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Decision

Matter of: The Concourse Group, LLC

File: B-411962.5

Date: January 6, 2017

Anuj Vohra, Esq., Robert Nichols, Esq., and Nooree Lee, Esq., Covington & Burling, LLP, for the protester.

MAJ Stephen P. Smith, Department of the Army, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency imposed unstated evaluation criteria and unreasonably evaluated protester's quotation as unacceptable is denied where the evaluation was reasonable and consistent with the evaluation criteria.
 2. Protest that the agency engaged in disparate treatment by applying lower scrutiny to the evaluation of awardee's quotation is denied where differences between the contents and organization of the two quotations supports the evaluation results.
 3. Protest that the agency's discussions were misleading is denied where the discussions were sufficient to lead the protester into the areas of its quotation which required revision.
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DECISION

The Concourse Group, LLC, of Annapolis, Maryland, protests the issuance of a task order to RER Solutions, Inc., of Herndon, Virginia, by the Department of the Army, Mission and Installation Contracting Command, under request for quotations (RFQ) No. W9124J-15-R-0064, to support the Army's financial, real estate analytical, advisory and consulting support services program. The protester argues that the agency improperly evaluated its technical proposal as unacceptable based on unstated evaluation criteria, engaged in disparate treatment between the vendors, and conducted misleading discussions.

We deny the protest.

BACKGROUND

On July 20, 2015, the Army issued the RFQ via the General Services Administration's e-Buy system to holders of Financial and Business Solutions Federal Supply Schedule (FSS) contracts, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4. The RFQ was to procure financial and real estate consulting support services for various of the Army's Military Housing Privatization Initiative (MHPI) programs--such as the Army's Residential Communities Initiative (RCI) and Privatization of Army Lodging (PAL) programs--and various non-MHPI public/private partnership programs. The RFQ anticipated the issuance of a single task order for a one-year base period and four one-year option periods. The RFQ provided that award would be made on a lowest-price technically-acceptable basis, considering two non-price factors, technical capability and past performance. The technical capability factor contained four subfactors: (1) corporate experience; (2) understanding of the Army MHPI program; (3) staffing plan/qualifications of key personnel; and (4) quality control approach. Agency Report (AR), Tab 33, RFP Amendment 0008, at 21-22.

As relevant here, the evaluation criteria under subfactor (1)--corporate experience--involved consideration of 10 specific elements of corporate experience identified in the RFQ. The subfactor provided that "[t]o be considered acceptable, the Offeror must be able to demonstrate experience on projects of similar scope and complexity to the specific tasks outlined in the [performance work statement (PWS)]" and that "[o]fferors are also required to provide a comprehensive narrative which explains how that experience on similar projects relate[s] and ties back to the Army's MHPI program for the subfactor 1 elements." Id. at 22.

Similarly, the evaluation criteria under subfactor (2)--understanding of the Army MHPI program--involved consideration of the vendors' understanding of 21 specified elements of the Army MHPI program identified in the RFQ. This subfactor required vendors to demonstrate a thorough understanding of the Army MHPI program, or Department of Defense (DoD) equivalents, and recent and relevant experience concerning each subfactor element. The subfactor also cautioned that:

NOTE: When using Air Force, Navy and Marine Corps MHPI equivalents while addressing the subfactor elements below offerors are required to relate their understanding of those programs to the Army's MHPI program and explain how it is applicable to their ability to successfully support the Army's MHPI program.

Id. at 23. Finally, the subfactor required "a narrative management plan describing ability to complete the work detailed in the PWS." Id. To be acceptable, vendors were required to demonstrate understanding by addressing five specific PWS tasks: 5.1.2; 5.2.1.b; 5.2.1.c; 5.9; and 5.10. Id.

In response to the RFQ, the agency received quotations from two small businesses, Concourse and RER.¹ After an initial evaluation in January 2016, the agency concluded that RER's quotation was acceptable, while Concourse's quotation was unacceptable with respect to technical subfactors (1), (2), and (3). The agency then elected to establish a competitive range including the two vendors and engaged in discussions. Following two rounds of discussions, Concourse's quotation, priced at \$22 million, remained unacceptable with respect to technical subfactors (1) and (2). Specifically, the agency concluded that Concourse had not submitted acceptable responses with respect to subfactor (1) element (1)(d), and with respect to 12 of the 21 subfactor 2 elements: (2)(a), (2)(d)-(2)(g), (2)(i), (2)(m), and (2)(p)-(2)(t). AR, Tab 43, Source Selection Decision Document (SSDD), at 12-13.

At the conclusion of discussions, RER's quotation remained the only acceptable small business quotation. Accordingly, the agency concluded that RER was the lowest-priced technically-acceptable vendor in the small business tier, and issued the order to RER at a price of \$25.8 million on September 16, 2016. Concourse requested a debriefing, which the agency provided on September 24. This protest followed.

DISCUSSION

Concourse challenges the agency's evaluation of its quotation as unacceptable under the technical capability factor, arguing that the agency applied an unstated requirement that vendors have direct experience with the Army's MHPI programs, including RCI and PAL. Although it lacked specific experience with the Army's programs, the protester asserts that it demonstrated substantial experience with other DoD MHPI programs, which the RFQ established as acceptable to meet the experience requirements of subfactors (1) and (2). Concourse also alleges that the agency engaged in disparate treatment of the vendors, by subjecting RER's quotation to less scrutiny, and conducted misleading discussions by not advising Concourse of the agency's actual (but unstated) requirements.

The agency denies that it required Army-specific MHPI experience, and responds that it evaluated the quotations in accordance with the stated criteria and on an equal basis, and did not mislead Concourse in discussions. The agency contends that Concourse's quotation was properly evaluated as unacceptable with respect to multiple technical subfactor elements because Concourse's quotation

¹ The RFQ utilized a tiered evaluation approach under which small business concerns' quotations were evaluated first, and large business concerns' quotations evaluated only if award could not be made to a small business firm. Because the agency was able to make award to RER, large business quotations were not further considered.

failed to clearly address Concourse's understanding of the distinct aspects of the Army's MHPI programs, or sufficiently relate and tie back its non-Army experience in the context of the subfactor elements, as required by the evaluation criteria.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, supra.

Our review of the record demonstrates that the agency's evaluation was consistent with the criteria set forth in the RFQ, and was not unreasonable. In this regard, the record shows that flaws or oversights in Concourse's quotation support the agency's conclusion that the quotation was unacceptable. Particularly with respect to subfactor (2)--understanding of the Army MHPI program (under which Concourse was found unacceptable with respect to 12 of 21 subfactor elements)--the record shows that Concourse's quotation reflected a significant emphasis on its management plan and approach to each of the PWS tasks, with only minimal narrative to specifically address the 21 Army MHPI program elements set forth in the evaluation criteria.

To address the 21 subfactor 2 elements, Concourse's quotation relied on a general corporate experience table (Table 1, Corporate Experience Client References) describing its prior experience, and another table (Table 6, Evaluation Criteria Chart) which purported to cross-reference the experience table and Concourse's management plan with the various subfactor elements. Our review of the quotation, however, demonstrates that many of the evaluation criteria references in table 6 point to corporate experience entries or management plan sections that provide only cursory discussion of the subfactor elements or no discussion at all, and fail to relate Concourse's non-Army experience to the Army's unique MHPI programs.

For example, subfactor element (2)(d) provided for evaluating vendors' understanding of, and experience with:

Providing assistance and advice on Army MHPI Housing and Lodging assets (or Air Force, Navy, and Marine Corps MHPI equivalent) based on changing market conditions due to actions by debt insurers, rating agencies [and] investors; [s]how recent

expertise dealing with investment banking firms, rating agencies and be able to advise on decisions made by these entities and how those decisions will potentially impact the Army's Housing and Lodging Programs not only for the near term but for the long term; to include providing tools and analysis that forecast future impacts; (PWS Para. 5.2.1).

AR, Tab 33, RFQ Amendment 0008, at 23. In response to this element, table 6 of the quotation advised that Concourse's relevant experience in this area was addressed in table 1, entries 1, 2, 3, 8, 9, 16, 18, 22, 23, 27, and 28. AR, Tab 36, Concourse Final Proposal Revision (FPR), at 273. Our own review of table 1 shows, however, that entries 8, 16, 18, 23, and 27 contain no discussion or reference whatsoever to subfactor element (2)(d).² See, Id. at 192-216 (Table 1). Additionally, entries 1, 9, 22, and 28 provide only citation to element (2)(d) without specific elaboration concerning the element criteria.³ Id. at 192, 200-201, 209-210, 215. Thus, of the 11 referenced experience entries, only entries 2 and 3 contained

² Table 6 also cited subfactor element (2)(d) to sections 2.2.1 and 2.2.9 of the quotation, which concern Concourse's program support team and portfolio management team "implementation management processes," and its "PAL services" experience--neither of which was responsive to "[p]roviding assistance and advice. . . based on changing market conditions due to actions by debt insurers, rating agencies, [and] investors." AR, Tab 33, RFQ Amendment 0008, at 23.

³ Table 1 entry 1 is typical of these references. It provides, in full:

How the experience ties back to the Army's MHPI Program:
This experience relates to Subfactors 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), 1(j), 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 2(g), 2(h), 2(i), 2(j), 2(k), 2(l), 2(m), 2(n), 2(o), 2(p), 2(r), 2(s), and 2(t). The Army's and Navy's privatization programs are substantially similar as they are both operated under the same legislative authorities. Concourse's current experience and expertise applies directly to the Army's program. Its skill sets are directly transferrable to each of the Services whose programs are based on the same authorities.

Id. at 192. We agree with the Army that this response fails to specifically address Concourse's understanding of, and experience with, "[p]roviding assistance and advice on Army MHPI Housing and Lodging assets (or Air Force, Navy, and Marine Corps MHPI equivalent) based on changing market conditions due to actions by debt insurers, rating agencies, [and] investors." AR, Tab 33, RFQ Amendment 0008, at 23.

explanation of the connection between the listed experience and evaluation element (2)(d).⁴

Specifically, entry 2 described Concourse's experience with Air Force MHPI programs that involved negotiation and coordination with rating agencies, debt insurers, commercial banks and public/private investors. The entry asserted that this experience "demonstrated Concourse's ability to meet with and negotiate with Wall Street investment bankers, rating agencies, insurance and surety providers, bond holders representatives and other relevant private sector parties advantage of exigencies associated with these externally driven events demonstrating expertise related to Subfactor 2(a) and Subfactor 2(d)." Id. at 194.

Similarly, entry 3 described Concourse experience with other Air Force programs involving financial and operational negotiations processes. With respect to this experience, Concourse asserted that "[p]er Subfactor 2(d), Subfactor 1(j) and Subfactor 2(i), Concourse provided assistance and advice on this lodging project and adjusted the project proforma and deal terms multiple times to reflect the changing market conditions due to actions by investors. Concourse demonstrated the impact of these entities on the deal terms for lodging privatization transactions and demonstrated an understanding of the capital markets and execution of transactions." Id. at 195-196.

While the above entries describe Concourse's experience with Air Force MHPI programs in this element area, they did not relate understanding of those programs to the Army's MHPI program, or demonstrate understanding of how third parties' "decisions will potentially impact the Army's Housing and Lodging Programs not only for the near term but for the long term; to include providing tools and analysis that forecast future impacts." AR, Tab 33, RFQ Amendment 0008, at 23.

Where the protester's quotation provided only cursory discussion of its understating and experience as it specifically related to the subfactor 2 elements set forth in the pass/fail evaluation criteria, we cannot conclude that it was unreasonable for the agency to find that Concourse failed to meet the requirement to "relate their understanding of [non-Army MHPI] programs to the Army's MHPI program and explain how it is applicable to their ability to successfully support the Army's MHPI

⁴ We note that other entries in table 1 also addressed subfactor element (2)(d). For example, entry 26 included one sentence indicating experience with that subfactor element. However, entry 26 was not cited as a reference for element (2)(d) in table 6 of the quotation and, in any event, also failed to specifically address understanding of the unique Army MHPI programs, or relate non-Army MHPI experience to the Army's programs, as required. It is an offeror's responsibility to submit a well-written proposal which allows a meaningful review by the agency. International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8.

program.” AR, Tab 33, RFQ Amendment 0008, at 23. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and it runs the risk that the agency will unfavorably evaluate its proposal where it fails to do so. United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150 at 4.

Concerning Concourse’s allegations of disparate treatment, our review of the record indicates that differences between the contents of the quotations support the evaluation results. For example, with respect to subfactor 2, the record reveals distinctly differing approaches to responding to the stated evaluation criteria. While Concourse’s quotation--as discussed--primarily focused on describing its management plan for the PWS tasks and relied on two inadequately detailed tables to address the subfactor elements, RER’s quotation was explicitly organized around addressing the subfactor elements through substantial narratives describing RER’s understanding of the areas in which the Army’s programs diverged from other DoD MHPI programs and relating its Army and non-Army MHPI experience to its ability to meet the Army’s program needs. See, e.g., AR, Tab 37, RER FPR, at 48-50 (concerning element (2)(a). RER also provided, in the context of each subfactor element, its management approach to the PWS tasks involved, as well as a separate management approach summary. Id. at 49-50, 91-95. We conclude that these differences between the two vendors’ quotations amply demonstrate why Concourse’s quotation was reasonably evaluated as unacceptable and RER’s quotation acceptable, and we see no basis to conclude that the agency’s evaluation was disparate in this respect.⁵

Finally, we disagree with Concourse’s allegation that the agency’s discussions were misleading.⁶ In this regard, Concourse asserts that the discussions were

⁵ While distinctions between the two quotations under subfactor 1, element (1)(d) are less apparent on our review, Concourse’s protest has not pointed our Office to any unacceptable aspect of RER’s response in that area. Concourse’s arguments concerning the acceptability of its own quotation under subfactor 1 are unavailing, as Concourse cannot demonstrate that it was prejudiced where we have concluded that Concourse’s quotation was reasonably evaluated as unacceptable with respect to subfactor 2. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3.

⁶ We note that this competition was limited to FSS vendors. As we have previously noted in our decisions, the procedures of FAR part 15 governing contracting by negotiation--including those concerning exchanges with offerors after receipt of proposals--do not govern competitive procurements under the FSS program. FAR § 8.404(a); USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3. However, exchanges that do occur with vendors in a FAR subpart 8.4 procurement, (continued...)

misleading because the agency did not advise Concourse of its alleged unstated requirement for Army-specific MHPI experience. As discussed above, we see no evidence in the record that the Army implemented an unstated requirement for Army MHPI experience.

To the extent the protester asserts that the agency was required to advise it of precisely how its proposal could become acceptable, the protester is mistaken. To be meaningful, discussions are required to be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. Here, we conclude that the Army's discussions adequately advised Concourse that its quotation was unacceptable because it did not adequately demonstrate understanding of the Army's MHPI programs, and failed to tie back or relate its non-Army MHPI experience to the Army's programs in the context of specific subfactor elements for evaluation.⁷ An agency is not required to "spoon-feed" offerors in discussions, ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45, nor conduct successive rounds of discussions until all proposal defects have been resolved. OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

like all other aspects of such a procurement, must be fair and equitable. A-Tek, Inc., B-404581.3, Aug. 22, 2011, 2011 CPD ¶ 188.

⁷ We also note that despite Concourse's acknowledged lack of Army MHPI experience, through the discussions process Concourse's quotation became acceptable in several areas originally evaluated as unacceptable, including subfactor elements (1)(a), (2)(l), and (2)(n); and under subfactor (3). AR, Tab 43, SSDD, at 12-14. We conclude that these improvements in Concourse's evaluation results, without Army MHPI experience, indicate that the Army did not have an unstated requirement for prior Army-specific MHPI experience to meet the subfactor elements.