



Decision

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Matter of: Grove Resource Solutions, Inc.

File: B-414746.2

Date: April 4, 2018

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DIGEST

1. Protest challenging agency's acceptance of revisions to the awardee's proposal, which removed a subcontractor from the awardee's cost/price proposal, is denied where the agency did not limit the scope of final proposal revisions.
 2. Protest alleging that agency failed to evaluate the technical risks resulting from the awardee's final proposal revision, which removed a proposed subcontractor, is denied where the solicitation did not call for the evaluation of offerors' technical approaches, and where the hours proposed for that subcontractor did not exceed the threshold provided in the solicitation for the evaluation of subcontractor corporate experience.
 3. Protest challenging the agency's failure to consider protester's incumbent corporate experience is denied where the protester did not include such information in its proposal.
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DECISION

Grove Resource Solutions, Inc. (GRSi), a small business located in Frederick, Maryland, protests the issuance of a task order to Vickers & Nolan Enterprises, LLC (VNE), a small business located in Stafford, Virginia, under request for proposals (RFP) No. N65236-17-R-3067, issued by the Department of the Navy for intelligence support services for the United States Marine Corps (USMC). The protester argues that the agency impermissibly permitted VNE to change the composition of its proposed team

during discussions, failed to assess the technical risks resulting from that change, improperly evaluated GRSi's technical capability, and conducted a flawed best-value tradeoff determination.

We deny the protest.

BACKGROUND

The solicitation, which was issued on December 13, 2016, as a small business set-aside, contemplated the issuance of a cost-plus-fixed-fee (CPFF), level of effort task order under the Navy's SeaPort-e contract for intelligence support services for the USMC. Such services include the design, development, testing, deployment and sustainment of the USMC intelligence, surveillance, and reconnaissance enterprise (MCISR-E) for operation and sustainment of USMC program of record intelligence systems. RFP at 7.¹ The requirement also includes content management, architecture design utilizing external sources (national and tactical assets), information assurance, and data sharing implementation across MCISR-E. Id. at 7-8.

The RFP contemplated the evaluation of three factors: technical capability, past performance, and cost/price. Id. at 82. Of these factors, past performance was to be evaluated on an acceptable/unacceptable basis, and technical capability was of significantly greater importance than cost. Id.

The solicitation anticipated that the agency would assess offerors' technical capability based on their corporate experience performing relevant work. Id.² The RFP provided that the more relevant the work performed was to the instant requirement, the more valuable it would be considered by the agency. Id. In connection with the evaluation of technical capability, offerors were instructed to provide reference information sheets for no more than five current and relevant contracts, with the total proposal section to encompass no more than 15 pages. Id. at 75-76. The solicitation limited the submitted references to "the prime offeror and its significant subcontractors," with "significant subcontractor" defined as a subcontractor that would be performing at least 20 percent of the total proposed labor hours. Id. at 76-77. The RFP further required each offeror to provide at least one reference for itself and at least one reference for any significant subcontractor. Id.

¹ Unless otherwise noted, citations to the RFP refer to the final solicitation, issued on September 26, 2017, which was provided in tab 11 of the agency report (AR).

² The technical capability evaluation factor included three subfactors: (A1) counterintelligence/human intelligence (CI/HUMINT) and signals intelligence (SIGINT) training support; (A2) general military intelligence (GMI)/geospatial training support; and (A3) CI/HUMINT and MCISR-E technical and engineering support. Id. at 82-83.

Cost/price proposals were to include, among other items, a cost proposal narrative and a “pricing model.”³ Id. at 79. The RFP advised offerors that the agency intended to contract “for the exact labor categories and number of labor hours for each performance period” as set forth in the pricing model. Id. The pricing model also contained the agency’s best estimate of the amount of other direct costs. Id. at 80. The solicitation provided for analyses, pursuant to Federal Acquisition Regulation (FAR) § 15.404-1, of both “price” reasonableness and cost realism. Id. at 85.

Both GRSi and VNE timely submitted proposals in response to the solicitation. On May 15, 2017, the agency issued a task order for the requirement to GRSi. Contracting Officer’s Statement/Memorandum of Law (COS/MOL) at 12. On May 30, VNE filed a protest of the task order issued to GRSi, which our Office docketed as B-414746. Id. at 13. On June 12, we dismissed the protest as academic based on the Navy’s decision to take corrective action. Id.

On September 26, the agency issued amendment 0008 to the solicitation, which updated the estimated labor hours and contained various clarifications and instructions. That same day, the agency also provided GRSi and VNE with letters containing discussion items arising from the agency’s initial evaluation findings. Id. at 15. For both offerors, the discussion items only identified issues arising from the respective offeror’s cost/price proposal. See AR, Tab 15, GRSi Discussion Letter Enclosure; AR, Tab 16, VNE Discussion Letter Enclosure. In addition, both letters stated that:

Your response to the discussion issues and amendment must be submitted in the form of proposal revisions. You are cautioned that the Government does not desire that any revisions be submitted that are not a direct result of the noted discussion issues, or that do not stem from specific requirements updates/clarifications identified in amendment 0008, as any such revisions could negatively impact your proposal evaluation.

AR, Tab 13, GRSi Discussion Instruction Letter, at 2; AR, Tab 14, VNE Discussion Instruction Letter, at 2.

Later that day, the agency sent a follow-up email to both offerors clarifying that:

Based on updates incorporated into Amendment 0008, proposal revisions will be required for your Cost/Price proposal. Although you may make any proposal revisions that you deem necessary, you are cautioned that the Government does not desire that any revisions be submitted that are not a direct result of the noted discussion issues, or that do not stem from specific requirements updates/clarifications identified in the solicitation

³ The solicitation made numerous references to “price” despite the fact that the procurement anticipated the issuance of a CPFF task order. For the sake of clarity, we have adopted the terminology used by the RFP.

amendment; as any such revisions could negatively impact your proposal evaluation.

AR, Tab 17, Clarification Email to VNE, at 1; AR, Tab 18, Clarification Email to GRSi, at 1.

Following these instructions, VNE sent an email to the agency noting the amount of time that had elapsed, and asking if the agency would “look negatively on Cost/Price proposal revisions in the pricing model . . . that reflect changes to accommodate for the current corporate situation of the offeror.” AR, Tab 19, September 28 VNE Email, at 1. The agency responded, in an email sent to both offerors, that it understood that “the cost proposal submissions may require many changes and updates due to the extended amount of time since the initial proposal submissions, as well as the solicitation updates incorporated in Amendment 0008.” AR, Tab 22, October 2 Agency Email, at 1.

On October 3, both GRSi and VNE timely submitted final proposal revisions. COS/MOL at 18. Both offerors proposed no revisions to their technical capability proposal volumes, but both included revisions to their cost/price proposal volumes that went beyond addressing the Navy’s discussion items and solicitation amendments. Id.

Following receipt of final proposal revisions, the Navy evaluated the two offerors as follows:

	GRSi	VNE
Technical Capability	Good	Outstanding
CI/HUMINT and SIGINT Training Support	Outstanding	Outstanding
GMI/Geospatial Training Support	Good	Good
CI/HUMINT and MCISR-E Technical and Engineering Support	Good	Outstanding
Past Performance	Acceptable	Acceptable
Total Proposed Cost	\$42,341,833	\$43,741,057
Total Evaluated Cost	\$42,342,411	\$43,782,866

Id. at 22.

Following a review of the agency’s evaluation findings, the Source Selection Authority concluded that the benefits associated with VNE’s proposal outweigh those identified in GRSi’s proposal, and warrant the payment of the price premium associated with VNE’s proposal. AR, Tab 31, Source Selection Decision Document, at 31. Accordingly, on

December 12, the Navy issued the subject task order to VNE. Following a debriefing, GRSi filed this protest with our Office.⁴

DISCUSSION

GRSi argues that the agency allowed VNE to make changes to its technical proposal despite directing offerors that any final proposal revisions be limited to their cost/price proposals.⁵ Comments at 15. The protester further argues that even if these changes were permissible, the agency erred in not evaluating the impact of such changes on the technical risks associated with VNE's approach. Lastly, GRSi challenges the agency's evaluation of its technical capability and the resulting best-value tradeoff determination.⁶

The competition here was conducted pursuant to FAR § 16.505. While this section does not establish specific requirements regarding the conduct of discussions under a task order competition, exchanges with offerors, like other aspects of such a procurement, must be fair, equal, and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9. In general, when an agency opens or reopens

⁴ The task order at issue is valued in excess of \$25 million. Accordingly, our Office has jurisdiction to consider GRSi's protest. 10 U.S.C. § 2304c(e)(1)(B).

⁵ In its initial protest, GRSi asserted that VNE's proposal should have been rejected as non-compliant due to its failure to comply with the alleged limitation on final proposal revisions. See Protest at 22. In its comments on the agency report, however, the protester largely abandoned this argument, instead arguing that the agency should have "carefully reviewed" VNE's proposal changes. Comments at 13.

⁶ While we do not address every argument raised by GRSi in its protest, we have reviewed each issue and do not find any basis to sustain the protest. For example, the protester argues that it should have received multiple strengths, instead of just one, under one of the technical capability subfactors, CI/HUMINT and MCISR-E technical and engineering support. In support of this contention, the protester argues that the Navy recognized the benefit of multiple areas of GRSi's experience, including its experience installing "more than 60 Lenel and AMG [intrusion detection systems (IDS)]" and its experience providing IDS support to more than 20 separate USMC, Navy, and Defense Logistics Agency commands across the country. Protest at 29. The agency responded to this argument by providing a declaration from the Selection Evaluation Board (SEB) chair, which explained that the SEB considered the totality of this experience, *i.e.*, "the quantity of systems installed in conjunction with the number of locations supported," to be of benefit to the agency, not any individual aspect of the experience alone. AR, Tab 36, SEB Chair Aff., at 1. Our Office has noted that we will consider an agency's post-protest explanations that fill in previously unrecorded details, so long as the explanation is credible and consistent with the contemporaneous record. See NCI Info. Sys., Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 11. Here, we find the SEB chair's explanation to be both reasonable and consistent with the underlying evaluation record.

discussions with offerors, the offerors may revise any aspect of their proposals, including portions of their proposals that were not the subject of discussions. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 22. If an agency limits the scope of revisions, however, the agency may not accept revisions that go beyond that scope if other offers were not provided the same opportunity. Id.

Here, the protester contends that the agency limited the scope of proposal revisions, while at the same time requiring that “any other changes would be carefully reviewed.” Comments at 13. In support of this contention, the protester argues that the cover letter provided by the Navy with amendment 0008 cautioned offerors that the agency “does not desire” any revisions that are not a response to either the issues raised in discussions or the changes/clarifications provided by amendment 0008. Id. at 11 (quoting AR, Tab 13, GRSi Discussion Instruction Letter, at 2). The protester notes that the discussion issues raised with both VNE and GRSi “were limited to cost/price proposals.” Id. at 17. GRSi argues that VNE’s final proposal revisions were inconsistent with this limitation, because they contained “wholesale changes” that negatively affected VNE’s technical capability and risk. Id. at 17. In this regard, VNE’s final proposal removed a minor subcontractor, which had been proposed to perform 8.27 percent of the total number of proposed hours, and reallocated those hours to be performed by VNE itself. Compare AR, Tab 6, Initial Bus. Clearance Mem., at 25 with AR, Tab 24, Cost/Price Evaluation Report, at 14-15.⁷

Based on our review of the communications between the offerors and the agency pertaining to the scope of proposal revisions, we conclude that the agency did not limit the scope of proposal revisions, but rather expressly permitted offerors to provide any proposal revisions they deemed necessary. Moreover, we find no support in the record for the protester’s argument that the agency was obligated to “carefully review,” i.e., apply extra scrutiny to, any revisions that did not fall within the limited areas included in offerors’ discussion letters or in solicitation amendments. In this regard, we note that, while the agency included the above-quoted cautionary language in its discussion instruction letters, it subsequently sent a clarification email advising both offerors that, notwithstanding the agency’s desire for limited revisions, the offerors “may make any proposal revisions that you deem necessary.” AR, Tab 17, Clarification Email to VNE, at 1; AR, Tab 18, Clarification Email to GRSi, at 1. The agency later sent a second clarification email, which provided that the agency would not look negatively on changes and updates that might be needed in offerors’ cost/price proposals due to the extended amount of time that had elapsed. AR Tab 22, October 2 Agency Email, at 1.

⁷ We note, however, that while VNE, like GRSi, made numerous changes to its cost/price proposal, it did not make any changes to its technical proposal. See COS/MOL at 18.

Furthermore, it is clear from the contemporaneous record that GRSi recognized the breadth of the proposal revisions that would be permitted. Specifically, after observing that the answer provided in the agency's second clarification email "appears to permit changes in pricing approach that are rather wide in scope," GRSi asked whether "[c]onsidering the very significant impact that profound changes in pricing approach can have to an offeror's overall proposal," the agency would consider granting an extension of the proposal submission deadline. AR, Tab 23, GRSi Extension Request, at 1.

The protester additionally argues that the agency erred in failing to analyze the technical risks resulting from VNE's removal, from its proposal, of the hours proposed for its minor subcontractor, and its reallocation of those hours to VNE.⁸ The protester contends that the agency was obligated to evaluate the risks associated with this change, but failed to do so. In support of this position, GRSi argues that risk is an inherent criterion of every procurement evaluation, and therefore the Navy was not permitted to ignore the risks stemming from the change to the composition of VNE's team.

Based on our review of the RFP's evaluation criteria, we are not persuaded that the agency was obligated to evaluate the risks associated with the removal of VNE's minor subcontractor in its technical evaluation. The solicitation here did not anticipate the assessment of each offeror's technical approach. In this regard, the RFP neither included an evaluation factor calling for an assessment of offerors' technical approaches, nor required offerors to provide a proposal section addressing their technical approaches. Moreover, the solicitation expressly provided, up front, much of the technical approach the agency was seeking, including the labor categories and number of labor hours that offerors were to use in preparing their proposals. RFP at 79. The RFP's evaluation scheme therefore did not envision that the agency would evaluate the technical risks stemming from each offeror's technical approach, or from changes to that approach.⁹

⁸ The protester further asserts that VNE's reference, during communications with the agency, to a change in its "corporate situation" indicates that VNE made additional changes beyond just removing its minor subcontractor from the proposal. We have reviewed this assertion and do not see any evidence in the record to support this contention.

⁹ The protester additionally relies on a definition provided in its debriefing to assert that the agency was required to assess the performance risks resulting from offerors' technical approaches. In this regard, GRSi's debriefing contained a definition of risk, which defined the risk to be considered as the risk of a "disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance." Comments at 5 (quoting AR, Tab 7, Debriefing, at 3). As an initial matter, we note that it is the solicitation's evaluation scheme to which an agency is required to adhere, not definitions or criteria provided in the debriefing. AlphaSix Corp., B-412456, Feb. 19, 2016, 2016 CPD ¶ 76 at 4 n.1. Moreover, we do not find the evaluation of such

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Instead of requiring the evaluation of offerors' technical approaches, the solicitation provided for the evaluation of technical capability through a review of each offeror's corporate experience. Id. at 82. This review, however, was limited to reviewing the experience of the offeror and its significant subcontractors, the latter defined as subcontractors that would be performing at least 20 percent of the total proposed labor hours. Id. at 76-77. As a result of this limitation, VNE's initial proposal did not include any references for the subsequently-removed minor subcontractor. The removal of that subcontractor therefore did not result in any changes to the technical capability portion of VNE's final proposal since the reference sheets for VNE and its significant subcontractors remained the same. See COS/MOL at 18, 21. In light of this evaluation scheme, and the fact that VNE's technical proposal did not change in its final proposal revisions, we conclude that the agency was not required to evaluate the technical risks associated with the removal of VNE's minor subcontractor.

The protester further argues that the agency unreasonably failed to account for the removal of VNE's minor subcontractor in the Navy's cost realism evaluation. We have reviewed this argument and conclude that it lacks merit. In this regard, the protester did not adequately explain why the removal of VNE's subcontractor would be likely to result in increased costs to the agency that were not already reflected in the evaluation of VNE's final cost/price proposal. Here, the agency's cost/price evaluation encompassed an assessment of the direct and indirect rates proposed by VNE and all of VNE's subcontractors in VNE's final proposal, an assessment that did not include the removed subcontractor. See AR, Tab 24, Cost/Price Evaluation Report, at 14-16. Based on our review of this evaluation, we see no basis to question the agency's conclusions with respect to the realism of VNE's costs.

Lastly, the protester challenges the agency's evaluation of its technical capability. In support of this challenge, the protester notes that since May 30, 2017, "GRSi and its subcontractor . . . have been performing the more significant elements of the present procurement through other contract vehicles." Protest at 30. The protester argues that the Navy erred by not considering this recent incumbent experience in its evaluation of GRSi's technical capability, because such experience was "too close at hand for the agency to ignore." Comments at 26.

We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider

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performance risks to be inconsistent with the RFP's evaluation scheme, which anticipated that the agency's technical evaluation (including its assessment of technical risks) would be conducted via a review of offerors' corporate experience, rather than through a review of their technical approaches.

the information. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5.

Here, we are not persuaded that the agency was required to consider the recent corporate experience cited by the protester given that GRSi did not include it in its final proposal revision despite having an opportunity to do so. In this regard, our Office has noted that any obligation to consider such information is not intended to remedy an offeror's failure to include corporate experience information in its proposal. See SNAP, Inc., B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8. Such circumstances are instead governed by the well-established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Id. at 9.

The protest is denied.

Thomas H. Armstrong
General Counsel