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Decision

Matter of: MicroTechnologies, LLC

File: B-415214; B-415214.2

Date: November 22, 2017

Aron C. Beezley, Esq., Lisa A. Markman, Esq., and Sarah S. Osborne, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Katherine B. Burrows, Esq., Nathanael D. Hartland, Esq., Laura Golden Liff, Esq., and Jeremy S. Scholtes, Esq., Miles & Stockbridge PC, for Telos Corporation, the intervenor.

Alexis J. Bernstein, Esq., Lieutenant Colonel Kevin P. Stiens, and G. Monica McGinley, Esq., Department of the Air Force, for the agency.

K. Nicole Willems, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the protester's proposal is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging contracting officer's affirmative determination of responsibility is dismissed where the assertion on which the protest is based does not constitute the type of allegation that triggers a review of affirmative responsibility determinations under our Bid Protest Regulations.
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DECISION

MicroTechnologies, LLC (MicroTech), of Vienna, Virginia, protests the issuance of a task order to Telos Corporation, of Ashburn, Virginia, under task order request for proposals (TORP) No. FA4890-17-R-0032, issued by the Department of the Air Force for defensive cyber operations support. The protester challenges the evaluation of its proposal, and contends that the agency failed to consider relevant information in making an affirmative determination of Telos' responsibility.

We deny the protest in part and dismiss it in part.

BACKGROUND

The TORP was issued on June 7, 2017, to holders of the Air Force's Network-Centric Solutions-2 (NETCENTS-2) NetOps and Infrastructure small business indefinite-delivery, indefinite-quantity (IDIQ) contracts. TORP at 1. The TORP contemplated the issuance of a fixed-price, level-of-effort task order for a 1-year base period and four 1-year options, for defensive cyber operations support including plans and programs support, client systems, cyber transport, and cyber operations contract personnel to augment base personnel in the performance of core information technology (IT) services.¹ The TORP established that award would be made to an offeror deemed responsible under subpart 9.1 of the FAR, on a best-value tradeoff basis, considering technical, past performance, and price factors.² Memorandum of Law (MOL) at 2. The TORP advised that the technical factors were of greatest importance, past performance was slightly less important than the technical factors, and when combined, the technical factors and past performance were significantly more important than price. Agency Report (AR), Tab 27, TORP Evaluation Methodology and Criteria, at 3-4.

The TORP established two technical factors: (1) management plan and staffing approach; and (2) technical approach and mission understanding. Id. at 3. The TORP provided that technical proposals would be rated at the factor level, with ratings ranging from unacceptable to excellent.³ Id. Offerors were required to address three enumerated criteria in their proposals under the first technical factor, and two enumerated criteria in their proposals under the second technical factor. Id. at 4-5. Proposal submissions were limited to six pages for the first technical factor and four pages for the second. Id. at 2. The TORP advised that any offeror that received an unacceptable rating for any criterion under the technical factors would be determined

¹ The TORP was issued in accordance with Federal Acquisition Regulation (FAR) § 16.505 ordering procedures. Agency Report (AR), Tab 4, TORP at 1.

² Subpart 9.1 of the FAR prescribes policies, standards, and procedures for determining whether prospective contractors are responsible.

³ The TORP defined an unacceptable rating as: "[p]roposal does not clearly meet the minimum requirements of the solicitation and has not demonstrated an adequate approach and understanding of the [performance work statement (PWS)] requirements. Proposal contains one or more deficiencies and is unawardable." AR, Tab 27, TORP Evaluation Methodology and Criteria, at 5-6. By way of comparison, the next highest possible rating, acceptable, was defined as: "[p]roposal clearly meets the minimum requirements of the solicitation and indicates an adequate approach and understanding of the PWS requirements. Proposal contains no deficiencies and strengths do not outweigh weaknesses." Id. at 5. A deficiency was defined as: "[a] material failure of a proposal to meet a [g]overnment requirement in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." Id. at 6.

unacceptable for that technical factor, and that an offeror must be rated acceptable or higher in all technical factors to be eligible for award. Id. at 4-5.

As relevant here, the technical approach and mission understanding technical factor required offerors to provide a technical approach for meeting the entire range of requirements in the PWS. Id. at 5. Offerors were to provide a sound technical approach addressing two distinct criteria by clearly detailing: (1) the offeror's strategy for aligning contractor personnel experience and qualifications to specific PWS tasks; and (2) the offeror's technical approach and mission understanding of the PWS tasks enumerated above. Id.

The agency received ten proposals in response to the TORP, including a proposal submitted by the protester. Contracting Officer's Statement of Fact (COSF) at 11. The source selection evaluation board (SSEB) evaluated proposals and found all but the awardee's proposal to be unacceptable. Id. The protester's proposal was deemed unacceptable due to a deficiency under the second technical factor's first criterion.

Based on the deficiencies identified in the nine unacceptable proposals, as well as pricing concerns, the agency decided not to conduct discussions. Id. at 12. Accordingly, Telos, the only acceptable offeror, was selected for issuance of the task order.⁴ The agency notified MicroTech that it was an unsuccessful offeror on August 28, and provided the protester with a debriefing on August 31. This protest followed on September 5.⁵

DISCUSSION

MicroTech challenges the agency's evaluation of its proposal. Most significantly, the protester disputes the deficiency assigned to its proposal under the technical approach and mission understanding technical factor, which rendered its proposal unacceptable. Additionally, the protester argues that the agency failed to consider available relevant information in making an affirmative determination of Telos' responsibility. As explained below, we find that the protester's arguments do not provide a basis for sustaining the protest.

⁴ Because Telos was the only offeror with an acceptable proposal, the agency was not required to conduct a best-value tradeoff.

⁵ The awarded value of the task order is \$105,601,403. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts issued by a defense agency where the task order exceeds \$25 million. See 10 U.S.C. § 2304c(e)(1)(B).

Technical Evaluation

The SSEB assigned a deficiency to MicroTech's proposal under the first criterion of the technical approach and mission understanding technical factor, which rendered the proposal unacceptable and thus ineligible for award. AR, Tab 42, Source Selection Decision Document (SSDD), at 22. The criterion at issue directed offerors to detail their strategies for aligning contractor personnel experience and qualifications to specific PWS tasks, including tasks: 3.1--plans and programs; 3.2--client systems; 3.3--cyber transport (infrastructure); 3.4--cyber operations (NetOps); and 3.5--management support. AR, Tab 27, TORP Evaluation Methodology and Criteria, at 5. According to the SSEB:

MicroTech does not offer a standalone strategy for how they will align contractor personnel experience and qualifications to each of the PWS tasks. The proposal refers back to section 1.1 of [the management plan and staffing approach technical factor] and the experience of their proven [project manager] to identify personnel with the necessary experience and qualifications. Offerors were limited to 4 pages for this proposal submission. Considering information included in [the management plan and staffing approach technical factor] would exceed the page limit for this factor.

AR, Tab 42, SSDD, at 22.

The protester argues that the agency should have considered the referenced information in section 1.1 of its management plan and staffing approach proposal. MicroTech further contends that even if the referenced information is not considered, it sufficiently addressed the criterion within the page allotment for the technical approach and mission understanding technical factor. Comments at 14.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6; Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶ 20 at 6. In reviewing protests challenging an agency's evaluation of proposals, even in a task order competition, we do not reevaluate proposals, but rather we examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Technology Concepts & Design, Inc., B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 8.

MicroTech's proposal included the following language under the "Strategy to Align Personnel Experience and Qualification" heading:

The requirement for DCO [Defense Cyber Operations] Support is a new requirement. Consequently, there is no incumbent contractor and no

transition period between outgoing and incoming contractors. There is, however, an effective period of three weeks between the effective date and performance start date of the contract. Team MicroTech, led by [DELETED], will use this time to [DELETED] Whether we are recruiting new employees or assigning current employees, we will use [DELETED] to identify personnel with the necessary experience and qualifications to provide the required support.

AR, Tab 34, MicroTech's Technical Proposal, at 13.

As noted above, the protester argues that the agency should have considered the referenced information in section 1.1 of MicroTech's management plan and staffing approach proposal, while the agency argues that such consideration would have been improper in light of the page limitations imposed upon the offerors. We agree with the agency.

It is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. See Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 4-5. Allowing MicroTech to satisfy the requirements for the technical approach and mission understanding factor by referencing other parts of its proposal would improperly increase the number of pages for addressing that factor, without allowing other offerors the same opportunity. See id. Accordingly, we agree with the agency that consideration of the referenced information in MicroTech's management plan and staffing approach proposal would have been improper.

The protester further argues that even if the referenced information is not considered, the information provided in its four-page technical approach and mission understanding proposal was sufficient to address the technical factor criterion. Comments at 16. In support of its argument, the protester cites to various sections of its technical approach and mission understanding proposal, in addition to the text cited above under the "Strategy to Align Personnel Experience and Qualifications" heading.⁶ The language

⁶ For example, the protester cites to the following language in its proposal that is general in nature and does not directly address the criterion at issue:

Our entire staff will be trained and focused on providing client services support including ticket management, telephone support, request fulfillment orchestration, business (functional) user first contact support, initial event and system incident response, account management and access request processes and training related issues.

AR, Tab 34, MicroTech's Proposal, at 14.

By way of a second example, the protester also cites to the following language:

(continued...)

relied upon by the protester, however, is general in nature, and while it does relate to the PWS tasks and staff, it does not detail a strategy for aligning contractor personnel experience and qualifications with the specified PWS tasks, as required by the TORP.

Offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. CompQsoft, Inc., B-414426, June 12, 2017, 2017 CPD ¶ 201 at 5. Here, the protester failed to adequately address the TORP criterion within the applicable page limitations, and the protester's arguments to the contrary amount to nothing more than disagreement with the agency. A protester's disagreement with the agency's judgment by itself is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. In sum, based on the record, we have no basis to conclude that the agency's assignment of a deficiency to MicroTech's proposal was unreasonable.⁷

Responsibility Determination

The protester also challenges the agency's determination that Telos was responsible, arguing that the agency failed to consider available relevant information that has a strong bearing on whether the awardee should be found responsible.⁸ Comments at 36. Specifically, the protester argues that the agency was obligated to consider a Dun & Bradstreet report, which indicated that the awardee was at high risk of severe

(...continued)

Team MicroTech leverages its considerable experience in infrastructure management of mission-critical systems across DOD [Department of Defense], Intelligence Community, and the commercial sector. Our successful experience builds upon a methodical approach of continuous improvement. These improvements lead to [DELETED].

Id.

⁷ Because we conclude that the protester's proposal was reasonably deemed unacceptable based on the assignment of a deficiency under the technical approach and mission understanding technical factor, we need not address other challenges the protester has raised regarding the evaluation of its proposal under the technical, past performance, and price factors. Even if the protester's other arguments were found to have merit, the proposal would still be ineligible for award.

⁸ The record indicates that the agency's responsibility determination was based on data available from multiple sources including: the NetCents-2 contracting vehicle website, the Federal Awardee Performance and Integrity Information System (FAPIS), and the System for Award Management (SAM). AR, Tab 41, Determination of Contractor Responsibility.

financial distress.⁹ Id. We conclude that the information cited by the protester does not meet our threshold for review in this area, and this protest ground is therefore dismissed.¹⁰

As a general matter, our Office does not review affirmative determinations of responsibility by a contracting officer. 4 C.F.R. § 21.5(c); FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308 at 7. One of the circumstances in which we will make an exception to the general rule is where a protest identifies evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information. Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4. This exception was intended to encompass protests raising supported allegations that the contracting officer ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 14.

The allegations that our Office has reviewed in the context of an affirmative determination of responsibility generally pertain to very serious matters such as potential criminal activity. For example, in FN Mfg., Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 7-8, our Office reviewed an allegation that the agency failed to consider an ongoing investigation into whether the awardee defrauded the government on a prior contract for the same requirement. In Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177, we reviewed an allegation that the agency failed to consider that the awardee's CEO had been indicted for conspiracy and fraud by the U.S. Attorney for Southern New York. In Verestar Gov't Servs. Group, supra, we reviewed an allegation that the agency had failed to consider that the awardee was embroiled in a massive public accounting scandal and had vastly

⁹ While the protester argues that the agency was required to review information from Dun & Bradstreet, the agency notes that the information was not publicly available and could only be purchased through Dun & Bradstreet or obtained through a paid Dun & Bradstreet subscription. COSF at 32. Additionally, the agency stated that it does not have a requirement to research Dun & Bradstreet in making a responsibility determination. Id.

¹⁰ Notwithstanding the fact that the protester's proposal was found technically unacceptable, we find that it is an interested party to challenge the awardee's responsibility determination. Because all proposals other than the awardee's were found technically unacceptable, there would not be another offeror in line for award ahead of the protester were its protests on this ground to be sustained. Under such circumstances, the protester is an interested party to raise the argument.

misstated its earnings. Here, the protester's allegations pertain to information that is not sufficient, without more, to rise to the level needed to trigger a review by our Office.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel