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Decision

Matter of: Zavda Technologies LLC

File: B-413390.3

Date: November 1, 2016

H. Todd Whay, Esq., The Whay Law Firm, for the protester.
Egon F. Donnarumma, Esq., and James Wyatt, Esq., National Security Agency, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's proposal as unacceptable is denied where the agency reasonably found that the protester's proposal failed to address a mandatory technical requirement.

DECISION

Zavda Technologies, LLC, of Columbia, Maryland, a small business, protests the exclusion of its proposal from the competition under request for proposals (RFP) No. H98230-14-R-0069, issued by the Maryland Procurement Office, National Security Agency (NSA), Central Security Service, for business, engineering, information technology, operations, and training support services. Zavda argues that NSA improperly found its proposal technically unacceptable and ineligible for award.

We deny the protest.

BACKGROUND

On July 21, 2014, NSA issued the solicitation, referred to as "NSETS III," which was set aside for small business concerns, and anticipated the award of approximately fifteen indefinite-delivery, indefinite-quantity (IDIQ) contracts for a period of five years. RFP at 9. The estimated contract ceiling for NSETS III was \$800 million. Contracting Officer (CO) Statement at 1. Over the life of the contract, the agency anticipated competing more than seventy task orders. Id. at 2.

The RFP provided for award on a best-value basis, considering the following evaluation factors: management/risk, technical/risk, scenario based example/risk, and price. Id., Proposal Evaluation Criteria (PEC), at 5. As relevant here, the management/risk factor included the evaluation of three subfactors: contract management requirements, probability of success, and innovation. Id. at 3. For purposes of award, the management/risk factor was more important than the technical/risk factor, which was equally important to the scenario based example/risk factor. The technical and scenario based example factors were more important than price, and when combined, all non-price factors were more important than price.

With regard to the management/risk subfactors, the first--contract management requirements--was evaluated on a pass/fail basis. The other subfactors--probability of success and innovation--were equal in importance. To be considered for award, the solicitation provided that a proposal "must not be unacceptable or fail any pass/fail evaluation categories." Id. at 1. The solicitation defined unacceptable as: "Proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable." RFP, PEC at 3.

As relevant here, and to enable small businesses to successfully compete for and perform the significant volume of work under NSETS III, the solicitation facilitated teaming arrangements of two or more small business concerns. RFP, Ordering Guidelines, at § 2.2. Specifically, the solicitation permitted an offeror to submit a proposal on behalf of a core team comprised of the prime contractor and up to 10 teammates, provided each teammate fell under the RFP's small business size standard.¹ The solicitation defined team member as "a small company . . . that has a formal teaming agreement with the Prime." Id. Specifically, each team member was required to have a top secret facility clearance and had to be pre-approved by the NSETS program management office and contracting officer. Id. In addition, the team was required to perform at least 50 percent of the labor dollars on any awarded task order. Id.

The solicitation required evaluation of proposed teammates in the context of an offeror's proposed management approach. Specifically, and as relevant here, under the innovation subfactor, the solicitation directed offerors to provide a management approach that included the "offeror's approach to ensure each teammate is fully integrated into the structure, retained, and managed." RFP, Proposal Preparation Instructions (PPI) at 10.

The solicitation's PPI, however, expressly advised offerors, that their program management approach "shall not include references to subcontractors." RFP, PPI at 8. The solicitation defined subcontractors "under NSETS III" as "companies

¹ The small business size standard for the solicitation was \$27.5 million.

(large or small)² that do not have a formal teammate teaming agreement with the Prime” and are “only proposed by Primes on NSETS III [task order] competitions.” Id., Statement of Work (SOW) at 4. During questions and answers (Q&As), the agency further explained that it did not want offerors to reference “subcontractors” in their proposed management approaches, because the agency was evaluating the prime and teammates, not the subcontractors, under the relevant evaluation criteria. RFP, Q&As, No. 14, at 2.³

The closing date for receipt of proposals was October 2, 2014. Contracting Officer (CO) Statement at 4. Zavda timely submitted a proposal by that date. Id. In evaluating Zavda’s proposal, the source selection evaluation board (SSEB) found Zavda’s proposal unacceptable under the management/risk factor. Agency Report (AR), Tab 9, SSEB Report, at 8. Specifically the SSEB assigned a deficiency to Zavda’s proposal under the innovation subfactor arising from two material failures. These included failing to address teammate retention, and failing to adequately address Zavda’s teammate management process. Id. at 8-10.

With regard to the first failure concerning teammate retention, the SSEB found that “[r]etention of teammates was not discussed in the proposal.” Id. at 9. As for the second failure with regard to management process, the evaluators explained the following:

Zavda briefly mentioned a management process that starts with teaming agreements, but they did not clearly define the process or go into further detail. Instead, the offeror addressed how they would manage subcontractors. For example, the offeror states that they understand that subcontractor management is vital and they use

² The solicitation further provided that small business subcontractors must meet the \$27.5M size standard, and “may work on any awarded [task orders] accounting for up to 50% of the labor dollar limit.” RFP, Ordering Guidelines § 2.2. The solicitation defined large business subcontractors, on the other hand, as “businesses that are over the \$27.5M revenue limit.” Id. § 2.3. The solicitation explained that, for large business subcontractors, the “maximum allowable contribution . . . is limited to 50% of labor dollars per [task order.]” Id.

³ Specifically, Q&A No. 14 asked the agency to clarify the intent of the following sentence: “PPI 3.1 – The last sentence of this paragraph states, “The Program Management approach shall not include references to subcontractors.” RFP, Q&As, No. 14, at 2. The agency responded: “When responding to the subfactors indicated in this paragraph, only references to the team (Prime, and team[m]ates) shall be used as they must be capable of successfully performing across the 5 service categories. Management of subcontractors (not part of the team) is not being evaluated in this section of the PEC.” Id.

proven subcontractor management processes. The offeror also provides a table that highlights how they would manage subcontractors. While the management of subcontractors may be important after a [task order] is awarded, the government required how the offeror was going to manage their teammates.

Id.

The evaluators explained that these “material failures” in Zavda’s proposal increased “the risk of unsuccessful contract performance to an unacceptable level.” Id. at 9. The SSEB also stated that “[t]he inability to demonstrate a plan to manage and retain teammates would adversely affect mission.” Id. Accordingly, the SSEB found that “Team Zavda’s proposal does not meet [the] requirements [of the innovation subfactor] as it contains a deficiency,” and therefore, it assessed an unacceptable rating to Zavda’s proposal under this subfactor. Id. at 8-9. Based on the unacceptable subfactor rating, the SSEB also assessed an unacceptable rating to Zavda’s proposal for the management factor overall. The SSEB concluded: “[Zavda’s] proposal did not meet requirements and contains one or more deficiencies which deems this proposal unawardable.” Id. at 1-2.

Thereafter, the source selection advisory council (SSAC) independently reviewed the evaluation findings and prepared its own comparative analysis for the source selection authority’s (SSA) review. The SSAC agreed that Zavda’s failure to address teammate retention and management represented material failures in the proposal which increased the risk of unsuccessful performance to an unacceptable level. AR, Tab 11, SSAC Report, at 3. The SSAC also stated that receiving an unacceptable rating on any evaluation factor makes an offeror ineligible for award. Id. The SSA concurred with the deficiency rating for Zavda under the innovation subfactor, and concluded that Zavda’s proposal was unacceptable under the management factor and ineligible for award. CO Statement at 6.

On July 21, 2016, Zavda received a written, pre-award debriefing. This protest followed.

DISCUSSION

Zavda argues that NSA unreasonably found its proposal unacceptable based on a deficiency assessed under the innovation subfactor for failing to provide required information concerning its teammate management approach. The protester also asserts that the agency improperly failed to follow the terms of the solicitation in concluding that Zavda’s proposal was unacceptable overall and ineligible for award.

For the reasons discussed below, we find that the agency reasonably evaluated Zavda's proposal in accordance with the RFP.⁴

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. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Zavda argues that NSA's assessment of a deficiency under the innovation subfactor based on the protester's failure to adequately address its teammate management process was unreasonable. Specifically, the protester asserts that its proposal adequately addressed its approach to managing teammates, but that the agency applied an unreasonable interpretation of the solicitation in concluding that Zavda's proposal improperly addressed subcontractor management, instead of teammate management. According to the protester, the RFP "contained no prohibition on using the word subcontractor to discuss post-award activities of teammates, since each teammate would, in fact, be a subcontractor post-award." Comments at 2.

As noted above, under the innovation subfactor, the solicitation and PPI required offerors to provide a management approach that included the "offeror's approach to ensuring each teammate is fully integrated into the structure, retained, and managed." RFP, PPI at 10. As relevant here, the PPI expressly advised offerors that, in responding to this subfactor, they "shall not include references to subcontractors." Id. at 8.

In responding to this subfactor, Zavda's proposal used both the terms "subcontractor," and "team member."⁵ In evaluating the proposal, the SSEB explained that, although "Zavda briefly mentioned a management process that starts with teaming agreements," it did not "clearly define the process or go into further detail." AR, Tab 9, SSEB Report, at 9. In this regard, the evaluators noted

⁴ The protester raised other collateral arguments that are not discussed in this decision. We have reviewed all of the protester's allegations and conclude that they are without merit.

⁵ For example, the proposal stated that "Team Zavda understands that subcontractor management is vital to the success of any contract," and that "[w]ith the NSETS III contract, Zavda Technologies, LLC (the prime contractor) utilizes proven subcontractor management processes to ensure contract compliance and excellent work performance." AR, Tab 17, Zavda Management Proposal, at 17.

several instances where Zavda discussed its subcontractor management processes, but explained that “[w]hile the management of subcontractors may be important after a [task order] is awarded, the government required how the offeror was going to manage their teammates.” Id. The SSEB concluded that the proposal failed to adequately address Zavda’s teammate management approach. It also found that the proposal failed to discuss teammate retention. The SSEB assigned a deficiency to Zavda’s proposal for these material failures, stating that they increased “the risk of unsuccessful contract performance to an unacceptable level.” Accordingly, the SSEB found that “Team Zavda’s proposal does not meet requirements [of the innovation subfactor] as it contains a deficiency,” and it assessed an unacceptable rating to Zavda’s proposal under this subfactor for this reason. Id. at 8-9.

The protester acknowledges that its proposal referenced subcontractors in response to the innovation subfactor. Zavda contends, however, that based on the context of the language in this portion of its proposal, it was clear that its proposal was discussing Zavda’s existing team members, but referring to them as subcontractors. The protester therefore asserts that it was unreasonable for the agency, having read Zavda’s proposal in the context presented, to have concluded that Zavda’s proposal failed to address its approach to managing teammates, as required by the solicitation.

NSA responds that if Zavda had intended to use the terms teammate and subcontractor interchangeably, it was incumbent upon Zavda to clearly indicate that intention within its proposal. In this regard the agency notes that “subcontractor” and “team member” were both clearly defined terms for purposes of the NSETS III procurement.

It is an offeror’s responsibility to submit an adequately written proposal, and an offeror risks having its proposal evaluated unfavorably where it fails to do so. Phillips & Jordan, Inc., B-411551, Aug. 25, 2015, 2015 CPD ¶ 273 at 6.

Here, the record supports the reasonableness of the agency’s evaluation. Zavda elected to discuss both “subcontractors” and “team members” in the innovation subfactor section of its proposal. As noted above, the solicitation provided a distinct definition for each of these terms. RFP, Ordering Guidelines, at 3. Although the protester asserts that the agency should have reasonably understood from the context of Zavda’s proposal that it was discussing its existing team members, but referring to them as subcontractors, the record reflects that Zavda’s proposal did not include any explanation that Zavda intended to use these two terms interchangeably, as the protester now asserts. Without such an explanation in the proposal, we find reasonable the agency’s assumption that the terms used in Zavda’s proposal would be consistent with the definitions provided in the solicitation. While the protester argues that the solicitation did not prohibit the use of the word “subcontractor” to discuss the post-award activities of teammates, since

each teammate would be a subcontractor post-award, the protester provides no evidence that Zavda's proposal provided any such explanation to the agency for the proposal's use of the term. As referenced above, it is an offeror's responsibility to submit an adequately written proposal, and an offeror risks having its proposal evaluated unfavorably where it fails to do so. Phillips & Jordan, Inc., supra. Here, the agency assessed a deficiency to the protester's proposal, in part, based on its conclusion that Zavda's proposal addressed management of subcontractors, rather than teammates.⁶ The record reflects that Zavda's proposal used the term subcontractors in discussing Zavda's management approach, a fact the protester does not dispute. Accordingly, based on this record, we find nothing unreasonable regarding the agency's evaluation in this regard.

Zavda also argues that the agency's evaluation was inconsistent with the solicitation's evaluation scheme. Specifically, Zavda contends that an unacceptable rating in a single subfactor did not provide the basis to render its entire proposal unacceptable. As discussed below, however, we find no merit to this argument.

As referenced above, the RFP provided that if an offeror's proposal contained one or more deficiencies, the proposal itself would be unacceptable and ineligible for award. RFP, PEC at 3. As also discussed above, we conclude that the agency's assessment of the deficiency under the innovation subfactor was reasonable. Thereafter, the SSAC independently reviewed the evaluation findings and prepared its own comparative analysis for the SSA's review. The SSAC agreed that Zavda's failure to address teammate retention and management represented material failures in the proposal which increased the risk of unsuccessful performance to an unacceptable level. AR, Tab 11, SSAC Report, at 3. The SSAC concluded that receiving an unacceptable rating on any evaluation factor makes an offeror ineligible for award. Id. The SSA concurred with the deficiency rating for Zavda under the innovation subfactor, and concluded that Zavda's proposal was unacceptable under the management factor and ineligible for award. CO Statement at 6. Based on our review of the record, we find that the agency's evaluation was consistent with the terms of the RFP.

The protest is denied.

Susan A. Poling
General Counsel

⁶ We have also reviewed the record and find reasonable the agency's determination that Zavda's proposal failed to address teammate retention.