



Decision

Matter of: American Native Veterans of Louisiana

File: B-414555.2

Date: July 11, 2017

Michael Wisner, American Native Veterans of Louisiana, for the protester. M. Warren Butler, Esq., and Scott D. Stevens, Esq., Starnes Davis Florie LLP, for Timberline Homes of Louisiana, LLC, an intervenor; and, John T. Andrishok, Esq., Breazeale, Sachse and Wilson, LLP, for Andries and Associates, LLC, an intervenor. Nathaniel Greeson, Esq., and Erin Greten, Esq., Department of Homeland Security, for the agency.

Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly evaluated the protester's proposal as unacceptable is denied where the record shows that the agency's evaluation was reasonable and in accordance with the solicitation requirements.

DECISION

American Native Veterans of Louisiana (ANVL), a service-disabled veteran-owned business located in Covington, Louisiana, protests the award of contracts to Timberline Homes of Louisiana, a small business located in Lafayette, Louisiana, and Andries and Associates, a small business located in Carencro, Louisiana, by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), pursuant to request for proposals (RFP) No. HSFE06-17-R-0003 for the maintenance and deactivation of manufactured housing units (MHUs). The protester alleges that the agency failed to reasonably evaluate ANVL's proposal, improperly amended the solicitation after the closing date for submission of proposals, and failed to provide a proper and fair debriefing.

We deny the protest.

BACKGROUND

FEMA is authorized to provide disaster assistance to individuals and households for emergencies, major disasters, and incidents of national significance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 et seq. RFP at 18. On August 11, 2016, a major disaster was declared due to storms and floods in Louisiana, which designated individual assistance for the following disaster-affected parishes: East Baton Rouge, Livingston, St. Helena, Tangipahoa, Arcadia, Ascension, East Feliciana, Iberia, Lafayette, Point Coupee, St. Landry, Vermilion, Avoyelles, Evangeline, Iberville, Jefferson Davis, St. Martin, St. Tammany, Washington, West Feliciana, St. James, West Baton Rouge, Assumption, Cameron, St. Charles, and John the Baptist.¹ Id. at 18, 41; Agency Report (AR), Tab H, Source Selection Decision (SSD) at 1. Due to the lack of housing resources as a result of the floods, FEMA implemented direct housing assistance in response to a request from the State of Louisiana for all affected parishes. AR, Tab H, SSD, at 1. FEMA issued a task order to Chicago Bridge & Iron (CB&I) Federal Services under the agency's pre-positioned contracts to provide for the haul/install and maintenance/deactivation for approximately 4,000 MHUs to temporarily house families affected by the flood. Id.

The agency issued the current solicitation for the maintenance and deactivation portion of the task order to transition to contracts for local businesses residing or primarily doing business in the disaster-affected areas in accordance with the Stafford Act. Id. FEMA issued a combined synopsis/solicitation on November 29, 2016, as a commercial item solicitation under the procedures in Federal Acquisition Regulation (FAR) parts 12 and 15, seeking proposals to provide the MHU maintenance and deactivation services. RFP at 19. The RFP was issued as both a Stafford Act set-aside for firms in the disaster-affected parishes, and a set-aside for small businesses. RFP at 9, 11. The solicitation contemplated the award of two fixed-price contracts, and provided that the awards would be made on a best-value basis based on the agency's evaluation of the following four factors: technical approach (phase-in and quality control plan), past performance, company experience, and price. Id. at 18-19. The RFP provided that the non-price factors were of equal importance and when combined were more important than price. Id. at 19. The RFP provided for a 6-month base period with three 6-month option periods. Id. at 3-6.

With respect to the technical approach subfactor 1a, phase-in plan, the solicitation required an offeror to address how it planned to assume the MHU maintenance and deactivation from the incumbent contractor. Id. at 19. The agency would evaluate an offeror's phase-in plan based on its ability to demonstrate techniques and strategies for

¹ RFP amendment No. 1 added the parishes of St. James and West Baton Rouge to the solicitation. RFP amend. No. 1 at 41. A modification/amendment notice was also issued on the fedbizopps website on December 6, 2017, adding the following parishes: Assumption, Cameron, St. Charles, and John the Baptist. See www.fbo.gov (last visited July 3, 2017).

quickly ramping up with equipment, sub-contractor(s), and management team(s) while simultaneously assuming the responsibilities of the statement of work. Id.

FEMA received multiple proposals in response to the solicitation, including a proposal from ANVL. AR, Tab H, at 3. The source selection evaluation board evaluated the proposals and rated ANVL's proposal as follows:

	Technical Approach		Past Performance	Corporate Experience	Price
	Phase-In	QC Plan			
ANVL	Unacceptable	Unacceptable	Neutral	Unacceptable	\$15,457,434.90

Id. With respect to ANVL's phase-in plan, the evaluators assessed a deficiency because the proposal provided that ANVL will transition only 1,000 MHUs during the phase-in, when the solicitation provided for as many as 2,000 MHUs to be transitioned during the phase-in period. AR, Tab F, Technical Evaluation Consensus Report, at 20. A weakness was also assigned because ANVL's proposal failed to address a timeline for any of the key tasks as requested in the solicitation. Id. With respect to the protester's quality control plan, the evaluators assigned a deficiency because ANVL's operations plan did not detail the firm's procedures to ensure work is being performed in a timely manner and of a high quality, or the corrective action measures ANVL would take when work is not performed in accordance with the contract terms and conditions. Id.

The evaluators assigned ANVL's past performance a neutral rating because only one past performance questionnaire was returned, which was for a project that the evaluators determined to be not relevant. Id. at 21. ANVL's corporate experience was assigned a deficiency because ANVL did not describe its experience on similar and/or relevant projects, as none of the projects submitted were similar to maintenance of the MHUs. Id. In this regard, the evaluators found that ANVL's projects demonstrated only that the firm moved MHUs within a staging yard. The evaluators concluded that ANVL's proposal was ineligible for award because it received an unacceptable rating. Id. at 20; see RFP at 19 ("[a] rating of '[u]nacceptable' in any of the [] technical factors or sub-factors will render the entire proposal technically unacceptable and, therefore, not eligible for award").

The source selection authority reviewed the results and recommendations of the source selection evaluation board and conducted an integrated assessment and comparison of the strengths, weaknesses, deficiencies, and risk of the proposals. AR, Tab H, SSD, at 1. Based on this analysis, the source selection authority concluded that the proposals of Timberline Homes of Louisiana, LLC and Andries and Associates, LLC represented the best value to the agency. Id. at 6. On March 28, 2017, ANVL was provided notice of the awards. AR, Tab J, Email to ANVL (Mar. 28, 2017), at 1. After receiving a debriefing on April 3, ANVL filed a protest with our Office.

DISCUSSION

ANVL challenges the agency's evaluation of its proposal and the agency's best-value award decision. The protester also alleges that the agency improperly amended the solicitation after the closing time for receipt of proposals. ANVL also contends that the contracting officer demonstrated bias by not disclosing the financial ranking of proposals to ANVL during its debriefing. Based on our review of the record, we find no basis to sustain the protest.²

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. ADNET Sys., Inc., B-413033, B-413033.2, Aug. 3, 2016, 2016 CPD ¶ 211 at 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. Id. A protester's disagreement with reasonable evaluation judgments does not provide a basis to sustain its protest. Technology Mgmt. Co., Inc., B-409976, Sept. 26, 2014, 2014 CPD ¶ 294 at 4.

With respect to the technical approach subfactor 1a, phase-in plan, the solicitation required an offeror to provide a draft phase-in plan that addressed how it would assume MHU maintenance and deactivation from the incumbent contractor. The RFP provided that the phase-in plan would be evaluated based on the offeror's ability to demonstrate its techniques and strategies for quickly ramping up with equipment, subcontractor(s), and management team(s) while simultaneously assuming the responsibilities of the statement of work.

The solicitation provided for the maintenance of up to 2,000 total MHUs. RFP at 18. The statement of work further explained that MHU services include the maintenance of MHUs in the field, and the deactivation and transport of the units back to the FEMA staging yard. Statement of Work at 1. The agency assigned a deficiency to ANVL's proposal under the phase-in approach subfactor because the evaluators concluded that

² Prior to receipt of the agency report, we dismissed the protester's challenge that the agency improperly amended the solicitation after the closing time for receipt of proposals. We concluded that the protester's challenge was untimely as ANVL did not file its protest within 10 days of receiving the agency's notification of the amendment, which it acknowledged. In this regard, our decisions state that where, as here, the agency does not provide an opportunity to submit revised proposals after the alleged solicitation defect becomes known, an offeror is obligated to protest the issue, which concerns the fundamental ground rules of the procurement, within 10 days after knowing of the basis for protest. 4 C.F.R. § 21.2(a)(1); Del-Jen Educ. & Training Group/Fluor Federal Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 6-7. Here, ANVL's protest was filed well after 10 days from the February 17 notice. We dismiss this aspect of the protest.

the proposal “states that [ANVL] will assume only 1,000 MHUs during the phase-in [] when the solicitation clearly states up to 2,000 MHU[s] will be transitioned during phase-in.” AR, Tab F, Source Selection Evaluation Board Report, at 20.

ANVL asserts that the agency’s assignment of a deficiency is unreasonable. ANVL contends that the contract language does not specify an exact number of MHUs, and in any event, ANVL provided adequate pricing per unit in its price proposal, which accounts for any discrepancy in its technical proposal. The agency responds that it reasonably evaluated ANVL’s proposal as unacceptable because the proposal provided for only half of the required 2,000 MHUs. The agency also contends that it could not make assumptions based on ANVL’s price proposal because ANVL’s technical proposal did not commit to the maintenance of all 2,000 MHUs. Based on our review of the record, we find that the agency reasonably evaluated ANVL’s proposal.

Here, the RFP clearly stated the agency’s requirement for maintenance of as many as 2,000 MHUs. ANVL’s proposal provided for maintenance of only half of this number. While the protester essentially argues that the agency should be required to cobble together and draw inferences from the information provided in ANVL’s price proposal, as we have previously explained, an agency is generally not required to search for information contained in other volumes of an offeror’s proposal. Hi-Tec Sys. Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 3. Moreover, it is an offeror’s responsibility to submit an adequately written proposal and a firm runs the risk of having its proposal rejected as unacceptable if it fails to do so. ACC Constr.-McKnight JV, LLC, B-411073, Apr. 30, 2015, 2015 CPD ¶ 147 at 5. On this record, we find that the agency’s assessment of this deficiency was reasonable. We also conclude that the assessment of the deficiency provided a permissible basis for determining that ANVL’s proposal was unacceptable, and thus ineligible for award. See RFP at 22. (“An unacceptable rating indicates that the submission contains one or more deficiencies.”) See also Id. at 19 (“A rating of ‘[u]nacceptable’ in any of the [] technical factors or sub-factors will render the entire proposal technically unacceptable and, therefore, not eligible for award.”).

ANVL also raises various other challenges to the agency’s evaluation of its proposal. For instance, ANVL asserts that the agency improperly assigned a deficiency to its quality control plan because the information was included in its proposal, and contends that the agency’s past performance and corporate experience evaluations were flawed because ANVL identified that it had the requisite relevant experience. ANVL also alleges that the agency’s best-value decision was flawed because its lower-priced proposal provided a better value than the awardees’ high-priced proposals. We need not reach the merits of these allegations because, as explained below, ANVL is not an interested party to challenge the remaining aspects of the agency’s evaluation of its proposal or the agency’s best-value decision.³

³ Similarly, we dismiss the protester’s allegations concerning the contracting officer’s conduct of the debriefing because our Office does not review protests challenging the
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Our Bid Protest Regulations define an interested party as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Pursuant to the RFP, if a proposal received an unacceptable rating in any factor or subfactor, the proposal was ineligible for award. RFP at 19. Since we find no basis to question the agency's evaluation of ANVL's proposal as unacceptable under the phase-in subfactor, as discussed above, ANVL is not an interested party to challenge the remainder of its evaluation or the agency's best-value award decision because it is not eligible for an award. As a result, we do not address the remainder of ANVL's allegations.

The protest is denied.

Susan A. Poling
General Counsel

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adequacy of debriefings. A1 Procurement, JVG, B-404618, Mar. 14, 2011, 2011 CPD ¶ 53 at 5 n.5 (debriefings are procedural matters that do not affect the validity of an award). In any event, the protester's unsupported speculation does not provide any proof of bias. Id. (government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation).