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Decision

Matter of: Environmental Waste Minimization, Inc.

File: B-402123.5

Date: September 3, 2010

Wayne A. Keup, Esq., Wayne A. Keup, PLLC, for the protester.
Avital G. Zemel, Esq., Environmental Protection Agency, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal is denied where record supports agency's evaluation conclusions and protest amounts to no more than disagreement with agency's scoring of proposal.

DECISION

Environmental Waste Minimization, Inc. (EWM), of Northampton, Pennsylvania, protests the award of contracts to Environmental Restoration, LLC (ER), of St. Louis, Missouri, and Kemron Environmental Services, Inc., of Atlanta, Georgia, under request for proposals (RFP) No. PR-R2-08-10085, issued by the Environmental Protection Agency (EPA) for emergency rapid response services. EWM asserts that the agency misevaluated its proposal and failed to provide adequate discussions.

We deny the protest.

BACKGROUND

The RFP contemplated the award of three contracts on a "best value" basis, two to be awarded to small businesses and one to a service-disabled, veteran-owned small business; this protest concerns the two small business awards. Proposals were to be evaluated on the basis of price and non-price factors; the non-price factors combined were approximately equal in weight to price for award purposes. RFP at M-1 to M-2. Proposals were to be point-scored under the evaluation factors and subfactors as follows: management factor--25 possible (of 100 total) points (divided between two subfactors--management approach, 15 points, and cost control, 10 points); past performance--25 possible points; personnel resources--20 points

(divided among three subfactors--program manager, 10 points, response managers, 5 points, and availability of response personnel, 5 points; and two sample work plans, 15 possible points each. RFP at M-2.

The agency received nine proposals, three of which were included in the competitive range, including the protester's but neither of the awardees'. Thereafter, ER and another offeror filed a protest with our Office challenging the elimination of their proposals from the competitive range. After reviewing those protests, the agency advised our Office that it would include ER's and Kemron's proposals in the competitive range. Based on this corrective action, we dismissed those protests as academic (B-402123 et al., Oct. 30, 2009). Thereafter, the agency engaged in several rounds of discussions, requested three rounds of final proposal revisions (FPR), and made award to Kemron and ER based on its determination that their proposals represented the best value. The cumulative point scores and prices were as follows:

Offeror	Technical Score	Proposed Price
EWM	79	\$121,851,959
Offeror A	[deleted]	[\$deleted]
Offeror B	[deleted]	[\$deleted]
ER	86	\$121,773,733
Kemron	86	\$119,697,227

Agency Report (AR), at 14; exh. 58, at 18. The agency scored EWM's proposal as follows:

Evaluation Factors/Subfactors	Maximum Possible Points	Evaluation Score (0-5)	Assigned Points
Management Factor			
Management Approach	15	[deleted]	[deleted]
Cost Control	10	[deleted]	[deleted]
Past Performance	25	[deleted]	[deleted]
Personnel Resources			
Program Manager	10	[deleted]	[deleted]
Response Managers	5	[deleted]	[deleted]
Response Personnel Availability	5	[deleted]	[deleted]
Sample Task 1	15	[deleted]	[deleted]
Sample Task 2	15	[deleted]	[deleted]
Total Score			79

AR, exh. 58, at 4.

PROTEST

EWM takes issue with virtually every aspect of the agency's evaluation of its proposal.¹ Where a protester challenges an agency's technical evaluation of its proposal, we will not independently reevaluate the proposal but, rather, will examine the record to determine whether the evaluation was reasonable and consistent with applicable statutes and regulations; a protester's mere disagreement with an agency's evaluation does not render it unreasonable. Dorado Servs., Inc., B-402244, Feb. 19, 2010, 2010 CPD ¶ 71 at 2-3. We have carefully reviewed all of EWM's assertions and find them to be without merit. We discuss several of EWM's assertions below.

Scoring Methodology

EWM maintains that the agency used an improper scoring methodology in evaluating the proposals. In this regard, in calculating the weighted cumulative point scores, the agency assigned scores of 0 to 5 points for each subfactor, and then calculated the weighted score for each subfactor in accordance with the RFP's evaluation scheme. According to the protester, this 0-5 scale deviated from the RFP, which provided that a 100-point scale would be used, and exaggerated any weaknesses or deficiencies identified by the agency in EWM's proposal.

We find no merit to this aspect of EWM's protest. The RFP specifically incorporated EPA's supplemental acquisition regulations found at 48 C.F.R. part 1515 (2009). RFP at M-1. Among other things, those procedures outline the 0-5 point scoring scheme employed by EPA here. 48 C.F.R. § 1515.305-70. That scheme provides for the assignment of a numeric score based on the evaluators' conclusions regarding the relative merits of proposals. For example, the scheme provides that a score of 3 will be assigned where "[t]he response to the factor is adequate. Overall, it meets the specifications and requirements, such that the technical evaluation team believes that the offeror could perform to meet the Government's minimum requirements." Id. While the RFP specified potential scores available for each

¹ In its initial protest, EWM challenged the evaluation of its past performance. The agency provided a detailed response to EWM's assertion, and EWM made no further reference to this aspect of its protest. Similarly, EWM initially asserted that it was misled during discussions with respect to its proposed price; the agency responded to this aspect of the protest, and EWM made no further mention of this aspect of its protest. We deem these assertions abandoned. Dorado Servs., Inc., B-402244, Feb. 19, 2010, 2010 CPD ¶ 71 at 5.

factor and subfactor, those point values simply indicated the relative weights of the factors and subfactors. Accordingly, the scoring scheme was unobjectionable.

In any case, the agency employed the same scheme in evaluating all proposals and went beyond merely assigning numeric scores by providing detailed narrative explanations for the scores. AR, exhs. 14, 58. In the final analysis, this was no different than any other point or adjectival scoring scheme; such scoring methods are no more than guidelines to intelligent decision making, and where, as here, the record shows that the evaluators and source selection authority considered the underlying bases for the ratings assigned, the protester's disagreement with the ratings assigned is inconsequential. DB Consulting Group, Inc., B-401543.2, B-401543.3, Apr. 28, 2010, 2010 CPD ¶ 109 at 5.

Sample Task Evaluation

EWM takes specific issue with the agency's assigning its proposal a score of [deleted] points for the second sample task. The second sample task required offerors to provide a comprehensive response to a scenario under which a tannery in a town in New York collapsed due to high winds. RFP at L-12-13. The evaluators found the following flaws in EWM's response:

EWMI did not address any off-site contamination plans or procedures for the surrounding community in their response. Furthermore, the offeror did not describe any confirmation sampling procedures to ensure the anthrax spores were addressed following the application of the bleach solution. Additionally, the route to the hospital in their health and safety plan was unclear.

AR, exh. 14, at B-7-8. According to the protester, these criticisms were unwarranted and unreasonable.

The evaluation was unobjectionable. With respect to off-site decontamination, the protester asserts that its response was planned and implemented in such a way as to eliminate the need for an off-site decontamination plan because it planned to address the problem on-site, before any off-site migration of hazardous materials could occur. The agency explains, however, that, notwithstanding the protester's plan for decontamination of the site itself, its proposal failed to address the fact that--as in the scenario outlined--the building collapse occurred prior to the arrival of the contractor, and that such a collapse generates a large amount of dust, which can travel extensively beyond the immediate site, thereby requiring off-site decontamination planning in the surrounding community. We find the agency's concern reasonable on its face, and EWM has not shown otherwise. Accordingly,

since EWM's proposal did not address the concern, there is no basis for questioning this aspect of the evaluation.²

As for confirmation sampling procedures, EWM asserts that it did, in fact, include such procedures in its response to the sample task. In this regard, the protester points out that its approach was to use a bleach solution to kill any anthrax spores, and then to rinse away the solution and collect the rinse water, which it would sample for contamination. The agency explains that this approach is inadequate because it is limited to the rinse water; it makes no provision for sampling the debris pile for remaining contamination using, for example, wipe samples, as opposed to merely sampling the rinse water. Again, we conclude that the agency's criticism was reasonable and substantiated by the record.

Finally, with respect to the lack of information relating to the route to the hospital, EWM's proposal not only did not include specific directions to the hospital from the work site, but, as EWM concedes, its health and safety plan included inconsistent information relating to the location of the work site itself. These considerations lead us to conclude that the agency's criticism was reasonable.

Evaluation Scores

EWM takes issue with essentially all of the numeric scores assigned by the agency that were less than the maximum score of 5 points. By and large, EWM's contentions amount to no more than mere disagreement with the scores assigned by the evaluators rather than a challenge to the evaluators' underlying substantive findings. For example, the record shows that the agency assigned EWM's proposal a score of [deleted], rather than 5, points under the cost control subfactor. EWM maintains that this was unreasonable because the evaluators did not identify any proposal weaknesses or deficiencies in this area. The record shows, however, that the agency assigned less than the maximum score in this area because EWM had no direct experience in managing the financial aspects of an effort similar to that called for here (even though its principal subcontractor did have such experience). AR, exh. 14, at B-2.

The rating scheme used by the agency provided for assigning a score of 4 points where "[t]he response to the factor is good with some superior features. Information provided is generally clear, and the demonstrated ability to accomplish the technical

² We point out as well that the scenario specifically noted that the building collapse occurred as a result of high winds, that there were crushed drums that apparently contained toxic materials, and that at least some of the floor drains at the site drained into a small stream located near the facility. RFP at L-12-13. These factors would appear to be consistent with the need for off-site decontamination planning.

requirements is acceptable with the possibility of more than adequate performance.” 48 C.F.R. § 1515.305-70. EWM does not challenge the evaluators’ underlying finding that it does not have direct experience in managing the financial aspects of a similar effort. Rather, EWM disagrees with the score assigned in light of the evaluators’ findings; this disagreement, without more, is inadequate to demonstrate that the evaluation was unreasonable or otherwise deviated from the terms of the RFP or relevant statutes and regulations. DB Consulting Group, Inc., supra.

Discussions

EWM assert that the agency failed to provide it with meaningful discussions. Specifically, EWM points to the fact that, during the time when ER and Kemron were eliminated from the competitive range, ER pointed out to the agency that if there were problems with one or more of the remaining offerors’ small business size status, the agency might not have enough small business concerns to award both small business contracts. The agency subsequently included the two firms’ proposals in the competitive range. According to the protester, had the agency raised the matter of its small business size status during discussions, it could have provided information that might have led to not including ER’s and Kemron’s proposals in the competitive range.

EWM’s argument ignores the purpose of discussions, which are intended to provide each offeror an opportunity to enhance its proposal for award purposes by remedying any deficiencies or weaknesses identified by the agency in its evaluation. Federal Acquisition Regulation § 15.306. Here, the agency did not identify any concern with EWM’s size status, and therefore was under no obligation to discuss the matter with EWM.

The protest is denied.

Lynn H. Gibson
Acting General Counsel