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Decision

Matter of: Office Design Group

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B-415855.4; B-415856.3; B-415856.4; B-415857.3; B-415857.4

Date: July 16, 2018

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Tyler P. Whisnant for SDV Office Systems, LLC; Holly L. Gack for A. Pomerantz & Company; Fred Danforth for JohnsonDanforth, Inc.; George R. Nelson, for The Russell Group United, LLC, the intervenors.

Alea Barlow, Esq., Department of Veterans Affairs, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the award of multiple indefinite-delivery, indefinite-quantity contracts is denied where the record shows that, after taking corrective action in response to the protester's prior protests, the agency reevaluated proposals and the record shows that the reevaluation was reasonable and consistent with the stated evaluation factors.

DECISION

Office Design Group, a service-disabled veteran-owned small business (SDVOSB) located in Irvine, California, protests the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts by the Department of Veterans Affairs (VA), Strategic Acquisition Center, under request for proposals (RFP) Nos. VA119-17-R-0260, VA119-17-R-0261, VA119-17-R-0262, VA119-17-R-0263, and VA119-17-R-0264, for healthcare furniture and related services.¹ Office Design primarily alleges that the

¹ Each solicitation was for a different region, five regions in total (Region 1, Northeast, Region 2, Southeast, Region 3, Midwest, Region 4, Southwest, and Region 5, West Coast). The agency selected the same nine firms for award for each region: A. Pomerantz & Company, of Philadelphia, Pennsylvania; GovSolutions LLC, of Virginia Beach, Virginia; JohnsonDanforth & Associates, of Little Rock, Arkansas; JPL & Associates, of Sarasota, Florida; The Russell Group, of Columbus, Ohio; Veteran Office Design, of Charlotte, North Carolina; SDV Office Systems, LLC, of Asheville, North

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agency unreasonably and unequally evaluated its own and the awardees' technical proposals, and that the agency did not reasonably investigate what it alleges were unmitigable unequal access to information organizational conflicts of interest (OCI) which should have disqualified four of the nine awardees.

We deny the protests.²

BACKGROUND

The healthcare furniture procurement was designed by the VA to establish multiple regional IDIQ contracts under which fixed-price task/delivery orders would be issued for a broad range of healthcare grade furniture, design, project management, furniture removal, professional installation and maintenance/warranty services to meet the needs of various VA facilities within the continental United States and outside the continental United States. RFP at 17, 27. The selected contractors will provide all labor, materials, equipment, transportation, and supervision necessary to satisfy the needs of each ordering activity. RFP Statement of Work (SOW) at 1.

The VA issued all five solicitations on May 5, 2017, with all being set-aside for SDVOSB concerns. Other than the geographic variance, all five solicitations were essentially identical. They all provided for the award of multiple fixed-price IDIQ contracts, each with a 5-year base ordering period, and one 5-year option.³ RFP at 28. The estimated ceiling value for each contract is \$499 million. Contracting Officer's Statement at 1 (May 11, 2018).

The RFP established that awards would be made using a best-value tradeoff selection process considering three factors: technical capability, past performance, and price. RFP at 28 33. Proposals had to demonstrate the offeror's ability to successfully satisfy the stated solicitation requirements and offerors were instructed to include sufficient

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Carolina; Cuna Supply, LLC, of Bellaire, Texas; and Coronado Distribution Company, Inc., of San Diego, California. Contracting Officer's Statement at 8 (May 11, 2018).

² The protester also alleged that the agency engaged in unequal and prejudicial discussions with the awardees. Protest at 3 (April 10, 2018). We dismiss this allegation for failing to state factual and legally sufficient grounds of protest. 4 C.F.R. §§ 21.1(c)(4), (f). The agency reports, and the contemporaneous evaluation record confirms, that the VA did not conduct discussions with any offeror. Contracting Officer's Statement at 5 (May 11, 2018).

³ Unless otherwise indicated, all citations to the RFP refer to the version provided in exhibit 6(a) of the agency report as RFP No. VA119-17-R-0261, which covers Region 2. This RFP includes all relevant amendments and the agency reports that this RFP represents the solicitation for all five regions. Contracting Officer's Statement at 6 (May 11, 2018).

details in their proposals “to permit a complete and accurate evaluation of each proposal.” Id. at 30. The technical capability factor was stated to be more important than the past performance factor and, when combined, the technical capability and past performance factors were stated to be significantly more important than price. Id. at 33.

As is relevant here, the technical capability factor was comprised of the following subfactors: (1) a cross-referenced copy of product literature for all of the items listed in the detailed item review minimum technical requirements (MTRs) list; (2) offeror’s self-certification under the MTRs; (3) offeror’s service narrative that discusses its ability to meet all services listed in the SOW (hereinafter, SOW service narrative); and (4) offeror’s project sample. Id. at 33-34. In this regard, the SOW established four line items, with contract tasks and requirements specified for each. The four delineated line items were: (1) furniture, design, and installation support services; (2) installation and reconfiguration services; (3) industrial design services; and (4) project management turnkey services with furniture. Id. at 3-19.

With respect to the SOW service narrative subfactor specifically, the RFP informed offerors that the SOW service narrative should include the following key elements:

- provide a staffing plan that includes the qualifications and experience of key personnel (project manager/lead installer and interior designer) working in a healthcare environment.
- describe the process of inventory, cataloging, protecting existing VA furniture and providing temporary storage for existing furniture; describe any materials to be used to protect furniture from damage.
- describe the process of protecting VA building during installation. Describe any materials to be used to protect the building and finishes of previously installed furniture.
- describe the process for making corrections during final walkthrough.
- describe the process used for warranty repairs.
- describe interior designer’s experience and qualifications working in healthcare facilities and the hardware and software that will be used to produce digital and hard copy drawings of design work and prepared installation drawings.
- describe the technical capabilities of staff producing AutoCad and or PDF drawings of the as-built furniture installation.

- describe the experience of the installation staff and interior design staff regarding work in federal and healthcare facilities. Address their knowledge regarding life safety codes, infection control standards and patient privacy standards.

RFP at 34.

Additionally, the RFP included various attachments, including attachment 15, entitled “Service Technical Evaluation Questions.” RFP at 24. This attachment contained the service requirements set forth in the SOW corresponding to the four line item requirements--(1) furniture, design, and installation support services; (2) installation and reconfiguration services; (3) industrial design services; and (4) project management turnkey services with furniture. RFP attach. 15 at 1-2. Under each line item, the RFP included a series of questions applicable to the particular tasks/services thereunder. Id. For example, under Industrial Design Services, the questions asked, among others, “Did the Contractor provide a staffing plan?”; “Did the Contractor describe the experience of the staff regarding life safety code, infection control standards, and patient privacy standards?” Id. at 1. In response to a question regarding the solicitation, the agency clarified that attachment 15 is the “checklist[s] that will be used to evaluate the technical proposals.” RFP amend. 1, Questions & Answers at 2 (No. 14).

Proposals were due July 5, 2017. The VA received proposals from 19 offerors in response to each of the solicitations for Regions 1-4, and proposals from 20 offerors for Region 5. Contracting Officer Statement at 2 (May 11, 2018). Office Design submitted a proposal for all five regions, as did the awardees. The VA’s source selection evaluation team evaluated proposals and prepared a consensus report detailing its evaluation findings, which included the assignment of adjectival ratings. Agency Report (AR) exh. 5b(ii), Source Selection Decision Documents at 11-60.⁴

On December 14, 2017, the VA notified Office Design that its proposal was not selected for award because its technical proposal was evaluated as unacceptable. B-415853 et al. Protest exh. A, Letter to Unsuccessful Offeror at 1 (Dec. 14, 2017).⁵ The unsuccessful letter informed the protester that awards had been made to six offerors: A. Pomerantz, GovSolutions, JohnsonDanforth, JPL & Associates, The Russell Group, and Veteran Office Design. Id. at 2.

⁴ All citations to the source selection decision documents refer to the version provided in exhibit 5b(ii) of the agency report, which pertains to the evaluation of proposals submitted in response to the RFP for Region 2. We note, however, that the agency report includes separate source selection decision documents for all five regions.

⁵ Citations to documents provided during the previous protests filed by Office Design are identified by their GAO docket numbers as B-415853 et al. (B-415853; B-415854; B-415855; B-415856; B-415857).

After receiving a debriefing, Office Design filed timely protests with our Office challenging the agency's evaluation of proposals and the resulting contract awards. B 415853 et al. Protest (Dec. 26, 2017). In response to these protests, the VA filed a notice of corrective action indicating that it intended to reevaluate proposals and make new award decisions, if necessary. Our Office dismissed the protests as academic on January 25, 2018. Office Design Grp., B-415853 et al., Jan. 25, 2018 (unpublished decision).

The VA's corrective action consisted of reevaluating proposals for all five regions; the agency did not permit offerors to revise their proposals. The evaluators prepared consensus source selection decision documents detailing their evaluation findings. AR exh. 5b(ii), Source Selection Decision Documents. At the conclusion of the reevaluation, the agency again concluded that Office Design's technical proposal was unacceptable. The evaluators found that Office Design's SOW service narrative was lacking significant details and contained vague or insufficient information. Id. exh. 5e(x), Office Design, Technical Evaluation Consensus Forms at 2, 6; exh. 5c(x), Office Design, Attachment 15 Evaluation Forms at 1-2. For example, among many other things, the VA evaluators found that Office Design failed to provide a staffing plan; failed to include any information regarding its process of inventory, cataloging, and protecting VA property at the contractor's storage facility; failed to include any information regarding a process for warranty repair; and failed to address the qualifications or experience of its staff regarding life safety code, infection control standards, and patient privacy standards. Id. exh. 5c(x), Office Design, Attachment 15 Evaluation Forms at 1-2. The source selection authority confirmed the prior IDIQ awards, and made new awards to three additional offerors: SDV Office Systems, Cuna Supply, and Coronado Distribution Company. Id. exh. 5b(ii), Source Selection Decision Documents at 60-63; Contracting Officer's Statement at 8 (May 11, 2018).

Upon learning the results of the agency's reevaluation, Office Design filed these protests.

DISCUSSION

Office Design challenges the VA's reevaluation of proposals under the technical capability factor and related subfactors. In this regard, the protester asserts that the agency's reevaluation of its proposal under the SOW service narrative subfactor, was not only inconsistent with the terms of the solicitation, but also was unequal as compared to the agency's evaluation of the awardees' proposals. Office Design also challenges the award decisions, alleging that four awardees had a disqualifying OCI. We have fully considered all of the protester's issues and arguments, which include arguments that are in addition to, or variations of, those specifically discussed herein. Although we do not specifically address them all, we find that none provides a basis to sustain the protests.

It is well settled that the evaluation of proposals is a matter within the discretion of the contracting agency and we will not substitute our judgment for that of the agency.

Rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with applicable procurement statutes and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5; Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id.

Evaluation of Technical Proposals

Office Design contends that the agency's reevaluation of its technical proposal as unacceptable was improper. Office Design asserts that the VA "never announced, as it must, that it planned to use responses to Attachment 15 as the rubric against which proposals were evaluated." Protest at 4; Protester's Comments & Supp. Protest at 1 (May 21, 2018). According to the protester, while the solicitation lists some "Key Elements" that should be discussed in the SOW service narrative, offerors were "not warned" that a failure to provide "complete details" in response to Attachment 15 "would result in a finding that their proposals were technically unacceptable." Protest at 11. Office Design is mistaken.

Agencies are required to evaluate proposals in accordance with a solicitation's stated requirements and evaluation criteria. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 38. Where a dispute exists as to the actual requirements of a solicitation, we will first examine the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 3; see also, Carthage Area Hosp., Inc., B-402345, Mar. 16, 2010, 2010 CPD ¶ 90 at 5 n.7; W. Gohman Constr. Co., B-401877, Dec. 2, 2009, 2010 CPD ¶ 11 at 3-4.

As noted above, the solicitation admonished offerors to include sufficient detail in their proposals to allow for a complete and accurate evaluation and informed offerors that the agency would evaluate SOW service narratives to determine if the offeror could meet all the delineated solicitation requirements. RFP at 34. Moreover, the solicitation explicitly described key elements that should be discussed in the offeror's SOW service narrative, such as, a staffing plan, the process for cataloging furniture, and the qualifications and experience of the offeror's proposed key personnel. Id. at 34. Moreover, the RFP included attachment 15, which the agency indicated would be used to evaluate proposals. RFP amend. 1 at 2.

On the record here, we find no merit in the protester's assertion that the agency's use of attachment 15 to evaluate SOW service narratives was inconsistent with the terms of the solicitation or otherwise improper. To the contrary, upon review of the solicitation provisions discussed above--including the specific agency response to a potential offeror's question regarding attachment 15--it is difficult to imagine how Office Design's obligation to submit a detailed SOW service narrative in response to questions set forth in attachment 15 could have been more clear. Accordingly, the protester's claim that

the agency acted improperly when it used attachment 15 as the basis to evaluate proposals under the SOW service narrative subfactor is without merit.

Next, Office Design challenges the agency's assessments regarding its response to the SOW service narrative requirements. Generally, Office Design's weaknesses were assigned for failing to provide adequate details or failing to address a majority of the requirements for subfactor 3, SOW service narrative. Protest exh. C, Letter to Unsuccessful Offeror at 2-3 (Apr. 3, 2018). For example, as noted above, the agency found that under three SOW requirements: (1) installation and reconfiguration services; (2) industrial design services; and (3) project management turnkey services with furniture, Office Design did not address the experience of staff regarding life safety codes, infection control standards, and patient privacy standards as required by attachment 15, questions 17, 24, and 33, respectively. Id. at 2.

The protester argues that it fully responded to this solicitation requirement, alleging that it provided information in its proposal regarding its design manager who "has over 18 years of design experience and specializes in the Healthcare area." Protest at 9. The protester also alleges that it provided information regarding its manufacturing partners who will help improve hospital infection prevention. Id. at 9-10; Protester's Supp. Comments at 3 (June 5, 2018). In response, the agency explains that the evaluators could not verify that the protester's proposed staff has actual experience with, or understanding of, life safety codes, infection control standards, or patient privacy standards because Office Design did not provide that level of detail in its proposal. AR exh. 5e(x), Technical Evaluation Consensus Forms at 6; Supp. Contracting Officer's Statement at 3 (May 29, 2018); Supp. Memorandum of Law at 10-11 (May 29, 2018).

After reviewing the record before us, we find no basis to question the agency's evaluative judgments as unreasonable given the general nature of the information contained in Office Design's proposal. With regard to the question of the experience of Office Design's staff regarding life safety code, infection control standards, and patient privacy standards, Office Design's proposal does not mention or otherwise provide any reference to life safety codes or patient privacy standards, let alone explain how its staff has experience with these standards. It is an offeror's responsibility to submit a well written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. Affolter Contracting Co., Inc., B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 7; Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror runs the risk that a contracting agency will evaluate its proposal unfavorably where, as here, it fails to do so. ACC Constr.-McKnight JV, LLC, B-411073, Apr. 30, 2015, 2015 CPD ¶ 147 at 5. This example is illustrative of the general failure of the protester's proposal to address many of the technical evaluation criteria set forth in the solicitation. Accordingly, the agency had a reasonable basis for evaluating the protester's proposal as unacceptable under the technical capability factor.

Office Design also argues that the agency's assignment of an unacceptable rating under subfactor 3, SOW service narrative, reflects unequal treatment in the evaluation of proposals. According to the protester, each awardee's proposal suffered from some of the same defects identified in Office Design's proposal, but they were not assigned corresponding weaknesses. Protester's Comments & Supp. Protest at 6 (May 21, 2018). Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from actual differences between the offerors' proposals. See Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 6; Northrop Grumman Sys., Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. Office Design has not made this showing.

For example, the protester asserts that one of the awardees, A. Pomerantz, also failed to describe the experience of its proposed staff regarding life safety codes, infection control standards, and patient privacy standards as required by attachment 15, question 17, for installation and reconfiguration services. Protester's Comments & Supp. Protest at 6 (May 21, 2018). The VA reports that the evaluators found that A. Pomerantz provided detailed information that clearly demonstrated that its proposed staff had the requisite experience in the specific areas delineated in subfactor 3, SOW service narrative, therefore, Pomerantz's proposal was assigned a higher rating. Supp. Contracting Officer's Statement at 7 (May 29, 2018); Supp. Memorandum of Law at 5 (May 29, 2018).

Based on our review of the record, we have no basis to question the agency's judgments in performing the evaluation. Specifically, the record indicates that the awardees submitted comparatively more detailed and complete proposals as compared to Office Design, accordingly, the agency had no obligation to assess comparable weaknesses. See Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. For example, regarding the evaluation of A. Pomerantz's proposal, unlike Office Design, A. Pomerantz expressly addressed its experience with life and safety requirements, infection control and patient privacy issues, and provided detailed examples of how it has addressed these requirements in performance of prior projects. AR exh. 2a, A. Pomerantz's Contractor Service Narrative, at 3, 6-7. While Office Design may disagree with the agency's conclusions, Office Design's disagreement with those conclusions is insufficient to establish that the agency acted unreasonably. Ball Aerospace & Techs. Corp., B 411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. Thus, these protest grounds are denied.

Other Issues

Office Design argues that the awards to SDV Office Design, JohnsonDanforth, Cuna Supply, and Coronado were tainted by unequal access to information OCI. As support, Office Design relies on a statement in each of these awardees' proposals indicating that their "systems are already in place and functioning with the same level of service

required by this contract.”⁶ Protester’s Comments & Supp. Protest at 3 (May 21, 2018). Office Design also asserts that the evaluation was flawed because company identification information was disclosed in proposals submitted by JPL and GovSolutions despite the RFP requirement for proposal anonymity. Protester’s Comments & Supp. Protest at 2-3 (May 21, 2018). According to the protester, company identification was found in the metadata of JPL’s technical proposal. Id. As to GovSolutions, the following language appears in that firm’s proposal: “GovSolutions wants everyone to go home safely. Every worker. Every night.” Protester’s Comments & Supp. Protest at 3 (May 21, 2018).

While we have reviewed the record and conclude that these issues provide no basis to sustain Office Design’s protest, we need not address them since the protester is not an interested party to challenge the awards to these firms. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an “interested party” may protest a federal procurement. That is, a protester must be 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. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of 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. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id. As explained above, we find no fault with the agency’s evaluation of Office Design’s proposal as unacceptable under the technical capability factor. With an unacceptable rating under the most important evaluation factor, Office Design would not be in line for an award even if we were to sustain its protest with respect to these allegations. Accordingly, the above allegations are dismissed.

The protests are denied.

Thomas H. Armstrong
General Counsel

⁶ The protester also alleges that there appears to be evidence of collusion between the same four awardees as reflected by their use of similar, and in some instances, identical language in their proposals. Supp. Protest at 3 (May 21, 2018). Aside from the fact that the protester is not an interested party to challenge the awardees in this regard, whether or not these firms engaged in collusive bidding, as alleged by the protester, is not within the purview of our Office. The allegation concerns potential violations of antitrust laws, which are primarily matters for the contracting agency and the Department of Justice. The agency has represented that it is currently reviewing the matter. Supp. Contracting Officer Statement at 5 (May 29, 2018). We therefore dismiss this allegation. See Thermex Energy Corp., B 227034.2, Aug. 17, 1987, 87-2 CPD ¶ 164 at 4.