



Decision

Matter of: Sky Quest Aviation LLC

File: B-415383

Date: December 4, 2017

William Tresky, Sky Quest Aviation LLC, for the protester.
Colonel C. Taylor Smith, Colby L. Sullins, Esq., Lesley V. Colosimo, Esq., and James W. Meinders, Esq., Department of the Air Force, for the agency.
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the awardee's proposal did not adequately describe its approach for performing the contract in the United Kingdom is denied where the record shows that the agency reasonably evaluated the proposal in accordance with the solicitation.

DECISION

Sky Quest Aviation, LLC (SQA), of Glendale, Arizona, protests the award of a contract to Gauss Management Research and Engineering, Inc. (GMRE), of South Ogden, Utah, by the Department of the Air Force under request for proposals (RFP) No. FA5587-17-R-0011 for helicopter flight services. The protester argues that the agency failed to reasonably evaluate the awardee's proposal with regard to its plan for performance of the contract requirements in the United Kingdom.

We deny the protest.¹

¹ Our Office did not issue a protective order in connection with this protest--under which proprietary and source-selection sensitive information would have been available to counsel admitted to the protective order--because SQA elected not to retain counsel. Consequently, only a redacted version of the agency report was furnished to the protester. For this reason, our discussion regarding the awardee's proposal and the agency's evaluation is general in nature because those evaluations and the source selection decision reference materials in the awardee's proposal that appear to be proprietary. Nonetheless, we have reviewed the entire record in camera, and base this decision on that review.

BACKGROUND

The Air Force issued the RFP on August 7, 2017, seeking proposals to provide one pilot and one special mission aviator to perform functional check flights, maintenance test flights, and instructional training for HH-60G helicopters at Royal Air Force Lakenheath in the United Kingdom, with a planned relocation to Aviano Air Base, Italy. Agency Report (AR), Tab 3, RFP at 3-4. The RFP was issued under the simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 13.5, and anticipated the award of a contract with a base period of 1 year and four 1-year options, with fixed-price contract line items for labor and travel. Id. at 3-8, 18.

The RFP advised offerors that their proposal would be evaluated based on price and the following four non-price factors, which were to be evaluated on an acceptable/unacceptable basis: (1) technical qualifications, (2) management and staffing plan, (3) quality control plan, and (4) prior experience.² Id. at 18. For purposes of award, the RFP stated that award would be made to the offeror whose proposal was acceptable under each of the non-price factors and proposed the lowest overall price. Id.

The Air Force received proposals from seven offerors, including SQA and GMRE, by the closing date of August 7. AR, Tab 11, Award Decision, at 1. The agency found six of the offerors' initial proposals were technically unacceptable. Id. at 2. The agency conducted discussions with all offerors and received revised proposals. Id. The agency evaluated SQA's and GMRE's revised proposals as follows:

	SQA	GMRE
OVERALL TECHNICAL RATING	UNACCEPTABLE	ACCEPTABLE
Technical Qualifications	Acceptable	Acceptable
Management and Staffing Plan	Unacceptable	Acceptable
Quality Control Plan	Unacceptable	Acceptable
Prior Experience	Acceptable	Acceptable
PRICE	\$2,589,119	\$2,460,072

Id. at 8, 10; AR, Tab 15, Pricing Abstract, at 1. The agency also found that a proposal submitted by a third offeror was technically acceptable, and that the proposals submitted by the other four offerors were technically unacceptable. AR, Tab 11, Award Decision, at 8.

² The technical qualifications evaluation factor had five subfactors: (1) class II [Federal Aviation Administration] flight physical, (2) rating in a HH-60G or other UH-60 variant, (3) flight instructor qualification, (4) functional check flight certification, and (5) and flight hours. RFP at 18.

The Air Force selected GMRE's proposal for award because its proposal offered the lowest price as between the two offerors whose proposals were found to be technically acceptable. Id. at 10. The agency advised SQA of the award on September 22, and this protest followed.

DISCUSSION

SQA primarily argues that the Air Force did not reasonably evaluate the acceptability of GMRE's proposal under the management and staffing plan factor with regard to the awardee's approach to performance of the contract in the United Kingdom.³ In this regard, the protester contends that GMRE is not currently licensed to conduct business in the United Kingdom, and that the agency should therefore have questioned the awardee's ability to meet the RFP requirements. For the reasons discussed below, we conclude that the protester's argument provides no basis to sustain the protest.

As noted above, the Air Force conducted this procurement using simplified acquisition procedures. Simplified acquisition procedures are designed, among other things, to reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate proposals in accordance with the terms of the solicitation. ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4. In reviewing protests of an allegedly improper simplified acquisition evaluation, our Office examines the record to determine whether the agency met this standard and exercised its discretion reasonably. Computers Universal, Inc., B-297552, Feb. 14, 2006, 2006 CPD ¶ 42 at 4-5. An offeror's disagreement with an agency's evaluation, without more, does not provide a basis to sustain a protest. McLaurin Gen. Maint., Inc., supra, at 3.

³ SQA also raises other collateral issues. Although we do not address these issues here, we have reviewed them all and find that none provides a basis to sustain the protest. Additionally, SQA argued that because GMRE was not currently licensed to conduct business in the United Kingdom, the Air Force should have concluded that the awardee will not be able to perform the contract. Our Office dismissed this argument on October 16 because it concerned a matter of contract administration, which we do not review as part of our Office's bid protest function. Solicitation provisions that require the contractor to obtain all necessary licenses, permits, or certifications needed to perform the work establish performance requirements that must be satisfied by the successful offeror during contract performance; as such, offerors are not required to satisfy the requirements prior to award. See McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 9. Instead, the ability to perform a contract is a matter of responsibility that our Office does not review, absent exceptions not alleged here. Id.; 4 C.F.R. § 21.5(c). In this regard, the protester acknowledges that the RFP did not expressly require offerors to be registered to do business in the United Kingdom prior to award. Protester's Comments at 2.

Interested Party Status

As an initial matter, the Air Force argues that SQA is not an interested party to bring this protest, because the agency found the protester's proposal technically unacceptable. We disagree.

Under our Bid Protest Regulations, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2.

SQA's protest does not challenge the evaluation of its own proposal as unacceptable.⁴ SQA's protest argues, however, that the agency failed to give any consideration to the solicitation requirements under the management and staffing plan factor regarding the offerors' approach to performing in the United Kingdom.⁵ The protester contends that the two offerors whose proposals were found acceptable should have been found unacceptable under the technical evaluation; thus, a resolution of this argument in the protester's favor would lead our Office to conclude that there were no acceptable proposals and recommend that the agency resolicit its requirement. Because SQA would be eligible to compete for the award under such circumstances, we conclude that the protester is an interested party, notwithstanding the fact that its proposal was

⁴ The Air Force did not advise the protester in the September 22 notice of award that its proposal was found technically unacceptable; thus, SQA did not know that its proposal had been found unacceptable when it filed its protest on September 28. See AR, Tab 12, Notice of Award, Sept. 22, 2017, at 1. The agency provided the protester a debriefing on October 6 which advised that its proposal had been found unacceptable under the management and staffing plan factor and the quality control plan evaluation factor. AR, Tab 13, Debriefing, Oct. 6, 2017, at 1-2. On October 12, the agency filed a request for dismissal of the protest on the basis that SQA was not an interested party. On October 16, the protester responded to the request, and included a challenge to its unacceptable rating under the management and staffing plan factor. SQA, however, did not specifically challenge the unacceptable rating under the quality control plan factor. See Protester's Response to Request for Dismissal, Oct. 16, 2017. As discussed above, the RFP stated that award would be made to the firm whose proposal offered the lowest price and was acceptable under all evaluation factors. RFP at 18.

⁵ As discussed above, we dismissed SQA's argument that, as a general matter, the awardee is not capable of performing the contract in the United Kingdom. In contrast, the protester's argument regarding the management and staffing plan subfactor concerns the requirements of the RFP, and is therefore a matter within our Office's jurisdiction. See McLaurin Gen. Maint., Inc., supra.

evaluated as unacceptable.⁶ See Greystones Consulting Grp., Inc., B-402835, June 28, 2010, 2010 CPD ¶ 159 at 3 n.2.

Challenge to GMRE's Evaluation

SQA argues that GMRE's proposal did not meet the requirements of the management and staffing plan factor with regard to performance in the United Kingdom. Although SQA was not provided the awardee's proposal, the protester contends that GMRE is not currently licensed to conduct business in the United Kingdom, and that it therefore could not have proposed a plan that reasonably addressed its approach to obtaining visas within the required 60-day period set forth in the RFP. We find no basis to sustain the protest based on the record.

The management and staffing plan factor stated that offerors were required to submit plans for staffing and meeting the requirements of the performance work statement (PWS) as follows:

The offer shall be evaluated for completeness in thoroughly addressing each of the areas identified in 52.212-1 Addendum and the 52.212-2 Addendum to include any compliance in accordance with the Performance Work Statement. Offers will be evaluated on the below criteria on an "Acceptable" or "Unacceptable" basis.

* * * * *

2.1. This factor is acceptable when contractor thoroughly, completely, and accurately submits a Management and Staffing Plan that describes how the contractor will staff and manage aircrew personnel and resources to successfully perform the work detailed in the PWS. The plan shall include at a minimum, but is not limited to:

2.1.1. Process to ensure aircrew qualifications are obtained and/or maintain Class II FAA Flight Physical, and secure aircrew have a US SECRET security clearance, instructor qualifications (if applicable), medical clearances, Passports, Visas, basic understanding of obtaining base access, and a basic understanding of obtaining Common Access Cards (CAC) for the duration of contract.

RFP at 19-20.

⁶ Because we conclude that SQA's challenge to the evaluation of GMRE's proposal provides no basis to sustain the protest, we need not address the evaluation of any other offeror's proposal.

As relevant here, the PWS stated that the contractor must “ensure[] professional services are performed in compliance [with] the PWS, FAA, [Air Force] Instructions, [United Kingdom] law and Italian law.” RFP at 59, PWS ¶ 1.2.4. The PWS also stated that the contractor will be required to “furnish all management, personnel, and services necessary to achieve full performance under the contract within 60 days of the contract date,” and provides that “[t]he contractor will be allowed 60 days from the start of the contract to mobilize and to achieve full performance under the contract.” Id., PWS ¶ 1.2.3.

GMRE’s proposal addressed its approach to meeting the visa requirements, including its prior experience in obtaining visas and the role of staff in ensuring successful contract mobilization. AR, Tab 7, GMRE Proposal, at 15-16, 22. The awardee’s proposal specifically stated that it would be able to obtain visas for its proposed staff in a manner that would ensure compliance with the 60-day schedule. Id. at 22.

The Air Force’s evaluators found that GMRE’s proposal met the RFP requirements for the management and staffing plan evaluation factor. AR, Tab 8, GMRE Technical Evaluation for Management and Staffing Plan, at 1-6. As the contracting officer explains, the evaluators found the awardee’s proposal acceptable “as a whole,” and also with regard to the specific approach to passports and visas. Contracting Officer’s Statement at 8-9.

Based on our review of the record, we conclude that the Air Force reasonably found the awardee’s proposal acceptable under the management and staffing plan factor. Although the contemporaneous record does not set forth the agency’s analysis in extensive detail, we conclude that the record, combined with the agency’s response to the protest, meets the requirements for documentation under the simplified acquisition process set forth in FAR § 13.106-3. The protester’s disagreement with the agency’s judgment, without more, does not provide a basis to sustain the protest. See McLaurin Gen. Maint., Inc., supra, at 3.

The protest is denied.

Thomas H. Armstrong
General Counsel