



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ProMaintenance Services, LLC

File: B-412958

Date: July 18, 2016

Michelle F. Kantor, Esq., and Manju Gupta, Esq., McDonald Hopkins LLC, for the protester.

Lawrence M. Anderson, Esq., Department of the Air Force, for the agency.

Lois Hanshaw, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The agency's discussions with protester were reasonable and meaningful where the agency repeatedly advised the protester of the basis for determining that its proposal was technically unacceptable.

2. Protester's assertion that the agency applied an undisclosed and unreasonable staffing estimate in evaluating proposals is denied where the agency considered the protester's approach, and informed the protester during discussions that its staffing was inadequate.

DECISION

ProMaintenance Services, LLC (PMS), of Scottsdale, Arizona, protests the elimination of its proposal from the competition under request for proposals (RFP) No. FA4800-15-R-0001 issued by the Department of the Air Force for custodial/janitorial services at Langley Air Force Base and Fort Eustis Army Base. PMS contends that the agency failed to engage in meaningful discussions and improperly evaluated its technical proposal.

We deny the protest.

BACKGROUND

On August 6, 2015, the RFP was issued as an 8(a) set-aside for small businesses. RFP at 1. The RFP contemplated the award of a fixed-price contract, for a one-year

base period and four one-year option periods, on a lowest-priced, technically-acceptable basis. Id. at 81, 83. Offerors were required to ensure that custodial services would be performed in a manner that maintains satisfactory facility conditions and presents a clean, neat, and professional appearance. RFP, Performance Work Statement (PWS), at 116. As relevant here, the required custodial services at Ft. Eustis were grouped into 13 contract line item numbers (CLINs) that defined the necessary services and established the required frequencies of performance. RFP at 6-14.

The RFP established three evaluation factors: price, technical, and past performance. Id. at 83. The technical factor included three subfactors: personnel, quality control, and transition plan. Id. at 84. As relevant here, the solicitation provided that proposals would be evaluated under the personnel subfactor to determine if the offeror was proposing “a sufficient number” of personnel.¹ Id. To be eligible for award, proposals must have received an acceptable rating under each technical subfactor. Id. Finally, the RFP advised offerors that a competitive range could be established, and could be limited for purposes of efficiency in accordance with Federal Acquisition Regulation § 15.306(c). Id. at 86.

On September 9, 2015, eight offerors, including PMS, submitted proposals. For staffing at Ft. Eustis, PMS’s proposal stated that it was proposing [deleted] full time equivalent personnel (FTEs) [deleted] for each contract performance period. AR, Tab 17, PMS Proposal, at 9. The agency evaluated PMS’s proposal as unacceptable on the basis of insufficient staffing. AR, Tab 23, Interim Proposal Analysis Report (PAR), at 15. Specifically, the agency established a manpower estimate, based on historical performance and International Sanitary Supply Association (ISSA) standards,² concluding that 26 FTEs was the minimum level of staffing that would be necessary to meet the solicitation’s requirements. Id. On November 18, the agency opened discussions with PMS, advising PMS, among other things, that its proposed level of staffing for Ft. Eustis was insufficient. Id. at 16.

PMS responded by asserting that its proposed staffing levels were based on “our proven methods of operations, integrated work management approach, our productivity improvement features, and the automated tools and technologies that

¹ The agency notes that the prior contract was terminated for being “significantly understaffed.” Agency Report (AR), Tab 38, Termination for Cause, at 1-3.

² The manpower estimate states that the agency relied on a study entitled ISSA 540 Cleaning Times, an industry study that identified the required amount of time to perform services to a determined cleaning standard, and the past history of FTEs used by both successful and unsuccessful contractors. AR, Tab 10 Agency’s Manpower Estimate, at 6; Tab 37, ISSA Cleaning Times.

we will bring, and use, on this contract,” further explaining that it had “[used] these same methods for staffing” under various other contracts. AR, Tab 12, Evaluation Notice (EN) No. PMS-T3, at 1-2. Thereafter, the agency evaluated PMS’s response and, again, concluded that its proposed staffing was inadequate.

On January 4, and by telephone on January 5, the agency conducted additional discussions with PMS, again advising PMS that the level of FTEs proposed for Ft. Eustis was insufficient, specifically identifying various CLINs about which the agency was concerned. Contracting Officer’s Statement at 13; AR, Tab 31, EN No. PMS-T-6, at 3-5. PMS provided various responses to the agency, continuing to assert that its proposed staffing was sufficient. Id. On January 12, the agency performed its final evaluation of PMS’s proposal, concluding that its staffing for Ft. Eustis was insufficient. Legal Memorandum at 8; AR, Tab 23, Interim PAR, at 16-17. Accordingly, PMS’s proposal was rated as unacceptable under the technical evaluation factor and eliminated from the competitive range. AR, Tab 22, Conclusion of Discussions Briefing, at 67, 87.

On February 3, 2016, PMS was notified of its exclusion from the procurement. Following a debriefing and an agency-level protest to the Air Force, this protest was timely filed with our Office.

DISCUSSION

PMS asserts that the agency’s discussions were inadequate and/or misleading. Protest at 22. PMS also argues that the agency had no legal justification to mandate any specific staffing requirements since the RFP was a performance-based contract; that the agency’s evaluation—which determined staffing by applying an undisclosed staffing estimate—was not only flawed, but also constituted the use of unstated evaluation criteria; and that the agency’s technical rating was unreasonable.³ Id. at 16, 18, 20, 23.

We first address PMS’s assertion that the agency engaged in inadequate and/or misleading discussions. In this regard, PMS argues that the agency, in advising

³ Before our Office, PMS also challenged the Air Force’s agency-level decision as unreasonable and argued that the agency should have referred PMS’s elimination to the Small Business Administration for a certificate of competency (COC). Protest at 10, 13. We dismiss PMS’s complaints regarding the agency-level protest process, since the procedures associated with an agency-level protest are not matters within the scope of our bid protest jurisdiction. B-310066, Eggs & Bacon, Inc., Nov. 20, 2007, 2007 CPD ¶ 209 at 4 n.5; 4 C.F.R. § 21.5(f). Additionally, we dismiss the protester’s arguments regarding the referral of a COC as untimely since it was not raised in the underlying protest to the agency. See 4 C.F.R. § 21.2(a)(3).

PMS that its staffing was low, failed to address any legitimate and crucial deficiencies in PMS's proposal. Id. at 22. We find no merit in this argument.

When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, they must lead the offeror into the areas of its proposal that require correction or amplification. Trajen, Inc.; Maytag Aircraft Corp., B-296334 et al., July 29, 2005, 2005 CPD ¶ 153 at 7-8.

Here, the agency initially found PMS's proposal unacceptable under the staffing subfactor because it determined that PMS's proposed staffing at Ft. Eustis was too low. The record establishes that the agency engaged in multiple rounds of discussions with PMS, repeatedly advising PMS that its staffing at Ft. Eustis was too low. Thereafter, PMS was eliminated from the competitive range because the agency concluded that PMS neither offered a sufficient number of staff to successfully perform the custodial tasks at Ft. Eustis, nor adequately explained the bases for its low staffing levels. On this record, PMS's complaints regarding the agency's discussions provide no basis for sustaining the protest.

Next, we address the protester's challenge to the agency's technical evaluation. While PMS raises various challenges to the agency's evaluation of its technical proposal, the gravamen of its protest is that it should not have been found technically unacceptable based on the agency's allegedly improper use of an undisclosed manpower estimate. Based on our review of the record, we find no merit to PMS's arguments.

An agency may evaluate technical or price proposals against an undisclosed estimate of the appropriate staffing needed to perform the solicitation requirements provided the RFP notifies offerors that staffing is an area of evaluation. Trajen, Inc.; Maytag Aircraft Corp., supra, at 7-8. A protester's disagreement with an agency's basis for developing a government estimate provides no basis to sustain a protest. Cantu Services, Inc., B-408012, B-408012.2, May 23, 2013, 2013 CPD ¶ 135 at 6. Because an agency's evaluation is dependent on the information provided in a proposal, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate or risk rejection if it does not. Excellus Solutions, Inc., B-410959.3, July 24, 2015, 2015 CPD ¶ 241 at 4-5.

Here, the solicitation unambiguously advised offerors that the agency would evaluate an offeror's proposed level of staffing. RFP at 84. Accordingly, the agency's reliance on a manpower estimate was not improper. Further, although PMS expresses disagreement with the level of the agency's staffing estimate, it does not provide a factual basis for our Office to conclude that the government's estimate was, in fact, unreasonable. More specifically, PMS has not explained, nor is it evident from its proposal or responses to discussions, how PMS calculated or derived the FTE estimates on which its proposal was based, despite the government's repeated attempts to obtain this information. Rather, the information

PMS provided in response to discussions either confirmed its FTE count, which the agency had already found to be low, or offered information that did not clearly explain how PMS's proposed FTEs would perform the custodial tasks contemplated by the various CLIN requirements. That is, PMS has not affirmatively demonstrated how its approach would have allowed it to perform the services with fewer FTEs than the agency estimated. PMS's formulation of staffing by using information in the RFP and its own experience, without sufficient detailed explanation, does not evidence a unique approach to accomplishing the custodial services that justifies departure from the agency's estimate. On this record, we conclude that it was reasonable for the Air Force to affirm its initial conclusion that PMS's proposed staffing was inadequate.

The protest is denied.

Susan A. Poling
General Counsel