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Decision

Matter of: Investment Management Enterprise

File: B-410762; B-410762.2

Date: February 9, 2015

Jerry A. Miles, Esq., Deale Services, LLC, for the protester.
Amy L. O'Sullivan, Esq., and Gordon Griffin, Esq., Crowell & Moring LLP, for Eagle Hill Consulting, LLC, the intervenor.
Michael Kiffney, Esq., Angela Varner, Esq., and Christopher Reames, Esq., Department of Homeland Security, for the agency.
K. Nicole Willems, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency misevaluated awardee's proposal is denied where the record shows that the agency's evaluation was consistent with the terms of the solicitation and applicable procurement statutes and regulations.

DECISION

Investment Management Enterprise (IME), of Washington, DC, protests the award of a contract to Eagle Hill Consulting, LLC (Eagle Hill), of Arlington, VA, by the Department of Homeland Security, Transportation Security Administration (TSA), under request for proposals (RFP) No. HSTS02-13-R-MLS263 for the Intermodal Security and Training Exercise Program (I-STEP). IME challenges TSA's evaluation of proposals.

We deny the protest.

BACKGROUND

The RFP, issued on December 12, 2013, contemplated the award of an indefinite-delivery/indefinite-quantity (IDIQ) contract with a sixty-month ordering period, and a ceiling amount of \$30 million. RFP at 2. The solicitation included two

initial task orders, which offerors were to address in their proposals.¹ Id. The RFP established a best value source selection process considering the following five factors, in descending order of importance: (1) technical capability: statement of objectives (SOO)/IDIQ; (2) technical capability: task order one; (3) technical capability: task order two; (4) past performance; and (5) cost/price. RFP §§ M.3 and M.4. Key areas to be evaluated under the first factor included: (1) overall technical and management approach; (2) corporate experience and expertise; (3) key personnel; (4) staffing; and (5) risk management. RFP § M.4. As relevant to this protest, an amendment to the RFP clarified that the key areas were not to be construed as subfactors and would not receive individual ratings. AR, Tab 2, Amend. No. 6, Mar. 7, 2014, at 321-322. The amendment also provided that proposals should address the corporate experience and expertise key area by providing “[t]he offeror’s corporate experience and expertise as a prime contractor providing management, monitoring, staffing and other services in support of work of similar size and scope as described in this RFP.” Id. at 322.

Twenty-seven offerors submitted proposals by the March 31, 2014, closing date. Agency Report (AR) at 2. The technical evaluation team (TET) evaluated all twenty-seven proposals under the four non-price factors, and the price evaluation team (PET) evaluated the proposed prices. AR at 2-3. IME and Eagle Hill were evaluated as follows:

	Technical Capability: Statement of Objectives (SOO)/IDIQ	Technical Capability: Task Order One	Technical Capability: Task Order Two	Past Performance	Evaluated Price
IME	Acceptable	Acceptable	Acceptable	Acceptable	\$3,134,027.78
Eagle Hill	Outstanding	Good	Good	Acceptable	\$2,780,192.74

AR, Tab 8, TET Consensus Technical Report at 1-2; Tab 14 Cost/Price Data Spreadsheets at 1.

After reviewing the results of the TET and the PET, and after conducting an independent review, the source selection authority (SSA) determined that Eagle Hill represented the best value to the government based on the assessment of its proposal under the non-price factors, and its lowest evaluated price. AR, Tab 17,

¹ Task order one is a fixed-price task order for program management support services with a twelve-month period of performance and four one-year options. Agency Report (AR) at 1. Task order two is a cost-plus-fixed-fee task order for training and exercise support with a twelve-month period of performance. Id. at 2.

SSA's Decision, at 3. TSA provided IME with a post-award debriefing on October 30, and this protest followed. Contracting Officer's (CO's) Statement at 24.

DISCUSSION

IME argues that Eagle Hill's proposal should have been assigned a weakness under the first evaluation factor for failing to demonstrate that, as a prime contractor, Eagle Hill had experience on contracts involving I-STEP and actual training exercises. IME's Supplemental Protest at 3. IME further argues that the agency unreasonably assigned an outstanding rating to Eagle Hill under the first factor, absent any documented findings pertaining to corporate experience and expertise.² Id. Additionally, IME contends that the agency evaluated proposals unequally under the first evaluation factor, by awarding strengths to other offerors for aspects of their proposals that were equivalent to aspects of IME's proposal that did not receive strengths. IME's Comments on Supplemental AR at 9-14.

TSA provided a detailed response to IME's arguments in its supplemental agency report. First, the agency explained that the solicitation did not require a showing of prime contractor experience with I-STEP or actual training exercises; rather the RFP required offerors to demonstrate experience providing "management, monitoring, staffing and other services in support of work of similar size and scope as described in this RFP." Supp. AR at 7; AR, Tab 2, Amend. No. 6, Mar. 7, 2014, at 322. With regard to IME's second argument, the agency explained that it evaluated Eagle Hill's proposal against the requirements in the RFP and documented five strengths and no weaknesses under the first evaluation factor, resulting in the outstanding rating. AR, Tab 8, TET Consensus Technical Report at 2, 25. The agency evaluated the corporate experience and expertise key area portion of the first evaluation factor and

² In its initial protest, IME challenged the agency's best-value tradeoff; the evaluation of the awardee under the past performance factor; the agency's alleged failure to conduct a price realism evaluation of the awardee's proposal; the technical evaluation of the awardee's proposal; the technical evaluation of IME's proposal; and the evaluation of the total prices for IME and the awardee. Protest at 1. In response to a request for dismissal, submitted by the agency, we dismissed the protester's challenges to the technical evaluation of IME's proposal, but declined to dismiss IME's challenges to the agency's price evaluation. Subsequently, the agency submitted its report, which included a detailed response to each of the protest grounds raised by IME. IME failed to rebut or otherwise substantively address the agency's arguments in its comments. Instead, IME advanced new arguments based on information disclosed in the agency report, which we address in this decision. We consider IME to have abandoned its original protest grounds, and those arguments will not be considered further. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

found that, while sufficient, it provided no strengths or weaknesses. Supp. AR at 8. The agency explained that there is no requirement for the agency to record findings where a proposal simply meets the agency's requirements, as was the case with Eagle Hill's proposal in the corporate experience and expertise key area. Id. at 6; DB Consulting Group, Inc., B-401543.2, B-401543.3, Apr. 28, 2010, 2010 CPD ¶ 109 at 6. IME provided no meaningful response to the agency's reasonable explanations in its comments on the supplemental agency report. Instead, the protester simply repeated its initial assertions. As such, there is no basis to sustain IME's arguments on this record.

IME also argues that the agency evaluated the proposals unequally under the first evaluation factor by awarding strengths to other offerors for aspects of their proposals that were equivalent to aspects of IME's proposal that did not receive strengths. IME's Comments on Supplemental AR at 9-14. According to the protester, if proposals had been evaluated fairly, equally, and consistently, its proposal would have received at least a rating of good for factor one.³ Id. at 9.

We need not reach the protester's allegations in this regard, however, because, even if our Office were to find them meritorious, the record does not support a finding that the protester was prejudiced by the alleged evaluation errors. Prejudice is an essential element of every viable protest, and we will not sustain a protest where it is clear from the record that a protester suffered no prejudice as a result of an agency evaluation error. A-Tek, Inc., B-404581.3, Aug. 22, 2011, 2011 CPD ¶ 188 at 10. Where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice. See, e.g., Special Servs., B-402613.2, B-402613.3, July 21, 2010, 2010 CPD ¶ 169 at 4.

Here, even if IME were to prevail on its challenge to its rating under the first evaluation factor, its best possible outcome would be that IME's rating for factor one would increase from acceptable to good or outstanding. In that situation, IME would not have a substantial chance of receiving the award because Eagle Hill would still be higher rated overall with the highest possible rating under the first factor; good

³ The protester also asserts that it would have received a good rating under the second factor and that it had a lower evaluated price than Eagle Hill that would have put it in line for the award. Id. The protester has raised no challenges to its evaluation under the second factor, however, so the acceptable rating assigned to its proposal would remain unchanged. Additionally, IME misstates the situation regarding the total evaluated prices--Eagle Hill's total evaluated price is lower than the protester's. In this regard, IME's argument is incorrectly based on a comparison of its price for task order one to Eagle Hill's total evaluated price for task orders one and two.

ratings under the second and third factors; and an acceptable rating under the fourth factor. Additionally, Eagle Hill would have a significantly lower price than IME. As a result, IME cannot establish that it has been prejudiced.

The protest is denied.

Susan A. Poling
General Counsel