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Decision

Matter of: MicroTechnologies, LLC

File: B-414670; B-414670.2

Date: August 1, 2017

Aron C. Beezley, Esq., Lisa A. Markman, Esq., and Emily A. Unnasch, Esq., Bradley Arant Boult Cummings LLP, for the protester.
Hallie L. Balkin, Esq., Department of the Navy, for the agency.
Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the elimination of a protester's proposal from a competitive range is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
2. Protest that an agency failed to refer a small business offeror to the Small Business Administration under the certificate of competency procedures is denied where the evaluation considered a proposal's failure to include required information and was not a responsibility-type determination.

DECISION

MicroTechnologies, LLC, a service-disabled veteran-owned small business of Tysons Corner, VA, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. N00244-16-R-0018, issued by the Department of the Navy, Naval Supply Systems Command, for wireless telephone services and devices. MicroTechnologies argues that the agency's evaluation of its technical proposal as unacceptable was unreasonable. The protester further asserts that the technical evaluation amounted to a nonresponsibility determination that should have been referred to the Small Business Administration (SBA) under the SBA's certificate of competency (COC) procedures before excluding MicroTechnologies from the competition.

We deny the protest.

BACKGROUND

The RFP, issued on April 28, 2016, contemplated the award of multiple indefinite-delivery/indefinite-quantity contracts to provide wireless telephone services and devices to military and federal civilian agencies. RFP at 70. The Navy sought to establish contracts that are mandatory for use by the Navy and Marine Corps, but also available to other Department of Defense and civilian agencies as an optional source for services within the continental United States and while on international travel. Contracting Officer's Statement of Facts (COSF) at 1.

The awards were to be made on a lowest-priced, technically-acceptable basis. RFP at 127. The solicitation announced that the technical evaluation was to consider two non-price factors, technical capability and past performance, including noted subfactors. Id. The RFP stated that only proposals evaluated as acceptable in both non-price factors were to be ranked according to price, and that the contracting officer was to determine the number of awardees following a price reasonableness evaluation. Id.

The solicitation stated that an acceptable rating was to be assigned to a proposal that "clearly" meets the requirements of the RFP and performance work statement (PWS). Id. at 127, 128. Further, the solicitation warned that the failure to address any aspect of the technical requirements could result in an unacceptable evaluation and preclude further consideration for award. Id. at 124, 127. Offerors were instructed that proposals "must convey evidence of understanding of the RFP and [PWS]...[and]...clearly show that the [o]fferor correctly interpreted all of the requirements." Id. at 119. The RFP specifically cautioned against restating the requirements, generic statements of understanding, and proposing "standard practices" without further definition. Id.

The technical capability factor included two subfactors, both of which had to be evaluated as acceptable in order for an offeror to receive an acceptable rating. Id. at 128. For the first subfactor, "coverage," the solicitation contained a series of attachments listing specific locations and areas where domestic and international wireless telephone service was to be required during performance. Id. at 81, 128; Attachments J-002 -- J-010. The RFP instructed offerors to provide a narrative demonstrating the locations where wireless service coverage will be provided, and detail where the offeror provides little or no coverage. Id. at 124. Additionally, proposals were to provide an offeror's plans to improve coverage in the areas where little or no coverage was provided and explain any plans for expanding international service during performance. Id. at 124, 128. The RFP stated the Navy's intention to provide this narrative to customer agencies during the life of the contracts. Id. at 124. Under the second subfactor, "devices," the RFP instructed offerors to demonstrate how cellular devices meeting the technical requirements of the RFP would be provided, as well as proposing an approach to repairing, replacing, or upgrading devices to include any terms of maintenance. Id. at 124.

The agency received four proposals by the solicitation's closing date, including a proposal from MicroTechnologies. COSF at 2. A technical evaluation board (TEB)

evaluated the proposals under the technical capability factor. Id. The TEB's evaluation of MicroTechnologies' proposal noted five deficiencies relating to the technical capability subfactors. Id. at 3-4. Based on those deficiencies, the TEB rated MicroTechnologies' proposal unacceptable under the technical capability factor. Id. The TEB did not evaluate MicroTechnologies' past performance and the contracting officer excluded it from a competitive range established for the purpose of conducting discussions. Id.

Following this evaluation, the contracting officer contacted the SBA regarding the necessity for a referral under the COC program. Agency Report (AR), Tab 52, Business Clearance Memorandum, at 20. The SBA indicated that it would not issue a COC if presented, as it did not view the unacceptable evaluation finding to be a determination of the small business's responsibility. Id.

The Navy notified MicroTechnologies of its exclusion from the competitive range and provided a written debriefing that included the detailed findings of the TEB. AR, Tab 53, Unsuccessful Offeror Letter; AR, Tab 54, Debrief Report. This protest followed.

DISCUSSION

MicroTechnologies protests that the evaluation of its proposal violated the terms of the RFP and was unreasonable. Protest at 4-8. The protester contends that each of the findings of the TEB was inaccurate, unreasonable, or insufficiently material as to render the entire proposal unacceptable. Id. at 5. After reviewing the documents submitted with the agency report, MicroTechnologies filed a supplemental protest alleging that the agency's failure to seek a COC from the appropriate SBA area office violated applicable regulations. Supp. Protest at 3-10. In this regard, the protester argues that the technical evaluation was tantamount to a negative responsibility determination, and therefore required the contracting officer to seek a COC before eliminating MicroTechnologies from the competition. Id.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency; we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Team Systems International, B-411139, May 22, 2015, 2015 CPD ¶ 163 at 5. It is an offeror's burden to submit an adequately written proposal for the agency to evaluate; otherwise it runs the risk of having its proposal found technically unacceptable. Id., citing Menendez-Donnell & Assocs., B-286599, Jan. 16, 2001, 2001 CPD ¶ 15 at 3. A protester's disagreement with evaluation judgments, by itself, does not render those judgments unreasonable. Metson Marine Services, Inc., B-413392, Oct. 19, 2016, 2016 CPD ¶ 313 at 3.

With respect to the first technical capability subfactor, the RFP required offerors to provide narratives to demonstrate their capability to provide wireless services in the locations required both within the United States and abroad as well as plans for expansion. RFP at 124. The protester was informed through the written debriefing that

the TEB's evaluation found that its proposal was unacceptable for this subfactor. AR, Tab 54, Debriefing at 1. MicroTechnologies protests that the findings lack a reasonable basis and that the agency's evaluators engaged in an improper qualitative assessment of the proposal. Protest at 5-7. In support of this contention, the protester points to various portions of its proposal, asserting that those passages contain the required information. Comments at 13-16. The Navy responds that its evaluation was reasonably based on the contents of MicroTechnologies' proposal, and that the proposal lacked information relating to these requirements in the RFP. Memorandum of Law (MOL), at 4-9.

We agree with the agency. The evaluation found that MicroTechnologies' proposal did not demonstrate an adequate ability to expand domestic service as the proposed solution was dependent on [DELETED] the offeror did not control. AR, Tab 50, TEB Summary and Recommendation, at III-1. The record reflects that the proposal's only mention of MicroTechnologies' proposed domestic wireless coverage enlargement touts that expansion will happen "faster" as [DELETED]. AR, Tab 49, MicroTechnologies Technical Proposal, at 4. Beyond this, and contrary to the RFP's instruction regarding generic statements of compliance, MicroTechnologies merely proposed to "work with the agencies . . . to achieve the improvements needed," but does not describe any plan with regard to domestic service expansion. *Id.* at III-3. As noted, it was MicroTechnologies' burden to submit a well-written proposal or risk, as here, an evaluation of unacceptable. Menendez-Donnell & Assocs., supra. Thus, we find nothing unreasonable in the agency's conclusion that there is no basis in the proposal to understand the specific means that MicroTechnologies would employ to improve coverage within the United States during performance.

The TEB also found that MicroTechnologies' proposal did not detail how the wireless services will be provided outside of the United States. AR, Tab 50, TEB Summary and Recommendation, at 4. Further, the evaluation noted that the proposal did not include a narrative explaining the offeror's plans to expand international coverage. *Id.* The record supports these conclusions as the areas of the proposal highlighted by MicroTechnologies in support of its protest contentions merely state the intention to comply with the solicitation. See Consolidated Comments at 14-16, citing AR, Tab 49, MicroTechnologies Technical Proposal, at III-1; III-3. While the proposal noted agreements with international wireless carriers, the protester did not point to meaningful details (including the identity of such service providers) to permit the agency to assess this aspect of the proposal. Likewise, the protester does not demonstrate where its plan for expanding international wireless services coverage was explained in its proposal. The RFP stated this as a requirement and explained that international coverage expansion narratives would be provided to customer agencies. RFP at 124. Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is unacceptable and may not form the basis for award. AttainX, Inc., FreeAlliance.com, LLC, B-413104.5, B-413104.6, Nov. 10, 2016, 2016 CPD ¶ 330 at 5. We find the agency's conclusions with regard to international wireless services to be reasonable as the proposal did not

include sufficient information to evaluate its approach and did not include specific information requested by the RFP.

Based on these conclusions, we find the Navy's evaluation of MicroTechnologies' proposal for the coverage subfactor of the technical capability factor to be reasonable. We need not consider MicroTechnologies' challenge to the findings relating to the devices subfactor as the protester is not an interested party to maintain that protest. 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 127, 128. Since we find no basis to question the agency's evaluation of MicroTechnologies' proposal as unacceptable under the coverage subfactor, as discussed above, the protester is not an interested party to challenge the agency's evaluation under the devices subfactor. Therefore, the protest of MicroTechnologies' exclusion from the competitive range is denied.

The protester also argues that the evaluation of MicroTechnologies' technical approach was essentially a determination of nonresponsibility. In making this argument, the protester avers that the technical capability subfactors were responsibility-type criteria, as they concerned the evaluation of an offeror's ability to perform contract requirements. Supp. Protest at 4-6. Therefore, in the protester's view, the contracting officer was required to refer the matter to the SBA under the COC program in accordance with the guiding regulations. Id. at 3. The Navy responds that the evaluations were based on MicroTechnologies' proposal's lack of specific information in response to the solicitation. Supp. AR at 3-4. As such, the agency argues it had no duty to refer the matter to the SBA. Id.

Under the SBA's COC program, agencies must refer a determination that a small business is not responsible to the SBA, if that determination would preclude the small business from receiving an award. 15 U.S.C. § 637(b)(7); 13 C.F.R. § 125.5; Federal Acquisition Regulation (FAR) subpart 19.6. The SBA's regulations specifically require a contracting officer to refer a small business concern to SBA for a COC determination when the contracting officer has refused to consider a small business concern for award of a contract or order "after evaluating the concern's offer on a non-comparative basis (e.g., pass/fail, go/no go, or acceptable/unacceptable) under one or more responsibility-type evaluation factors (such as experience of the company or key personnel or past performance)." 13 C.F.R. § 125.5(a)(2)(ii). The SBA is then empowered to certify the responsibility of the small business concern to the agency. 15 U.S.C. § 637(b)(7)(A).

On this record, we do not agree that the agency's evaluation involved a determination of the protester's responsibility that required referral to the SBA.¹ The protester relies on a

¹ The protester argues that the contracting officer accepted the advice of an SBA representative from an office without authority to issue a COC, thus compounding the
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number of decisions to demonstrate that our Office has previously found an agency's rejection of a small business's proposal on non-comparative bases to be responsibility-type determinations requiring referral to the SBA. Supp. Protest at 4-5; Comments at 9. However, the decisions cited are inapposite here as none discusses the evaluation of a technical approach, but rather traditional responsibility-type matters such as company experience or past performance, personnel, and the ability to comply with laws and regulations. E.g., FitNet Purchasing Alliance, B-410263, Nov. 26, 2014, 2014 CPD ¶ 344 at 6-7 (protest sustained where an agency failed to refer a small business for a COC following a negative past performance evaluation); also, PHE/Maser, Inc., B-238367.5, 91-2 CPD ¶ 210 at 6 (protest sustained where agency failed to refer a small business to the SBA for a COC after rejecting a proposal because of an evaluation of "high risk" of the company's financial capability and concerns about the intent or ability to comply with the Limitations on Subcontracting clause). Rather, where an agency finds a proposal to be unacceptable based on the offeror's failure to submit required information, the finding does not constitute a determination that the offeror is not a responsible prospective contractor. Eagle Aviation Services and Technology, Inc., B-403341, Oct. 14, 2010, 2010 CPD ¶ 242 at 4-5.

In this instance, the agency's elimination of MicroTechnologies' proposal from further consideration was not based on its responsibility-type factors, but on the evaluation of its proposed technical approach. While the evaluation factor was styled "technical capability," it was not concerned with traditional responsibility-like issues such as company experience or personnel. The record shows, as noted above, that the Navy evaluated the proposal as unacceptable based on the protester's failures to include relevant and required details about its proposed technical approach. Despite the non-comparative basis of evaluation (acceptable/unacceptable), because the evaluation was not a responsibility-type evaluation we find no merit in the protester's argument that the contracting officer was required to refer the matter to the SBA for a COC.

The protest is denied.

Susan A. Poling
General Counsel

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impropriety of the agency's failure to refer the matter to the SBA. Comments at 4-5. As the agency had no duty to refer the matter to the SBA, we do not consider these arguments relevant.