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Decision

Matter of: Trident Military Systems, LLC

File: B-417020; B-417020.2

Date: January 22, 2019

Steven J. Koprince, Esq., Matthew P. Moriarty, Esq., John M. Mattox II, Esq., and Haley E. Claxton, Esq., Koprince Law, LLC, for the protester.
Kevin P. Mullen, Esq., W. Jay DeVecchio, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP, for L3 Technologies, Inc., an intervenor.
Angelina Calloway, Esq., General Services Administration, for the agency.
Young H. Cho, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation and selection of lower-rated, lower-priced proposal is denied where record shows that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation.

DECISION

Trident Military Systems, LLC (Trident), of Mesa, Arizona, protests the award of a contract to L3 Technologies, Inc. (L3) of New York, New York, under request for proposals (RFP) No. ID07180027, issued by the General Services Administration (GSA), for operations, maintenance and support for the F-16 mission tactics trainer (MTT) training system support center (TSSC). The protester challenges the agency's evaluation of L3's proposal and the selection decision.

We deny the protest.

BACKGROUND

On August 20, 2018, GSA issued the solicitation on behalf of the Air National Guard (ANG) and Air Force Reserve Command (AFRC) for comprehensive operations,

maintenance, and sustainment services for their F-16 MTT systems¹ designed to support initial, qualification, and continuation training of full-time and part-time pilots, in both training and operational F-16 units. Agency Report (AR), Tab 6, RFP, at 3.² The solicitation, issued pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15, contemplated the award of a fixed-price contract with time-and-materials and cost-reimbursable line items, with a 12-month base period and four 12-month option periods. Id. at 3-6, 108, 110, 118.

Award was to be made on a best-value tradeoff basis using a two-phased evaluation process. Id. at 118-119. During phase one, the agency evaluated proposals under the following two factors on a go (acceptable) or no-go (unacceptable) basis: intelligence community directive (ICD) 705 compliance and past experience. Id. Only offerors that received a go/acceptable rating under phase one were requested to submit a response for phase two. Id. at 108.

During phase two, the agency evaluated proposals using non-price and price factors. Id. at 117. The two non-price factors, listed in descending order of importance, were: technical approach and small business utilization. Id. As relevant here, for the technical approach factor, the solicitation stated the agency would assess the extent to which the offeror understands the requirements of the performance work statement (PWS), and the offeror's approach meets those requirements. Id. at 117, 119. For the price factor, the solicitation advised that the agency would evaluate the offeror's price for fairness and reasonableness.³ Id. at 120. The solicitation advised that the non-price factors, when combined, were significantly more important than price. Id. at 117. Finally, the solicitation stated that past performance was not a formal evaluation factor for this procurement but would be considered as part of the contracting officer's responsibility determination. Id. at 116.

The agency received four proposals, including ones from Trident and L3, which were evaluated as follows:

¹ The solicitation explains that the training devices the ANG previously used have become obsolete. RFP at 3. The solicitation also explains that the ANG now uses excess cockpits from various sources, combined with government furnished software from the AFRC, which is referred to as the F-16 MTT-G. Id. Trident states that it is the original equipment manufacturer of the F-16 MTT-G simulator and a subcontractor on the incumbent contract. Protest at 2.

² The solicitation was amended three times. All citations to the solicitation are to the final version as amended and to electronic page numbers.

³ The solicitation advised that the agency would perform an analysis of the offeror's total cost by adding labor costs to estimated travel and other direct costs. RFP at 120.

Offeror	ICD Compliance	Past Experience	Technical Approach	Price
L3	Go	Go	Acceptable	\$34,799,958
Trident	Go	Go	Very Good	\$50,448,236

AR, Tab 17, Award Decision Document (ADD), at 3, 27.

The contracting officer (CO), who acted as the source selection authority (SSA) for this procurement, reviewed the results of the technical and price proposal evaluations, and concluded that L3’s proposal represented the best value to the government. Id. at 27-29. After receiving a written debriefing, this protest followed.

DISCUSSION

The protester challenges the agency’s evaluation of L3’s proposal under the past experience and technical approach factors, and the agency’s best-value tradeoff decision. Although we do not specifically address all of Trident’s arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

Past Experience

First, the protester argues that the agency failed to conduct a past performance evaluation under the past experience factor, which the protester insists was required by the solicitation. See Protest at 8-9; Protester’s Comments at 6-7. In support of its argument, the protester contends that the past experience factor included a confidence assessment, which “sounds like a quality of performance assessment, i.e. past performance.” Protest at 8. In addition, the protester contends that because the solicitation stated under the past experience factor that an offeror who has not “successfully performed” comparable PWS tasks would not be considered technically acceptable and would not be considered for award, the agency was required to perform a past performance evaluation. Protester’s Comments at 6 (quoting RFP at 111, 116). The agency states that past performance was not an evaluation factor for this procurement, which the protester concedes. Memorandum of Law (MOL) at 9 (citing Protest at 8 (“past performance was not a formal evaluation factor”)).

As a general matter, where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of the provisions; to be reasonable, an interpretation must be consistent with such a reading. ProActive Techs., Inc.; CymSTAR Servs., LLC, B-412957.5 et al., Aug. 23, 2016, 2016 CPD ¶ 244 at 13. Here, the solicitation stated:

While past performance is not a formal evaluation factor for this procurement, the GSA CO will review the Federal Awardee Performance and Integrity Information System (FAPIIS). . . to make a past performance

responsibility determination in accordance with FAR 9.104-6[,] FAPIIS and FAR 9.105-1, [] Obtaining Information.

RFP at 116. Further, the solicitation stated that the government reserved the right to review information in the Past Performance Information Retrieval System and other government systems to “make an informed responsibility determination prior to award.” Id.

We agree with the agency that past performance was not a formal evaluation factor for the procurement. To the extent there was any conflict between the solicitation’s statement that past performance was not a formal evaluation factor and other language in the solicitation, this was a patent ambiguity in the RFP and Trident’s argument is an untimely challenge to the terms of the solicitation. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); MEDI/e-Imagedata Corp., B-410018, Sept. 30, 2014 2014 CPD ¶ 286 at 4 (where a patent ambiguity is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the term). Accordingly, this protest allegation is dismissed.

Second, the protester argues that the agency should have found L3’s proposal unacceptable under the past experience factor. Protest at 8-10; Protester’s Comments at 2-7. Specifically, Trident argues that L3 lacks recent and relevant experience with the simulators to be provided here. In this regard, Trident contends that the simulators to be provided under this contract correspond to aircraft the protester refers to as “pre-block” aircraft, which are flown by the ANG and AFRC. Protest at 2. The protester contends that “knowledge and experience with Pre-Block simulators is essential” and that L-3 demonstrated “scant experience with F-16 Pre-Block simulator work.” Protest at 2; Protester’s Comments at 3-4.

In response, the agency contends that the protester wrongly assumes that the solicitation required pre-block simulator experience. MOL at 9. The agency explains that the solicitation sought past experience performing similar tasks required by the PWS and defined “similar” as “a measureable range of operations which include simulator experience and operation of a TSSC.” Id. The agency further asserts that it found that L3 demonstrated significant experience with TSSC operation and F-16 simulators, and determined L3’s past experience to be similar and therefore, acceptable. Id.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency’s judgment was reasonable and in accord with the RFP evaluation criteria. JSR, Inc., B-405463, Nov. 8, 2011, 2011 CPD ¶ 265 at 4. An agency has broad discretion, when evaluating offerors’ experience, to determine whether a particular contract is relevant to an evaluation of experience. RORE, Inc., B-410759, Feb. 6, 2015, 2015 CPD ¶ 94 at 5. A protester’s disagreement with the agency’s evaluation judgments does not establish that the evaluation or the source selection decision was unreasonable. Id.

Here, the solicitation advised that under the past experience factor, the agency would consider the extent of the offeror's past experience in carrying out similar work either as a prime contractor or subcontractor. RFP at 118. The solicitation further advised that the agency must have confidence in the offeror's ability to complete concurrent projects with similar scope, size, and duration of the work with minimal risk. Id. at 118-119. As relevant here, the solicitation defined similar in scope as "a measurable range of operations which include simulator experience and operation of a TSSC." Id. at 111. Further, an offeror was required to have successfully performed comparable tasks as stated in the PWS to be considered technically acceptable. Id. In this regard, the PWS identified the following tasks that fell within the scope of the F-16 MTT TSSC contract: program management/systems engineering; upgrades and modifications; training systems support or contractor operations and maintenance support; task order transition; and deliverables. Id. at 7.

We agree with the agency that the solicitation did not require offerors to possess pre-block simulator experience and did not state that the lack of pre-block simulator experience would result in an unacceptable rating. Thus, the protester's arguments do not provide any bases to sustain the protest.

Further, the agency found that the past experience from two of L3's references⁴ was very similar in scope to the solicited requirement. Specifically, the agency concluded that L3 demonstrated experience with TSSC operation, simulators (including experience to meet concurrency requirements), and the F-16 airframe, and assigned a go, or acceptable, rating to L3's proposal under the past experience factor.⁵ See AR, Tab 9, Technical Consensus Report (Phase I Evaluation), at 7; see also AR, Tab 7, L3's Phase I Proposal, at 7-10. Based on our review of the record, we find no basis to question the agency's judgments in performing the evaluation. See Addx Corp., B-414749 et al., Aug. 28, 2017, 2017 CPD ¶ 275 at 7. Accordingly, this protest ground is denied.

Technical Approach

The protester next argues that the agency should have assigned a deficiency and therefore a marginal or unacceptable rating to L3's proposal under the technical approach factor. Supp. Protest at 4-7. Specifically, the protester argues that the agency should have assessed a deficiency (instead of a significant weakness) because

⁴ These contracts were for an F-16 Mission Training Center and F-16 Training Systems for the Air Force. AR, Tab 7, L3's Phase I Proposal, at 7-10.

⁵ The solicitation did not provide adjectival ratings and definitions that would be used in the agency's evaluation; rather, these were provided in the source selection plan (SSP). A go (or acceptable) rating for this factor was defined as "the offeror has experience examples that are the same or very similar to the type of work identified in this solicitation." AR, Tab 4, SSP, at 6.

L3 omitted and therefore failed to demonstrate a coherent methodology for flight simulator software and hardware concurrency,⁶ which according to the protester is the primary contractual requirement. Supp. Protest at 5.

In response, the agency explains it reasonably assessed a significant weakness rather than a deficiency to L3's proposal because while L3 only generally described its approaches for achieving concurrency, the proposal also demonstrated some understanding of the requirement. Supp. MOL at 6-7; Decl. of Source Selection Evaluation Team (SSET) Chairperson at 4. In this regard, the agency explains that L3 did not omit--as the protester alleges--the concurrency requirement. Supp. MOL at 8. The agency further explains that while concurrency is considered the most important element of the PWS requirements, it is not--as the protester contends--"the requirement." Id. Rather, the objective of the requirement is to support ANG and AFRC's F-16 training system and the PWS is divided into several major areas. Id. As a result, the agency contends that it reasonably concluded that L3's significant weakness was mitigated by its demonstration of a stronger understanding and capability in other areas of the PWS, which increased the government's confidence in L3's ability to successfully complete the requirement, resulting in the assignment of an acceptable rating. Id. at 7-8.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with an agency's evaluation does not show that it lacked a reasonable basis. Jacobs Tech., Inc., B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 6.

Here, the solicitation advised that under the technical approach factor, offerors would be evaluated on a demonstrated understanding of the PWS requirements and adequacy of the technical approach. RFP at 119. This factor also included the following elements, which were of equal importance and were not individually rated, but together formed the basis for the technical approach rating: methodology overview; transition plan; labor category crosswalk; subcontractor management plan excerpt; quality control plan excerpt; and organizational conflict of interest mitigation plan, if applicable. Id. The solicitation also stated, as relevant here, the government would verify whether the offeror's proposed methodology could effectively meet the requirements in the PWS. Id.

⁶ The solicitation defined concurrency as "keeping the training devices and courseware concurrent or up to date with the aircraft configuration or courseware training policy." RFP, Section J, Glossary and Acronym List, at 1.

The solicitation further explained that the agency would pay particular attention to the offeror's approach to performing the required work and ability to provide services that ensure the best value to the government. Id.

The agency assessed L3's proposal three strengths, two weaknesses,⁷ and one significant weakness under this factor. AR, Tab 16, Phase II Evaluation, at 2-3. With regard to the significant weakness, the agency found that L3's technical approach did not "fully describe methodologies on how software and hardware concurrency will be achieved, the most important methodology element." Id. at 3. The agency specifically quoted the statement from L3's proposal that "[i]mplementation of aircraft systems is largely dependent [DELETED]" and noted that L3 did not "provide detailed information on processes, or methodologies to achieve software or hardware concurrency, potentially limiting aircraft simulator functionality to architecture." Id. The agency found that this flaw appreciably increased the risk of unsuccessful contract performance. Id.

Based on our review of the record, we find the agency's assessment of a significant weakness, rather than a deficiency, to be reasonable. In this regard, as explained by the SSET chairperson, L3's proposal discussed its proposed approach for concurrency and concurrency management in a general manner, but did not provide specific details about the processes that it would utilize. Decl. of SSET Chairperson at 4;⁸ AR, Tab 11, L3's Phase II Proposal, Encl. 1, Technical Approach, at 1-6-1-7. As a result, the SSET concluded that while L3's failure to provide details regarding its specific approaches presented some risk, L3 nonetheless demonstrated some understanding of the concurrency requirement for an F-16 training system and demonstrated general knowledge related to this requirement. Id. Consequently, the agency assigned a significant weakness for this flaw relating to the concurrency requirement. See Decl. of SSET Chairperson at 4 (citing AR, Tab 4, SSP at 8 (source selection plan defines weakness as flaw in proposal that increases risk of unsuccessful performance)). The

⁷ Both offerors were assessed identical weaknesses for failing to "address one of the most important methodologies of TSSC operations, the operations and maintenance of a Relocatable Simulation Shelter []" and failing to "describe methodologies to ensure the government maintains ownership of data rights." AR, Tab 16, Phase II Evaluation, at 3, 4.

⁸ In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties' arguments and explanations concerning the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the reasonableness of evaluation decisions--provided those explanations are credible and consistent with the contemporaneous record. MSI-Tetra Tech, B-414517, B-414517.2, June 22, 2017, 2017 CPD ¶ 194 at 12 n.5.

agency concluded that an assessment of a deficiency, which was defined as “an aspect of the proposal that fails to meet a Government requirement or combination of significant weaknesses in the proposal that increases the risk of unsuccessful contract performance to an unacceptable level” was not warranted. Id. (quoting AR, Tab 4, SSP, at 8). Because the agency reasonably found that L3 generally described its approaches for achieving concurrency and demonstrated some understanding of the requirement, we have no basis to sustain this protest allegation.

We also find reasonable the agency’s assessment of an acceptable rating to L3’s proposal under the technical approach factor. An acceptable rating was defined as:

Some doubt exists that the offeror demonstrates a clear understanding of the technical requirements. Evaluation of the factor presents a low to moderate risk of unsuccessful contract performance. Little to moderate Government oversight is expected in achieving the required level of contract performance.⁹

AR, Tab 4, SSP, at 6. As noted, the solicitation stated that the objective of the requirement was to support the ANG and AFRC’s F-16 training system and the PWS was divided into several areas, not just one relating to concurrency. RFP at 7; see also Supp. MOL at 8; Decl. of SSET Chairperson at 3-4. In addition to the assessment of a significant weakness, the agency also assessed L3’s proposal three strengths. The agency found that L3 proposed a very good management structure; methodology for physical and cybersecurity programs; and transition plan, all demonstrating that L3 had an understanding of the PWS requirements. AR, Tab 16, Phase II Evaluation, at 2-3; see also Decl. of SSET Chairperson at 4-5; Supp. MOL at 8. In this regard, the agency explains that L3’s strengths for its good management structure and physical and cybersecurity programs related to the program management/systems engineering area of the PWS, which is considered to be a major requirement of the PWS. Decl. of SSET Chairperson at 5. The agency further explains that L3’s demonstration of a strength in this major area of the PWS increased confidence in L3’s ability to successfully perform this requirement. Id. On this record, we have no basis to question the agency’s judgments in performing the evaluation. Accordingly, this protest ground is denied.

⁹ By contrast, an unacceptable rating was defined as:

It is extremely doubtful that the offeror demonstrates a clear understanding of the technical requirements. Evaluation of the factor presents a very high risk of unsuccessful contract performance. Substantial Government oversight is expected achieving the required level of contract performance.

AR, Tab 4, SSP, at 7.

Best-Value Tradeoff

Finally, the protester argues that the agency converted the basis of award from best-value tradeoff to lowest-priced technically acceptable by choosing to ignore Trident's technical superiority and making award based solely on price. Protest at 10-11; Protester's Comments at 7-9. In this regard, the protester contends that the agency failed to explain how Trident's significantly higher-rated technical approach did not outweigh L3's price. Protester's Comments at 8. The protester also contends that the agency did not adequately explain why the price of L3's proposal was worth the level of risk associated with the significant weaknesses discussed above. Id. at 9.

The agency explains that the SSA considered Trident's technical superiority as well as the price difference between the two proposals and found that the added value of Trident's proposal could not justify the \$15.6 million price premium because L3's technical proposal demonstrated an acceptable level of technical competency. MOL at 12-14. The agency also explains that the SSA considered the significant weakness in L3's technical approach and found that the increased risk associated with L3's technical proposal was acceptable to the government considering the price savings. Id. at 13; Contracting Officer's Statement at 13-14.

In a best-value tradeoff procurement, such as this one, it is the function of the SSA to perform a price/technical tradeoff to determine whether one proposal's technical superiority is worth a higher price. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8. Where a solicitation provides for a tradeoff between the price and non-price factors, an agency properly may select a lower-priced, lower-rated proposal if the agency reasonably concludes that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified in light of the acceptable level of technical competence available at a lower price. i4 Now Sols., Inc., B-412369, Jan. 27, 2016, 2016 CPD ¶ 47 at 15. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. General Dynamics-Ordnance & Tactical Sys., supra. Thus, a protester's disagreement with an agency's determination as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Id.

Here, the record shows that the SSA specifically recognized that Trident's proposal was stronger under both the past experience and the technical approach factors. AR, Tab 17, ADD, at 28. Specifically, with regard to the past experience factor, the SSA found that Trident's proposal showed stronger similar past experience that exceeded the solicitation's requirements as Trident not only operated the TSSC, it also designed, built, delivered, and installed MTT-G devices. Id. at 11-12, 28. By contrast, the SSA found that L3 possessed significant experience in simulator and TSSC operations that only met the solicitation's requirements. Id. at 9-10, 28. With regard to the technical approach factor, the SSA found that Trident demonstrated a good understanding of the PWS posing very little risk of unsuccessful contract performance. Id. at 16-17, 28. The

SSA found that while L3's technical approach demonstrated a good understanding of the PWS requirements, the risk of unsuccessful contract performance was determined to be low to moderate as a result of the significant weakness in L3's technical approach. Id. at 15-16, 28. The SSA also found that while Trident and L3's proposal were assessed similar weaknesses, Trident's proposal did not have any significant weaknesses. Id. at 28. As a result, the SSA concluded that Trident's proposal was stronger than L3's under the technical approach factor as well. Id.

The SSA acknowledged that while the solicitation stated that the non-price factors were significantly more important than price, the benefits offered by Trident's proposal did not justify its considerable price premium. Id. at 29. The SSA found that L3 had similar past experience demonstrating it could perform the requirement and a good understanding of the requirements. The SSA also "considered the low to moderate risks posed by [L3's technical approach] proposal. However, for an approximately \$15.6 [million price premium, the SSA concluded that] the government is willing to undertake the slightly increased risks by awarding this requirement to [L3]." Id. Contrary to the protester's contention that the record contained "minimal explanation," we find that the agency's source selection decision is adequately documented. See Protester's Comments at 9. In this regard, we see no indication in the record that the agency, in making its source selection, placed undue emphasis on price or made award on a lowest-priced, technically acceptable basis. See MVM, Inc., B-403912.3, May 26, 2011, 2012 CPD ¶ 129 at 12. On this record, the protester's arguments provide no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel