratings and a lower price. However, the firm is an interested party to challenge the technical evaluation of its own proposal as unreasonable and as reflecting unequal treatment because those challenges, if successful, would place Manhattan's quotation as superior to Safal under the technical capability subfactor (and therefore, by implication, superior to Offeror A). Since Manhattan contends that its quotation would then be shown to be the best value, we regard it as an interested party to raise those grounds of protest. However, as discussed below, the record does not provide a basis to sustain Manhattan's challenges to the technical capability evaluation. As a result, the protester is not an interested party to raise its remaining grounds of protest.

Misevaluation and Unequal Treatment

Manhattan argues that its quotation was misevaluated under the technical capability aspect of the technical capability and key personnel factor. The firm contends that Labor overlooked "at least eighteen" aspects of its technical approach that should have been considered strengths. Supp. Protest at 7-14; Comments at 2, 17-25. Manhattan contends that in responding to the protest, Labor failed to rebut most of those claimed

strengths, and that our Office should therefore consider those points conceded, and conclude that the firm's quotation was misevaluated. *Id.*; Supp. Comments at 13.

Where an agency issues a solicitation to vendors holding FSS contracts, and conducts a competition among the vendors, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Spectrum Comm, Inc.*, B-412395.2, Mar. 4, 2016, 2016 CPD ¶ 82 at 8. In reviewing protests of an agency's evaluation and source selection decision in procurements conducted under FSS procedures, we do not conduct a new evaluation or substitute our judgement for that of the agency. *Harmonia Holdings Grp., LLC*, B-413464, B-413464.2, Nov. 4, 2016, 2017 CPD ¶ 62 at 7; *Research Analysis & Maint., Inc.*, B-409024, Jan. 23, 2014, 2014 CPD ¶ 39 at 5. When the procurement is conducted pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 and requires vendors to respond to a statement of work, the record must document the evaluation and selection as provided in section 8.405-2(f) of the FAR, including the rationale for any tradeoffs made in the selection. *Spectrum Comm, Inc.*, supra at 8.

Labor counters that its evaluation of both firms' technical capability was reasonable and consistent with the RFQ's evaluation criteria. With respect to Manhattan's list of allegedly-overlooked strengths, Labor argues that the evaluators reviewed the quotation and expressly concluded that the firm's technical approach did not meaningfully exceed the requirements. The agency maintains that the record documents a reasonable evaluation that supports the judgment that Manhattan's quotation was acceptable and satisfactorily offered what the RFQ sought, "but [offered] nothing that made [Manhattan] get to the next level." Memorandum of Law (MOL) at 6 (quoting AR, Tab 10, Technical Evaluation Consensus Form at 6).

In reviewing the contemporaneous record of an evaluation, we have recognized that the evaluation record may not document the evaluation judgments regarding individual aspects of a quotation that did not constitute strengths, which a protester may later argue were unreasonably overlooked. Fundamentally, the evaluation of quotations is a matter of agency discretion, a protester must demonstrate that the failure to assess those allegedly overlooked strengths was unreasonable. *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 13. Our review of the record shows that Labor's evaluation of Manhattan's quotation under the technical capability subfactor was reasonable, consistent with the RFQ, and did not involve unequal treatment.

Although Manhattan identifies eighteen allegedly overlooked strengths, it has not shown that Labor's evaluation judgment that none represented an improvement was unreasonable. While the evaluators did not address every aspect of the quotation in their consensus report, the documentation required in a procurement under FAR subpart 8.4 is expressly minimized, and as relevant here, must include the evaluation methodology used in selecting the successful vendor and the rationale for any tradeoffs in making that selection. FAR 8.405-2. Manhattan's argument is that it should have been evaluated as having additional strengths based on eighteen innovations spread

across the five task areas in the RFQ. For example, it proposed to have [DELETED] with recipients “when [DELETED],” Comments at 18; it proposed to have its coaches [DELETED] by working closely with them to “[DELETED],” *Id.* at 22; and it offered to customize [DELETED] as needed. *Id.* at 23. However, our review does not provide a basis to conclude that Labor was unreasonable in evaluating these innovations as going beyond the services that the agency expected.² Accordingly, Manhattan’s argument that Labor overlooked technical strengths in the proposal does not show that the agency’s evaluation judgments were unreasonable. As a result, this ground of protest is denied.

Manhattan next argues that the misevaluation of its quotation is evident because Labor assessed the quotation as merely acceptable, even though the agency recognized that Manhattan had an exclusive partnership with a nonprofit organization serving homeless veterans that was a “vital” source of knowledge. AR, Tab 10, SSEB Technical Evaluation Consensus Report, at 6-7. Manhattan contends not only that such a vital partnership should have resulted in an adjectival rating of exceeds, but also that the evaluators treated the quotations unequally. In this regard, Manhattan notes that Safal’s quotation merely stated that it might form a partnership with any of several nonprofit organizations, but was nonetheless evaluated as exceeding the agency’s requirements because the quotation showed Safal’s ability to identify vital partnerships and supplement its expertise. *Id.* at 1. Additionally, Manhattan argues that Labor should have discredited Safal’s potential partnership because among Safal’s list of possible partnerships was the same nonprofit firm that Manhattan had identified in its quotation as an exclusive partner. Comments at 2, 16-17; Supp. Comments at 11-12.

In response to Manhattan’s allegation of unequal treatment, the agency notes that the evaluators identified several elements of Manhattan’s quotation that exemplified its technical capability. One of those elements was the firm’s continuation of partnerships with two nongovernmental entities that would be, in the evaluators’ view, “vital resources” of knowledge for serving homeless veterans. AR, Tab 10, SSEB Technical Evaluation Consensus, at 6. The agency explains that the reference to vital resources was descriptive of the role of its partnerships in Manhattan’s specific technical approach. The agency asserts that Manhattan’s protest is based on a misreading of the evaluation record as implying that the agency would consider all competing technical approaches to be inferior if they lacked the same partnership that the agency viewed as a vital resource for Manhattan’s technical approach.

Labor contends that the evaluators reasonably considered Safal’s technical approach, and based their evaluation on unique aspects that made the approach superior: its use of data analytics to improve services to corrective-action-plan/high-risk recipients, and its approach to use of surveys that anticipated the potential need for Office of Management and Budget (OMB) approvals, which the evaluation identified as a

² Nor do we find any of the other purported innovations identified in Manhattan’s protest, but which we find unnecessary to discuss, were unreasonably evaluated.

Paperwork Reduction Act³ approach. MOL at 5; Contracting Officer's Statement at 10. Thus, Labor argues that the record shows that the evaluators reasonably considered Manhattan's utilization of vital resources--by which the evaluators were identifying an aspect that was vital to Manhattan's approach--but also their reasonable consideration of Safal's approach, which did not require reliance on the same resources in its technical approach. As a result, Labor argues, the record supports the different evaluation judgments regarding those two different technical approaches, and that Manhattan's claim of unequal treatment should be denied.

We deny Manhattan's claims of unequal treatment in the technical capability evaluation, particularly in the assessment of strengths regarding partnerships with nonprofit organizations. We will not find that an agency has unequally evaluated proposals where the differences in the evaluation are based on differences in the offerors' technical approaches. *Johnson Controls Sec. Sols.*, B-418489.3, B-418489.4, Sept. 15, 2020, 2020 CPD ¶ 316 at 7.

Here, the record shows that Labor had a reasonable basis for reaching different judgments regarding different approaches to the technical requirements. For Manhattan, the evaluators recognized that its approach emphasized the value of continuing its existing partnerships to provide value to NVTAC. On the other hand, the evaluation notes that Safal identified veteran service organizations by name as one way that Safal showed an ability to identify vital partnerships and to supplement its expertise. The evaluation then proceeds to emphasize other aspects of Safal's technical capability as particularly valuable: its approach to dealing with Paperwork Reduction Act requirements, and its use of innovative data analytics to better serve NVTAC's corrective action plan/high-risk recipients. AR, Tab 10, SSEB Technical Evaluation Consensus, at 1.

Additionally, the SSA's selection decision did not mention Safal's identification of potential partnerships in explaining the source selection judgment, but instead based the selection of Safal on its ability to assist NVTAC best through its preparation to address Paperwork Reduction Act requirements and its ability to focus technical assistance using data analytics. AR, Tab 12, Source selection Decision Document at 5. The record thus does not support Manhattan's challenge to Labor's judgment that Safal's quotation was superior to Manhattan's under the technical capability evaluation because of unequal treatment. Accordingly, we deny this ground of protest.

³ The Paperwork Reduction Act is codified at 44 U.S.C. §§ 3501-3520. While Manhattan argues that the evaluation is incorrect because the specific words "Paperwork Reduction Act" do not appear in Safal's quotation, Labor rebuts that contention by noting that Safal's quotation expressly addresses the potential that OMB approval will be needed for surveys, and explains that the evaluators understood that Safal was addressing the requirement for OMB approval imposed by the Paperwork Reduction Act, which then led them to describe Safal's approach as including compliance with that law.

Interested Party

As noted above, Labor argues that the protest should be dismissed because Manhattan is not an interested party to pursue a protest. The agency argues that the record shows that the SSA considered Offeror A to be next in line for award after Safal, not Manhattan. MOL at 2. Manhattan opposes dismissal, arguing that its challenges to the evaluation of its own quotation, along with the alleged unequal evaluation treatment, make it an interested party. Comments at 28. In Manhattan's view, a reasonable evaluation would have shown its quotation was superior to both Safal's and Offeror A's, and significantly, was worth the difference in price, making Manhattan an interested party. *Id.* at 28-29.

Our Office's authority to decide protests requires that the protest be filed by an interested party. 31 U.S.C. § 3551. Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. *Id.*

We regarded Manhattan as an interested party to pursue its challenges to its own technical capability evaluation, and its argument of unequal treatment addressed above. In our view, but for the errors alleged by Manhattan, its quotation could have been next in line for award. However, the remainder of Manhattan's challenges assert that Safal's quotation was misevaluated under other evaluation criteria; for example, that Safal's key personnel did not merit a rating of exceeds, and that the record does not document a reasonable basis for that evaluation. Manhattan does not meaningfully challenge the evaluation of Offeror A's quotation, however, other than generally--principally contending that alleged flaws in the record must also have affected Offeror A.

Since Manhattan's challenges to the technical capability evaluation have been denied, and Labor thus, reasonably, concluded that Manhattan's quotation was not superior to Offeror A's in any respect, the record demonstrates that Offeror A would be next in line for award, ahead of Manhattan. Consequently, Manhattan is not an interested party to challenge other aspects of the procurement--whether those challenges are to the evaluation of Safal's quotation or to Labor's tradeoff judgment in selecting Safal for award. Accordingly, we do not address Manhattan's remaining grounds of protest.

The protest is denied.

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General Counsel