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Decision

Matter of: National Fatherhood Initiative

File: B-405961.2; B-405961.4

Date: January 10, 2012

H. Todd Whay, Esq., The Whay Law Firm, for the protester.
Karen R. Harbaugh, Esq., and Robert E. Gregg, Esq., Squire, Sanders & Dempsey (US) LLP, for Fathers Incorporated, the intervenor.
Kristine Kassekert, Esq., Department of Health and Human Services, for the agency.
Kenneth Kilgour, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals is denied where the record reflects that the agency's evaluation was reasonable and in accord with the terms of the solicitation.

DECISION

National Fatherhood Initiative (NFI), of Germantown, Maryland, protests the award of a contract to Fathers Incorporated, of Albany, New York, under request for proposals (RFP) No. 11-233-SOL-00430 issued by the Department of Health and Human Services (HHS) for the operation of the National Responsible Fatherhood Clearinghouse (NRFC). The protester alleges that the agency improperly evaluated the awardee's proposal.

We deny the protest.

BACKGROUND

Through its Office of Family Assistance (OFA), HHS administers a Congressionally authorized program to promote responsible fatherhood. See 42 U.S.C. § 603(a)(2) (2006). The authorizing legislation requires that the contract be awarded to a nationally recognized, non-profit fatherhood promotion organization. RFP ¶ C.1. In furtherance of that effort, HHS issued this RFP, which contemplated the award of a

cost-plus fixed-fee contract, for a base year with two 1-year options, for the creation and maintenance of a clearinghouse that builds on the NRFC.

The RFP announced four evaluation criteria--technical, cost, past performance, and small and disadvantaged business utilization. Technical was more important than the other three criteria combined. The technical criterion was divided into six "technical factors," to be scored as follows: (1) understanding the statement of work (20 points); (2) technical approach (40 points); (3) organizational capacity and experience (20 points); (4) qualifications of proposed personnel (10 points); (5) management plan (10 points); and (6) HHS Section 508 evaluation template (acceptable/unacceptable). In order to be eligible for award, the RFP established that an offeror's proposal must be evaluated as technically acceptable, it must be rated as acceptable under the Section 508 template factor, and the offeror must have an adequate cost accounting system. RFP at 54, 57.

As it relates to the protest, under technical factor 3, organizational capacity and experience, the RFP established that the agency would evaluate "[t]he extent to which the offeror demonstrates that it is a nationally recognized, fatherhood promotion non-profit organization" and "[t]he extent to which the offeror demonstrates an ability to design and manage [a] multi-faceted clearinghouse." RFP at 55-56. Moreover, under this factor, the RFP set forth six discreet areas for evaluation (e.g., "[r]elevant support and documentation, which describes the Offeror's national presence, is clear and reasonable"; "demonstrated experience as a fatherhood promotion organization is clearly described and is sound"; and "[t]he ability to collaborate with and disseminate information important to a diverse fatherhood field is clearly described.") Id. at 56.

The agency received proposals from three offerors, including the protester--who is the incumbent on this contract--and the awardee. The third proposal, evaluated as unacceptable, is not relevant to this protest. The table below provides a summary of the agency's point scores for the proposals of the awardee and the protester under the technical factors.

Technical Evaluation Factor (Total Points Possible)	Awardee	Protester
Understanding the Statement of Work (20)	20.00	15.67
Technical Approach (40)	38.00	32.33
Organizational Capacity and Experience (20)	20.00	17.33
Qualifications of Proposed Personnel (10)	9.33	10.00
Management Plan (10)	6.33	7.33
Total (100)	93.67	82.67

AR, Tab 10, Technical Evaluation Documents, at 501, 508.

In addition, the awardee's proposal was rated as acceptable under the Section 508 compliance factor, while the protester's proposal was rated unacceptable. Notwithstanding the protester's unacceptable rating, and the solicitation provision indicating that a firm had to be rated as acceptable under the 508 compliance factor in order to be eligible for award, the record reflects that both proposals were identified as "technically acceptable" overall. Id.

With respect to cost, the record reflects that Fathers Incorporated's total evaluated cost was \$7,428,721, whereas NFI's was \$6,732,362. AR, Tab 14, Summary of Negotiations and Recommendation for Award Memorandum (Award Memo), at 4. The agency traded off the protester's lower cost with the awardee's higher technically-rated proposal and determined that the awardee's proposal offered the best value. Id. at 6. After the agency determined, as part of its responsibility determination, that Fathers Incorporated had adequate accounting controls, the agency made award to Fathers Incorporated. See AR, Tab 13, Responsibility Determination and Summary of Negotiations; AR, Tab 14, Award Memo, at 4-5. Upon learning of the agency's decision, NFI filed this protest.

DISCUSSION

The protester alleges that the award to Fathers Incorporated violates the statutory requirement--contained in the RFP--that contracts be awarded to nationally recognized, non-profit fatherhood promotion organizations. Alternatively, to the extent Fathers Incorporated can be considered to qualify as a nationally recognized organization promoting fatherhood, NFI alleges that it was unreasonable for the agency to have assigned Fathers Incorporated's proposal more points than NFI's under technical factor 3 because NFI has far more national recognition than Fathers Incorporated.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its evaluation does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

As an initial matter, the agency argues that the protester is not an interested party because its proposal was ineligible for award. In this regard, the agency notes that the protester was evaluated as unacceptable under the HHS Section 508 evaluation template. AR at 1-3.

While the RFP announced that a proposal must be evaluated as acceptable under the Section 508 compliance factor to be eligible for award, the contemporaneous

record makes no mention of the protester's ineligibility. To the contrary, the agency's Summary of Negotiations and Recommendation for Award Memorandum, which lists the "scores and acceptability" of the offers, describes the awardee's and the protester's proposals as "acceptable." Award Memo, Sept. 29, 2011 at 3. The Memorandum then documents the tradeoff of the higher cost of the awardee's proposal with the lower technical rating of the protester's. On this record, notwithstanding the evaluation scheme announced in the RFP, it is apparent that the agency considered the protester to be eligible for award. We will not, at this juncture, conclude that the protester is ineligible for award--and thus not an interested party--when the agency, in its contemporaneous review, treated this proposal as viable.

Turning to the merits of the protest, NFI argues that Fathers Incorporated should have been viewed as ineligible for award and that the agency unreasonably determined that the company qualifies as a nationally recognized, fatherhood promotion non-profit organization.¹ In this regard, NFI notes that Fathers Incorporated's owner is employed outside of the organization and that Fathers Incorporated is a home-based business, without a base of employees or "substantive revenue." Protest at 15. Although NFI acknowledges that Fathers Incorporated's owner and Executive Director "may have developed a reputation in the 'industry' in his capacity as the former Director of the State of New York's Fatherhood Initiative," *id.*, the protester argues that it is the organization, and not that organization's leader, that is required to be "nationally recognized."

The agency substantiates the reasonableness of its evaluation with references to the awardee's proposal, which, in the agency's view, demonstrated Fathers Incorporated's status as a nationally recognized organization dedicated to promoting fatherhood. In this regard HHS notes that Fathers Incorporated has run

¹ The protester also challenges the agency's affirmative responsibility determination, arguing that the awardee lacks an adequate cost accounting system. Protester's Comments at 9. Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office will not consider a protest challenging such a determination unless the protest alleges that the solicitation incorporated definitive responsibility criteria that were not met or where the protester has identified evidence raising serious concerns that the contracting officer unreasonably failed to consider available relevant information, or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); T. F. Boyle Transp., Inc., B-310708; B-310708.2, Jan. 29, 2008, 2008 CPD ¶ 52 at 5. The matter alleged by the protester fails to meet the standard of review for our Office's consideration of an affirmative responsibility determination. Moreover, the record reflects that the agency specifically considered Fathers Incorporated's cost accounting system, obtained additional information from Fathers Incorporated, and found the information provided to be adequate.

programs that are national in scope, AR at 5 (citing Fathers Incorporated Proposal at 10 & 40), has received national publicity, id. (citing Fathers Incorporated Proposal at 42-43), and is considered by experts in fatherhood promotion to be a nationally recognized, non-profit fatherhood promotion organization. Id. at 6 (citing Fathers Incorporated proposal at 138). To the extent the protester ultimately disagrees with the weight given to these activities by the agency, such disagreement does not demonstrate that the agency's evaluation was unreasonable. VT Griffin Servs., Inc., supra.

Moreover, there is nothing in the record to indicate that the agency's evaluation of Fathers Incorporated was based solely on the accomplishments of its Executive Director, as opposed to the firm itself. See, e.g., AR, Tab 10, Technical Evaluation Documents, at 494 (noting Fathers Incorporated's accomplishments, which outline a "national presence"); and Fathers Incorporated Proposal at 42-43 (discussing the role of the "programs and accomplishments" of Fathers Incorporated and only secondarily the role of the Executive Director). In any event, because the organization's 2004 founder is its current Executive Director,² it seems unremarkable that their reputations would be intertwined. As a consequence, we find the protester's arguments challenging the agency's evaluation of the awardee's status as a nationally recognized organization promoting fatherhood to be without merit.

We also deny the protester's contention that it was unreasonable for the agency to award fewer points to the protester's proposal than to the awardee's under technical factor 3, organizational capacity and experience. The RFP advised offerors that their proposals would be evaluated under factor 3 on "the extent to which the offeror demonstrates that it is a nationally recognized, fatherhood promotion non-profit organization. The extent to which the offeror demonstrates an ability to design and manage a multi-faceted clearinghouse." RFP ¶ M.4 (emphasis added). NFI argues that the phrase used in the solicitation, i.e., "the extent to which," requires a comparative evaluation of proposals. Thus, in NFI's view, the awardee's evaluation was unreasonable because NFI has a greater degree of national recognition than Fathers Incorporated.

As discussed above, agencies are required to identify the bases upon which offerors' proposals will be evaluated and to evaluate proposals in accordance with the stated evaluation criteria. Under technical factor 3, the agency identified six discreet qualifications, only one of which was documentation of the offeror's national presence. See RFP at 55. Given that there were several other facets under this factor, this facet alone did not determine the outcome of the evaluation. In fact, the record reflects that the protester's lower point score was based, in part, on the agency having identified a "major" weakness with NFI's proposal under factor 3,

² See http://www.fathersincorporated.com/?page_id=15.

which NFI has not challenged. See AR, Tab 10, Technical Evaluation Documents, at 510. The awardee, on the other hand, in addition to being assessed several strengths, was not assessed any weaknesses under technical factor 3, and thus received the maximum of 20 points. Given this record, we have no basis to conclude that the agency's evaluation was unreasonable or otherwise inconsistent with the terms of the solicitation.³

The protest is denied.⁴

Lynn H. Gibson
General Counsel

³ NFI also alleges that the agency's tradeoff analysis was flawed. Because we deny the protester's allegations concerning the agency's proposal evaluations, and because there is no independent challenge to the tradeoff, there is no basis on which to question the reasonableness of the agency's cost/technical tradeoff.

⁴ NFI asserted several other grounds of protest not discussed in this decision. In this regard, the agency responded to each of the specific issues raised in its report and, in its comments, NFI did not further address the issues--NFI's comments on the agency report are dedicated almost exclusively to reiterating its principal challenge of Fathers Incorporated's status as nationally recognized. For example, in its initial protest, NFI challenged the agency's evaluation of Fathers Incorporated's proposal under technical factor 5, Management Plan, see Protest at 17, the agency specifically addressed this issue in its report, see AR, Legal Memorandum, at 10, yet the protester did not address the matter in its comments. We will not further consider the issues that were not specifically addressed in the protester's comments on the agency report since we have no basis to question the reasonableness of the agency's assessments. See Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3 (considering protest allegations to be abandoned where protester's comments on agency report fail to rebut agency's defense).