



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: DRIVE Developments, Inc.

File: B-405910.6

Date: April 19, 2012

Lawrence E. Osentoski, Jr., for the protester.
Michael Kraycinovich, Esq., Department of the Army, for the agency.
Matthew T. Crosby, Esq., John L. Formica, Esq., Glenn G. Wolcott, Esq., and
Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency's evaluation of the protester's proposal as "adequate" under two of the solicitation's evaluation factors, and elimination of the protester's proposal from the competitive range, are unobjectionable, where the evaluation was consistent with the terms of the solicitation and reasonably based.

DECISION

DRIVE Developments, Inc., of Clarkston, Michigan, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. W56HZV-11-R-0155, issued by the Department of the Army, for a pilot condition-based maintenance (CBM) program for Army vehicles. DRIVE argues that the agency's evaluation of DRIVE's proposal was unreasonable and was the result of bias against DRIVE.

We deny the protest.

BACKGROUND

The overall purpose of the CBM program is to perform vehicle maintenance only when there is need for such maintenance. RFP at 12. Under the CBM program, the determination to perform vehicle maintenance is based on a real-time assessment of equipment condition, using information obtained from sensors that are embedded in vehicles, and/or the results of tests and measurements performed using portable equipment. Id. The successful contractor here will provide the

personnel and certain hardware necessary to establish a pilot CBM program for 2000 Army vehicles.

The RFP, issued on May 25, 2011, provides for the award of a cost-plus-fixed-fee contract (with a fixed-price option contract line item) for a base period of one year with two 1-year option periods. RFP at 2, 22. The solicitation states that award will be made to the offeror whose proposal represents the best value to the government, considering the following evaluation factors listed in descending order of importance: technical; cost/price; and small business participation. RFP at 87. The RFP adds that the technical factor is comprised of the following two subfactors listed in descending order of importance: technical approach and technical experience. Id.

The agency received multiple proposals in response to the solicitation, and on September 26, 2011, selected the proposal submitted by Lockheed Martin Global Training & Logistics for award. Contracting Officer's Statement at 1. QinetiQ North America, Inc., and Raytheon Technical Services Company LLC, subsequently filed protests and supplemental protests with our Office challenging the award to Lockheed Martin.¹ The agency advised our Office and the parties that it would take corrective action in response to the protests by reevaluating all of the proposals received under the solicitation's technical and cost/price factors, and making a new source selection decision. Based on the proposed corrective action, our Office dismissed the protests on November 1.

DRIVE, which had filed a post-award protest with the contracting agency that was subsequently denied, filed a protest with our Office on November 7. On November 18, our Office dismissed DRIVE's protest (docketed as B-405910.5) as academic, based on the agency's determination to take corrective action in response to the prior protests filed by QinetiQ and Raytheon.

The agency reevaluated each of the proposals received, and determined that it was necessary to establish a competitive range of the most highly rated proposals and conduct discussions. Contracting Officer's Statement at 2; Agency Report (AR), Tab N, Competitive Range Determination, at 1. The agency eliminated DRIVE's proposal from the competitive range, and after requesting and receiving a debriefing, DRIVE filed two agency-level protests. Contracting Officer's Statement at 2. The agency denied DRIVE's agency-level protests, and DRIVE's protest to our Office followed.

¹ These protests were docketed by our Office as B-405910, B-405910.2, B-405910.3, and B-405910.4.

DISCUSSION

The protester argues that the agency's evaluation of DRIVE's proposal was unreasonable.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with 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 evaluation judgments does not render those judgments unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., *supra*.

We have reviewed the protester's arguments regarding the propriety of the agency's evaluation of DRIVE's proposal, and as illustrated by the examples below, find the agency's evaluation to be consistent with the solicitation's evaluation scheme and reasonable.

The protester argues that the evaluation of its proposal under the technical approach subfactor to the technical factor as "adequate" with "moderate" risk was unreasonable.² Protest at 2-3; Protester's Comments at 2-3. Specifically, the protester argues that the agency unreasonably concluded that DRIVE's failure to discuss the experience and qualifications of its proposed workforce in its proposal constituted a "weakness."

The solicitation instructs offerors that in the section of their proposal addressing the technical approach subfactor, they are to, among other things, "discuss the experience and qualifications of the planned workforce to perform the work effort as detailed in the [statement of work]." RFP at 73. Consistent with this, the RFP informs offerors that the agency's evaluation of proposals under the technical approach subfactor "will include an assessment of . . . the experience and qualifications of the proposed workforce." RFP at 87.

² The agency's source selection plan provided for the rating of proposals under the technical factor, and the technical approach and technical experience subfactors, as either "excellent," "good," "adequate," "marginal," or "poor," and assigned technical risk ratings of either "low," "moderate," or "high." AR, Tab Y, Source Selection Plan, at 18-19.

The agency found that while DRIVE's proposal discussed the qualifications and experience of four individuals, each identified as either a senior manager or company president, it failed to include any discussion of the qualifications and experience of DRIVE's proposed workforce. AR, Tab W, Evaluation of Drive's Proposal, at 2, 5; see AR, Tab E, DRIVE's Proposal, at 36-37. The agency concluded that the lack of information in DRIVE's proposal regarding its proposed workforce, including, for example, its field service representatives and data analysts, constituted a weakness because the agency was "unable to determine the sufficiency of the experience and qualifications of the proposed workforce." AR, Tab W, Evaluation of DRIVE's Proposal, at 5.

DRIVE specifically argues that this aspect of the agency's evaluation was unreasonable because the solicitation did not require the submission of resumes for its proposed workforce, and "the discussion of the work to be performed by direct reference incorporates the skills of the staff that is bid to perform the tasks." Protester's Comments at 3. The protester continues by arguing that it was unreasonable for the agency to "assume that DRIVE bid staff that could not accomplish the work when the proposal has no evidence to the contrary," and that its performance of similar other contracts demonstrates the capabilities of its proposed workforce. Id.

It is the offeror's burden to submit an adequately written proposal; an offeror, including an incumbent contractor, must furnish, within its proposal, all information that was requested or necessary to demonstrate its capabilities in response to a solicitation. HealthStar VA, PLLC, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2. While DRIVE is correct that the solicitation did not require the submission of resumes for the proposed workforce, the RFP did, as set forth above, require offerors to "discuss the experience and qualifications of the planned workforce," and provide for the evaluation of the "the experience and qualifications of the proposed workforce." RFP at 73, 87. DRIVE's proposal simply failed to include any discussion of the experience and qualifications of its proposed workforce, and the agency's criticism of DRIVE's proposal in this regard was consistent with the solicitation and reasonable. Additionally, we fail to see, and DRIVE has not explained, how the discussion of tasks to be performed by the workforce demonstrates the skill of the personnel comprising the workforce. DRIVE's assertion that the agency's conclusions here were unreasonable given DRIVE's performance of other contracts is similarly meritless. An offeror's technical evaluation is dependent upon the information furnished; there is no legal basis for favoring a firm with presumptions on the basis of its past performance of other contracts. See HealthStar VA, PLLC, supra.

The protester also argues that the agency's evaluation of its proposal as "adequate" under the small business participation factor was unreasonable. The protester asserts that because DRIVE, as well as its proposed subcontractors, are small businesses, its proposal should have received a better rating.

The solicitation's proposal preparation instructions informed offerors, including, for example, those offerors that qualify for the purposes of this procurement as small businesses or small disadvantaged businesses (SDB), that they were to identify the extent to which different types of small business concerns, such as SDBs, woman-owned small businesses, and veteran-owned small businesses, would "be utilized as first-tier subcontractors in the performance of this proposed contract." RFP at 75. The solicitation further informed offerors that their proposals would be evaluated under the small business participation factor to determine "the extent to which the Offeror's proposed small business participation for [small businesses] and SDBs would achieve" the goals set by the contracting agency of 31.7 percent for small business concerns and 5 percent for SDBs. RFP at 88.

The agency found that because DRIVE and its proposed subcontractors are small businesses, its proposal exceeded the agency's goals for small business participation as set forth in the solicitation. AR, Tab X, Proposal Evaluation Worksheets-DRIVE, at 4. The agency found that this aspect of DRIVE's proposal constituted a "strength." Id. However, the agency also noted that DRIVE's proposal did not provide for any SDB participation, and thus would have no effect on enabling the agency to achieve its overall goal of SDB participation of 5 percent. Id.

The protester argues here that the agency's evaluation of DRIVE's proposal was unreasonable and inconsistent with the terms of the solicitation, because the solicitation did not specify that SDB participation was a "requirement" in order to receive an excellent rating. Protester's Comments at 5.

As set forth above, the solicitation clearly provided that in evaluating proposals under the small business participation factor, the agency would consider the degree of the offeror's proposed SDB participation. Accordingly, the agency's consideration of the fact that DRIVE proposed no SDB participation, and determination that this aspect of DRIVE's proposal constituted a "weakness," was neither inconsistent with the terms of the RFP nor unreasonable.

The protester argues at length that its evaluation, and the elimination of its proposal from the competitive range, was the result of bias. For example, the protester asserts, based upon "information and belief," that the contracting agency, as well as certain contracting agency personnel, have "been bias[ed] against DRIVE for a period of several years." Protest at 2. DRIVE adds that its complaints are, in part, the result of

historically corrupt congressional influence over these program funds where many bids are rigged to pre-determine winners in full and open competition such as this solicitation in order to continue to receive federal appropriations from certain members of the United States Congress who receive political donations from these winning contractors, their employees, wives and even children.

Protest at 5. The protester continues by arguing that the RFP here should have included past performance as an evaluation factor, and that the decision to omit a past performance factor was because of bias against DRIVE, or in favor of other contractors. The protester contends, among other things, that by not including past performance as an evaluation factor, “DRIVE stood no chance to win this competition as contractors that bring congressional funds year after year to [the contracting agency] only to fail again next year are not penalized for those failures in this solicitation.” Protest at 4.

Our Bid Protest Regulations require that a protest must include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), 21.5(f) (2012). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester’s allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11. With regard to allegations of bias or bad faith on the part of contracting officials, our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. See, e.g., Operational Support & Servs. B-299660.2, Sept. 24, 2007, 2007 CPD ¶ 182 at 3; Midwest Metals, B-299805, July 17, 2007, 2007 CPD ¶ 131 at 3 n.2.

Here, DRIVE’s protest fails to meet this Office’s threshold requirements for consideration. That is, although DRIVE makes a number of allegations regarding bias that it believes is pervasive on behalf of both the contracting agency and the United States Congress, DRIVE has not provided sufficient support for its allegations. Given this, and our view that the solicitation as well as the record here reflect reasonable efforts on behalf of the agency to ensure an objective evaluation and source selection process, DRIVE’s allegations of bias will not be considered further.³ See International Garment Processors, B-299674 et al., July 17, 2007, 2007 CPD ¶ 130 at 4-5 n.6.

³ In response to a request for dismissal filed by the agency, DRIVE filed supplemental arguments on its claims of bias. Accompanying DRIVE’s filing were documents connected with a civil action between DRIVE and a competitor that, in DRIVE’s view, demonstrate the agency’s bias against it. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. Halter Marine, Inc., B-289303, Dec. 12, 2001, 2001 CPD ¶ 200 at 3. This includes the identification of more specific information concerning allegations raised in the initial protest. See id. Such information must be filed within 10 calendar days after the protester knew or should have known the basis for its protest. 4 C.F.R. § 21.2(a)(2). Because DRIVE did not present its supplemental arguments and information until it filed its response to the dismissal request, more than 10 days after its protest was filed, these arguments and information are untimely. See Halter Marine, Inc., supra. In any event, a review of the

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To the extent that the protester's argument here is intended as a challenge to the terms of the solicitation, that is, that it was improper for the agency not to have included past performance as an evaluation factor, its argument is untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of proposals. Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Finally, the protester contends that its bias allegation "warrants further investigation by the GAO," and argues that our Office, by not conducting our own independent investigation into the protester's allegations of bias, has acted in a manner that is inconsistent with our "charter." Protester's Comments at 7; see Protest at 1. However, and contrary to the protester's apparent belief, our Office does not conduct investigations as part of our bid protest function. RMI, B-405409, Oct. 20, 2011, 2011 CPD ¶ 224 at 3 n.2; New SI, LLC, B-295209 et al., Nov. 22, 2004, 2005 CPD ¶ 71 at 3.

The protest is denied.

Lynn H. Gibson
General Counsel

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supplemental arguments and information does not change our view that DRIVE's assertion of bias is fundamentally based on speculation and inference.