



Decision

Matter of: Beacon Grace, LLC

File: B-415529

Date: January 16, 2018

Becky R. Willard for the protester.
Roland Baumann III, Esq., Department of Transportation, for the agency.
Alexander O. Levine, Esq., Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal is denied where the record reasonably supports the agency's evaluation and where any errors committed by the agency did not cause competitive prejudice to the protester.

DECISION

Beacon Grace, LLC, a small business of Hagerstown, Maryland, protests the award of a contract to Qi-Tech, LLC, a small business of Fairfax, Virginia, under request for proposals (RFP) No. DTNH22-17-R-00033, issued by the Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA), for technical support services for the agency's non-traffic surveillance system. The protester challenges the agency's evaluation of the protester's technical and price proposals.

We deny the protest.

BACKGROUND

DOT issued the solicitation on April 26, 2017, as a set-aside for small business concerns. RFP at 1, 42. The solicitation sought proposals to provide services associated with the agency's non-traffic surveillance system.¹ RFP at 2. In general, the

¹ The non-traffic surveillance system is a virtual data collection system designed to provide counts and details regarding fatalities and injuries in non-traffic crash incidents and in non-crash incidents. RFP at 5; Agency Req. for Dismissal at 2.

scope of work requires the contractor to provide technical support to review data and perform statistical analysis as part of a special study being performed by the Consumer Product Safety Commission (CPSC) for NHTSA. Id. at 5-6.

The solicitation contemplated the award of a fixed-price contract for a base year and four 12-month options. Id. at 2, 3, 41. The solicitation anticipated award on a best-value tradeoff basis considering price and three technical factors, in descending order of importance: (1) qualifications of key personnel, (2) understanding of the technical requirements, and (3) corporate experience and past performance. Id. at 49-51. When combined, the technical factors were more important than price. Id. at 49. The solicitation further provided that, “[i]f there are no significant technical proposal differences, price may be the determining factor for source selection.” Id.

In evaluating technical proposals, the agency assigned numerical scores between 0 and 10 under each technical factor as follows: unacceptable (0-2); minimally acceptable (3-4); acceptable (5-6); good (7-8); and outstanding (9-10). Agency Technical Evaluation Plan at 1. The agency then multiplied the raw numerical score by a weight representing the importance of each factor. Id. The record reflects that the qualifications of key personnel factor was worth 45 percent of the overall technical score; the understanding of the technical requirements factor was worth 40 percent of the overall technical score; and the corporate experience and past performance factor was worth 15 percent of the overall technical score. Id. The maximum possible technical score was 1,000. Id.²

The solicitation stated that the agency would evaluate offeror’s price proposals for price reasonableness. RFP at 52. A price would be considered reasonable “if it does not exceed that which a prudent person would pay in the conduct of a competitive business.” Id. Price would not be assigned a numerical score. Id. The RFP did not provide for a price realism evaluation.

In response to the solicitation, the agency received six proposals, including proposals submitted by the protester and awardee. Agency Report (AR), Attach. 2, Evaluation Documents, at 43. Two proposals were determined to be technically unacceptable and, as a result, were excluded from the competition. Id. at 43. The agency evaluated the remaining four proposals as follows:

² As a result of the total technical numerical score, proposals were assigned one of the following five adjectival ratings: unacceptable (0-299 points), minimally acceptable (300-499 points), acceptable (500-699 points), good (700-899 points), and outstanding (900-1000 points). Id. at 2.

Offeror	Key Personnel		Understanding Technical Requirements		Corporate Experience and Past Performance		Overall Technical Score	Rank
	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score		
Qi-Tech	10	450	10	400	10	150	1000 (outstanding)	1
Offeror A	10	450	9	360	9	135	945 (outstanding)	2
Offeror B	9	405	7	280	7	105	790 (good)	3
Beacon Grace	8	360	4	160	8	120	640 (acceptable)	4

Id. at 5.

Beacon Grace’s proposed price was \$312,540, which was the lowest of the four offerors. Id. at 44. Qi-Tech’s proposed price was the second-lowest at \$349,056. Id. Following the evaluation of proposals, DOT concluded that Qi-Tech’s proposal offered the government the best value, and therefore the agency awarded the contract to Qi-Tech. Id. at 45, 50.

DOT notified the protester of the award on September 15, 2017. Protest at 1. Beacon Grace requested and received a debriefing, which was held on October 3. Id. This protest followed on October 10.

DISCUSSION

Beacon Grace challenges the agency’s evaluation of its proposal under every technical factor, and also challenges the evaluation of its price proposal. Specifically, with regard to the understanding of the technical requirements factor, the protester contends that the agency evaluated its proposal inconsistently with the solicitation’s evaluation criteria by requiring more detail than was called for by the RFP. With regard to the qualifications of key personnel factor, the protester asserts that DOT failed to evaluate all of its proposed personnel and unreasonably assigned weaknesses to its proposal for a lack of detail and for not providing a work sample. For the evaluation of the corporate experience and past performance factor, Beacon Grace argues that the agency unfairly and unevenly evaluated proposals because the agency did not contact references, but did use an evaluator who, as the contracting officer’s technical representative (COTR) for the predecessor contract, had knowledge of the incumbent Qi-Tech’s performance. Finally, the protester contends that the agency erred in negatively evaluating the capabilities of Beacon Grace’s proposed personnel on the basis of its low labor rates.³

³ While we do not address every argument raised by Beacon Grace in its protest, we have reviewed each issue and do not find any basis to sustain the protest. For

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In reviewing protests challenging an agency's evaluation, we will not substitute our judgment for that of the agency regarding the merits of proposals; we will only review the evaluation to determine whether it was reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws and regulations. M-Cubed Info. Sys., Inc., B-284445, B-284445.2, Apr. 19, 2000, 2000 CPD ¶ 74 at 5. An offeror's disagreement with the agency, without more, does not render the evaluation unreasonable. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4.

With respect to the understanding of technical requirements factor, the protester argues that the competition was not conducted on a level playing field because the agency's evaluation deviated from the evaluation scheme provided in the RFP. In support of this contention, Beacon Grace asserts that DOT's evaluation under this factor improperly expected offerors to provide responses to information and processes that were not provided to the offerors in the solicitation or during the questions and answers phase of the procurement. Such information and processes included statistical analysis system (SAS) data files, SAS code, the expected technical process, and additional variable names. The protester additionally argues that this expectation was inconsistent with the evaluation criteria, which did not anticipate a detailed response and instead required only a "high-level" response. Protest at 3.

For the evaluation of this factor, DOT assigned Beacon Grace's proposal a score of four, corresponding to a minimally acceptable rating, based on an assessment of four strengths, four weaknesses, and one deficiency. AR, Attach. 2, Evaluation Documents, at 17. The weaknesses generally involved a lack of detail in discussing the protester's approach to meeting the solicitation requirements. For example, DOT remarked that the proposal was:

Vague as concerned to the specific requirements outlined in the RFP. Talks in generalities without specifically demonstrating an understanding of the variables, etc. with no discussion of the NTS system, [National Electronic Injury Surveillance System All Injury Program], CPSC, or non-crash injury data collection.

Id. The deficiency was similarly assessed for a lack of detail, with the agency noting that there was "[n]o discussion of variables collected/coded, project objectives, kickoff

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instance, Beacon Grace argues that certain terminology appearing in the solicitation was confusing and was used interchangeably and inconsistently. We find this challenge to the solicitation terms to be untimely under our Bid Protest Regulations since it was not filed prior to the time set for the receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1).

meeting and adjusting of work plans, content of monthly report, case review, and no detail about the adequacy of facilities and equipment to carry out this project.” Id.

Based on the evaluation record, we conclude that the agency’s evaluation of this factor was reasonable and consistent with the stated evaluation criteria. In this regard, the RFP advised offerors that proposals would “be evaluated based upon the [o]fferor’s demonstrated understanding of the key technical issues,” including the “soundness of the [o]fferor’s strategy for meeting all contract requirements;” the solicitation further provided that the “[o]fferor’s approach to achieving the overall objectives of the contract, as well as the approach to completing each of the tasks identified in the statement of work, Section C.4.3,[⁴] will be evaluated for clearness, completeness, reasonableness, and feasibility.” RFP at 51. The solicitation therefore anticipated that proposals would be evaluated based on completeness and on how well the proposals demonstrated the offeror’s understanding and strategy for meeting all of the contract requirements. Here, the agency assessed weaknesses and a deficiency based on the protester’s failure to do precisely that. We do not find this to be inconsistent with the evaluation criteria.

We also do not agree with the protester’s assertion that it needed more information, from the agency, such as the SAS data files or the SAS code, in order to provide DOT with the desired level of detail. We see no reason that the protester could not have provided this detail, even without having received further information such as the SAS data files or the SAS code.⁵

The protester additionally challenges the agency’s evaluation of its proposal under the qualifications of key personnel factor. In this regard, the protester argues that the agency failed to evaluate both of the key personnel proposed by Beacon Grace.

We do not find any evidence in the evaluation record to support this contention. Indeed, we note that the agency’s technical review assigned a strength under this factor based on the experience of both personnel proposed.⁶ See AR, Attach. 2, Evaluation Documents, at 16.

⁴ Section C.4.3 of the statement of work detailed the tasks required of the contractor, which included monthly case review, ad-hoc review of motor vehicle cases, and creating a final weighted data set. See RFP at 8-9.

⁵ Indeed, we note that three of the other offerors received significantly higher scores (of 10, 9, and 7 respectively) under this factor. AR, Attach. 2, Evaluation Documents, at 5. This belies the protester’s contention that the solicitation was missing critical information needed to receive a higher rating.

⁶ The agency contends that this strength was actually a typo because DOT intended to assign two strengths here, one strength for each of the two proposed personnel. For purposes of our decision, it does not matter whether the agency is correct that the evaluation finding was meant to encompass two strengths rather than one.

The protester also challenges the assignment of another weakness under this factor based on the proposal's failure to provide a work sample. In this regard, Beacon Grace's proposal explained that "[b]ased on the confidential nature of most of [the projects performed by the listed personnel], we are unable to provide samples of past work. However, this proposal will serve as a sample of our work." AR, Attach. 3, Tech. Proposal, at 5 (emphasis omitted).

We do not find the agency's assessment of a weakness here to be unreasonable. The solicitation required offerors' proposals to "demonstrate sound final report writing skills," and specifically prescribed that offerors should do this "through submission of a link to such a report." RFP at 46. Nothing in the RFP permitted an offeror to deviate from this requirement; nor did anything in the solicitation require the agency to accept a different type of work sample in lieu of the RFP-prescribed report.

The protester also challenges the agency's evaluation of proposals under the corporate experience and past performance factor because DOT did not contact offerors' references. The protester asserts that the evaluation under this factor was unfair and uneven as a result because the agency permitted the COTR for the predecessor contract, which was performed by Qi-Tech, to be a technical evaluator.⁷

Here, it is clear from the record that Beacon Grace was not prejudiced by the agency's failure to contact references. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8. In the instant evaluation, the corporate experience and past performance factor was the least important technical factor, counting for only 15 percent of an offeror's total technical score. See RFP at 50; Agency Technical Evaluation Plan at 1. This means that, even if Beacon Grace had received the highest raw score possible under this factor of 10 (rather than the 8 the protester did receive), its overall technical score would only have increased by 30 points (from 640 to 670), which would not have changed Beacon Grace's overall technical rating of acceptable. See AR, Attach. 2, Evaluation Documents, at 5. Nor would it have changed the protester's relative standing as the fourth highest-rated offeror for the technical factors. See id. Based on the evaluation

⁷ The protester further asserts that "it is fair to assume that [the COTR] brought his bias to the evaluation process." Comments at 2. We disagree. 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. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Here, the protester provides no evidence of bias on the part of the COTR, nor do we find it improper or unreasonable for an agency to use an evaluator that had a role overseeing performance on the prior requirement.

record, we see no indication that such a small adjustment would have resulted in Beacon Grace having a substantial chance of receiving the award.

Beacon Grace also challenges a comment made in DOT's "cost analysis" that asserted that the protester's "low labor cost for the Senior Data Analyst brings into question the capabilities of the proposed staff." AR, Attach. 2, Evaluation Documents at 21; see also Comments at 2. As discussed below, while we agree with the protester that the agency erred in reaching this finding, we do not conclude that this error was prejudicial.

In this regard, absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 7. Accordingly, we find that the agency erred in considering whether Beacon Grace's low labor rates was cause to question the capabilities of its proposed staff. Despite this error, however, we see no evidence in the evaluation record that this finding was considered, or had any effect, with regard to the agency's technical evaluation or with regard to DOT's best-value tradeoff determination. Indeed, we note that the finding was not repeated in the source selection decision document. See generally AR, Attach. 2, Evaluation Documents, at 38-50.

In sum, we find that the agency's evaluation and best-value tradeoff determination were reasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel