



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ARServices, Limited

File: B-417561; B-417561.2

Date: August 19, 2019

Megan C. Connor, Esq., Meghan F. Leemon, Esq., and Emily J. Rouleau, Esq., Piliro Mazza PLLC, for the protester.
Elizabeth Amato, Esq., and Michael D. McPeak, Esq., Defense Logistics Agency, for the agency.
Uri R. Yoo, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal as technically unacceptable is denied where the agency reasonably found, consistent with the stated evaluation criteria, that the protester's proposed key personnel failed to satisfy the solicitation's minimum requirements.
 2. Protest challenging the agency's evaluation of the awardee's proposal is denied where the evaluation was reasonable and performed in accordance with the stated evaluation criteria.
 3. Protest challenging the agency's affirmative determination of responsibility for an awardee is dismissed where the protester does not raise any allegations that are within the narrow exceptions for GAO's consideration of this issue.
 4. Protester is not an interested party to challenge the agency's best-value tradeoff and award decision where the agency reasonably found the protester's proposal to be technically unacceptable and the protester's challenges to the agency's evaluation of the awardee are without merit.
-

DECISION

ARServices, Limited, an 8(a) small business concern of Alexandria, Virginia, protests the award of a contract to RightDirection Technology Solutions, Inc., an 8(a) small business concern of Baltimore, Maryland, under request for proposal (RFP) No. SP4701-18-R-0047, issued by the Defense Logistics Agency (DLA) for research and

development program management support services. The protester argues that the agency unreasonably evaluated the offerors' technical proposals under the key personnel subfactor, failed to reasonably assess the awardee's responsibility, and conducted a flawed best-value tradeoff.

We deny in part and dismiss in part the protest.

BACKGROUND

On September 6, 2018, DLA issued the RFP pursuant to Federal Acquisition Regulation (FAR) part 15, as a set-aside for participants in the Small Business Administration's (SBA) 8(a) program. Agency Report (AR), Tab 4, Conformed RFP, at 1, 55.¹ The RFP included a detailed performance work statement (PWS) requiring the contractor to provide a broad range of subject matter expertise, technical analysis, and documentation in support of DLA's research and development program. Id. at 4-30. The solicitation provided for the award of a fixed-price contract for a base year, two 1-year option periods, and a 1-month transition phase-out. Id. at 4, 51.

The RFP advised offerors that proposals would be evaluated on the basis of three factors--technical, past performance, and price--where the technical factor was more important than past performance, and non-price factors were significantly more important than price. Id. at 59. Of the two subfactors comprising the technical factor, the technical approach subfactor was more important than the key personnel subfactor. Id. The RFP stated that proposals would be assigned adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable under the technical factor and subfactors. Id. at 59-61.² As relevant here, an unacceptable rating under the technical factor was defined as a proposal that "does not meet requirements and contains one or more deficiencies." Id. at 59. The RFP further stated that an unacceptable proposal would be unawardable. Id.

With respect to the key personnel subfactor, offerors were to propose key personnel for four positions: program manager, applications developer, subject matter expert in strategic communication and outreach, and subject matter expert in finance. Id. at 20-21. The RFP also instructed offerors to submit, for each proposed key person: a resume demonstrating the individual's qualifications and experience relevant to the requirements set forth in the key personnel section of the PWS; copies of required

¹ Unless otherwise noted, citations to the RFP are to the conformed solicitation provided at Tab 4 of the agency report.

² Under the past performance factor, the RFP stated that the agency would first evaluate the offerors' past performance information for the two aspects of relevancy of prior contracts and quality of past performance, resulting in the following performance confidence assessment ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral). RFP at 62-63.

certifications; a letter of intent; and a completed non-disclosure agreement and conflict of interest statement. Id. at 65. As relevant here, the RFP required that an offeror’s proposed key person for the applications developer position “have at a minimum: a Bachelors of Arts or Science in [a] business related discipline (logistics, industrial engineering, management, economics, finance, information technology) and at least two years’ recent experience within a [Department of Defense] organization.” Id. at 21.

The RFP advised offerors that key personnel would be evaluated “to determine if the individuals possess the qualifications, certifications, and experience appropriate to provide support in accordance with the [g]overnment’s requirements,” and that the submitted resumes would be evaluated on “whether the individual’s qualifications and experience are relevant to the requirements set forth in the PWS.” Id. at 61. The RFP defined an unacceptable rating for the key personnel subfactor as one where the “[p]roposal does not meet [the] requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable.” Id. It further stated that such proposal would be unawardable. Id.

The agency received proposals from seven offerors, including the protester and the awardee. Contracting Officer’s Statement & Memorandum of Law (COS/MOL) at 10. After the initial evaluation, the contracting officer established a competitive range consisting of the protester, awardee, and a third offeror. Id. The agency conducted discussions through two rounds of negotiation letters and telephonic negotiations with each offeror in the competitive range. Id. at 10-11. In each of the negotiation letters and the telephonic negotiation with ARServices, the agency informed the protester that its proposal was assessed deficiencies under the key personnel subfactor because its proposed applications developer failed to meet the minimum solicitation requirements. Id.; see AR, Tab 11, ARServices Initial Negotiation Letter, at 2; AR, Tab 17, Memorandum of Ongoing Negotiation Phone Calls, at 1; AR, Tab 20, ARServices Final Proposal Revision Letter, at 2. In its final revised proposal, ARServices replaced its initially proposed applications developer with a new individual. AR, Tab 22, ARServices Final Proposal Revision, at I-4.

The agency evaluated the final revised proposals from the protester and the awardee as follows:

	ARSERVICES	RIGHTDIRECTION
Technical	Unacceptable	Outstanding
Technical Approach	Outstanding	Outstanding
Key Personnel	Unacceptable	Outstanding
Past Performance		
Relevancy of Prior Contracts	Relevant	Relevant
Quality of Past Performance	Outstanding	Outstanding
Performance Confidence Assessment Rating	Substantial Confidence	Substantial Confidence
Price	\$7,998,966	\$5,962,443

AR, Tab 28, Source Selection Decision Document (SSDD), at 24-25.³

The agency determined that the new applications developer proposed in the protester's final revised proposal did not meet the solicitation's minimum requirement for a bachelor's degree in a business-related discipline. AR, Tab 25, ARServices Final Technical Evaluation, at 1, 9. As a result, the agency assessed a deficiency for the protester's proposed applications developer and, consequently, assigned unacceptable ratings to ARServices under the key personnel subfactor and the overall technical factor. Id.

The source selection authority reviewed the evaluations, concurred with the assessment of the source selection evaluation board, and determined that RightDirection's proposal provided the best value to the government. AR, Tab 28, SSDD, at 26-27. The agency awarded the contract to RightDirection and notified ARServices. AR, Tab 30, Award Notice. Following the agency's debriefing, ARServices timely filed this protest.

DISCUSSION

ARServices protests the evaluation of the protester's and the awardee's proposals, arguing that: (1) the agency's assessment of a deficiency for ARServices' proposed applications developer and the resulting unacceptable rating under the key personnel subfactor was unreasonable and inconsistent with the solicitation's evaluation criteria; (2) the agency unreasonably failed to consider the location of RightDirection's key personnel in assessing their availability; and (3) the agency erroneously found the awardee to be responsible by ignoring information that should have cast doubt on the proposed key personnel's availability and commitment. The protester contends that its proposal would have represented the best value to the government, and thereby received the contract award in a best-value tradeoff, but for the alleged evaluation errors.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines 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. Native Energy & Tech., Inc., B-416783 et al., Dec. 13, 2018, 2019 CPD ¶ 89 at 3-4. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. Veterans Evaluation Servs., Inc., et al., B-412940 et al., July 13, 2016, 2016 CPD ¶ 185 at 8-9.

³ The third offeror in the competitive range was also found unacceptable under the technical factor. AR, Tab 28, SSDD, at 24.

For the reasons discussed below, we find that the agency evaluated the proposals reasonably and in accordance with the stated evaluation criteria and applicable procurement laws and regulations. Although we do not address each of the protester's arguments, we have considered all of ARServices' contentions and find that none provide a basis to sustain the protest.

Evaluation of the Protester's Key Personnel

The protester argues that its proposed applications developer met the education requirements of the solicitation because the level of the proposed employee's experience and education was "on par with a 'business related discipline.'" Protest at 8. The agency responds that it evaluated ARServices' proposed applications developer in accordance with the terms of the solicitation when it assigned a deficiency for not meeting an unambiguously stated minimum requirement for a bachelor's degree in a business-related discipline. COS/MOL at 18.

As noted, the RFP required offerors to propose several key personnel, including an applications developer who has "at a minimum: a Bachelors of Arts or Science in [a] business related discipline (logistics, industrial engineering, management, economics, finance, information technology) and at least two years' recent experience within a [Department of Defense] organization." RFP at 21. In its amendment to the solicitation addressing questions from potential offerors, the agency clarified its key personnel minimum requirements by providing that each key person proposed "must meet the minimum qualifications for the position they are being proposed for." AR, Tab 3, Amend. 0001, at 6. The amendment also explained that the specified key personnel position descriptions are "minimum requirements proposed personnel must meet in order for an offeror to be considered for award" and that "[t]he requirements listed are all inclusive." Id. at 7.

In its proposal, ARServices proposed an individual for the applications developer position that has a Bachelor of Science degree in marine biology and is "[i]n-progress" with a master's degree in information systems. AR, Tab 22, ARServices Final Proposal Revisions, App. A, at A-73. The proposal explained that:

[The proposed employee's] Bachelor of Science [(B.S.)] Degree and Graduate work in Information Systems with a concentration in Network Management is equivalent to a Bachelor of Arts or Sciences Degree in a related business discipline. The coursework that [the proposed employee] received in completion of his B.S. in Marine Biology consists of classes directly related to business related disciplines (these courses are highlighted in yellow). Additionally, the [DELETED] requires students receiving a B.S. in Business Administration to complete two years of business focused courses. The remaining two years required for completion consist of "[DELETED]" requirements. The University's course catalog is listed below and shows that [the proposed employee's]

completion of a B.S. in Marine Biology included many of the same courses as students receiving a B.S. in Business Administration. Items highlighted in green illuminate the courses included in the “[DELETED].”

Id. at A-95.

In its evaluation of ARServices’ proposed applications developer, the agency determined that the individual did not meet the minimum requirement for a bachelor’s degree in a business-related discipline, based on the resume showing a bachelor’s degree in marine biology. AR, Tab 25, ARServices Final Technical Evaluation, at 7. The evaluators noted that, although the individual was pursuing a master’s degree in a business-related discipline, it was not completed, and therefore did not meet the solicitation’s degree requirement. Id. at 7, 9. The agency identified this aspect of the protester’s key personnel proposal as a deficiency and rated the proposal as unacceptable under the key personnel subfactor and the overall technical factor. Id.

Based on the record, we conclude that the agency reasonably assessed a deficiency in ARServices’ key personnel proposal. As discussed above, the solicitation required that the person proposed for the applications developer position have, “at a minimum,” a bachelor’s degree in a business-related discipline. RFP at 21. The individual the protester proposed for this position--with a bachelor’s degree in marine biology and coursework towards a master’s degree in information systems--does not meet this requirement. The stated minimum educational requirement for the applications developer position was not completion of “many of the same courses” as students receiving a bachelor’s degree in a business-related discipline, but the possession of a degree in that discipline, which the protester’s key person did not have.

The protester also argues that lack of a business-related degree for one of four key personnel is a “minor detail” that has no bearing on the individual’s ability to provide the required services because the individual has a degree, just not a business-related degree. Therefore, in the protester’s view, this matter does not rise to the level of a material failure warranting a deficiency and an unacceptable rating. Protest at 9-10. Specifically, the protester argues that the agency cannot show that holding a different type of degree rises to the level of a “material failure . . . to meet a [g]overnment requirement . . . that increases the risk of unsuccessful contract performance to an unacceptable level” under the definition of a deficiency under the FAR. Id. at 10 (quoting FAR § 15.001). The protester further argues that the agency unreasonably converted the key personnel evaluation into a pass/fail evaluation, contrary to the stated evaluation criteria. Id. at 11. The agency contends that the RFP and the agency’s responses to questions clearly informed offerors that proposed key personnel must meet all of the minimum requirements for their respective positions in order to be considered for award. COS/MOL at 20.

Where a solicitation states that the qualifications of key personnel will be evaluated, and a proposal fails to demonstrate that key personnel hold qualifications that the solicitation

requires them to possess, the proposal may be evaluated as unacceptable. ICI Servs. Corp., B-411812, B-411812.2, Sept., 21, 2015, 2015 CPD ¶ 288 at 5.

Here, the agency informed offerors that each key person proposed “must meet the minimum qualifications for the position they are being proposed for” in order for an offeror to be considered for award. AR, Tab 3, Amend. 0001, at 6-7. The RFP stated the type of degree was a mandatory requirement for the key personnel position of applications developer. The solicitation defined an unacceptable rating, for both the key personnel subfactor and the overall technical factor, as a proposal that does not meet a solicitation requirement and thus contains a deficiency, and further stated that such proposal would be unawardable. RFP at 59, 61.

The protester’s proposal failed to meet the solicitation’s requirement for key personnel as it related to the applications developer. Therefore, on this record, we find that the agency reasonably assessed a deficiency where the protester’s proposed key person did not meet a stated minimum requirement and properly assigned the rating of unacceptable under the key personnel subfactor and the overall technical factor.

Evaluation of the Awardee’s Key Personnel

The protester also argues that the agency misevaluated the awardee’s key personnel by not considering the current location of the awardee’s proposed key persons to assess their availability. Protest at 12-13. The agency responds that it properly did not consider the current location of the awardee’s key personnel because the solicitation did not require offerors to identify, or indicate that the agency would assess, such information to determine availability. COS/MOL at 25-27.

As noted, the RFP instructed offerors to submit specific information about their proposed key personnel, including resumes, copies of required certifications, letters of intent, and non-disclosure agreements/conflict of interest statements. RFP at 65. The RFP further required that “the key personnel specified in the [c]ontractor’s proposal be available on the effective start date of the contract.” Id. at 22. In addition, the RFP identified the primary place of performance to be “the [c]ontractor’s office location which must be accessible within 1-hour commuting time to or from the [headquarters]-DLA (Fort Belvoir, VA) site.” Id. at 26.

ARServices argues that, given the solicitation’s requirement for the primary place of performance to be within a 1-hour commuting distance of the agency and for the key personnel to be available on the effective start date of the contract, it was unreasonable for the agency not to consider where the proposed key personnel were currently located in order to assess their availability. We disagree.

While the resumes of the individuals may have identified their current job locations, as the agency points out, the solicitation never required offerors to provide any information with respect to the current location of proposed key personnel. Moreover, nothing in the solicitation informed offerors that the agency would use the key personnel’s current

location to assess their availability. Rather, the solicitation specifically asked for letters of intent from the proposed key personnel to ensure their availability, which the awardee provided. RFP at 20; see AR, Tab 14, RightDirection Revised Proposal, App. A, at 10, 23, 28, 39. Therefore, we find no error in the agency's reliance on the letters of intent and find that the agency's evaluation was consistent with the stated evaluation criteria. See Native Energy & Tech., Inc., supra.

Determination of the Awardee's Responsibility

The protester also argues that the agency failed to reasonably evaluate whether the awardee was a responsible offeror. Comments & Supp. Protest at 10-13. Specifically, ARServices argues that the agency unreasonably ignored information in the awardee's proposal that should have raised doubt as to whether the awardee "has the necessary technical skills, or ability to obtain them." Id. at 10. The agency stated in its source selection decision that the contracting officer determined RightDirection to be a responsible contractor and provided the contracting officer's documentation of this determination. We dismiss this argument because the protester has not set forth a challenge to the agency's affirmative determination of responsibility that our Office will review.

The FAR provides that an award may not be made unless the contracting officer makes an affirmative determination of the prospective awardee's responsibility. FAR § 9.103(b). The standards for determining responsibility of an offeror are set forth in FAR § 9.104-1. In most cases, such determinations involve subjective business judgments that are within the broad discretion of the contracting activities. Mountaineers Fire Crew, Inc. et al., B-413520.5 et al., Feb. 27, 2017, 2017 CPD ¶ 77 at 10. Our Office generally will not consider a protest challenging an agency's affirmative determination of an offeror's responsibility, except where the protester presents specific evidence that the contracting officer unreasonably failed to consider information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. 4 C.F.R. § 21.5(c); FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308 at 7.

First, the protester argues that because [DELETED] of the awardee's proposed key personnel were subcontractor employees, the agency should have questioned whether the awardee has the technical skills and ability to perform. Comments & Supp. Protest at 11. Similarly, the protester contends that the agency should have questioned the validity of the key personnel's letters of intent based on the fact that they expressed intent to work for the subcontractor, rather than the awardee. Id. at 11-13. We find these arguments to be without merit.

As the protester acknowledges, FAR § 9.104 permits a prospective contractor to demonstrate its ability to obtain required resources through subcontracting. Id.; see FAR § 9.104-3(a). Therefore, the fact that the awardee proposed to fill its key personnel positions with subcontractor employees, on its own, does not constitute

evidence of information that the contracting officer unreasonably failed to consider in determining the awardee to be responsible.

Next, the protester argues that RightDirection's proposal to fill [DELETED] key personnel positions with employees of a non-8(a) subcontractor "runs afoul of the very purpose of the 8(a) [p]rogram" and casts doubt as to the awardee's compliance with the limitation on subcontracting clause. Comments & Supp. Protest at 11-12. As noted, the RFP, issued as a set-aside under SBA's 8(a) program, contained FAR clause 52.219.14, as well as a stand-alone clause on subcontracting limitations, which required that at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the 8(a) concern. RFP at 27.

As a general matter, an agency's judgment as to whether a small business offeror will comply with a subcontracting limitation presents a question of responsibility not subject to our review. Mountaineers Fire Crew, Inc., *supra*, at 6. An agency may reasonably rely on an offeror's assurances of compliance with a solicitation's limitation on subcontracting. Sealift, Inc., B-409001, Jan. 6, 2014, 2014 CPD ¶ 22 at 5. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the proposal's acceptability. Mountaineers Fire Crew, Inc., *supra*.

Here, the protester raises the issue of subcontracting limitation as a matter of responsibility, which we will not review. Moreover, even if the protester were to argue that the awardee's proposal should have been found unacceptable, the argument would fail because the awardee's proposal, on its face, stated the awardee's intention to comply with the limitation on subcontracting. *See* AR, Tab 14, RightDirection Revised Proposal, at 33. Therefore, the agency reasonably relied on the awardee's assurance of compliance in concluding that the awardee would comply with the limitations on subcontracting requirement.

ARServices also contends that the agency unreasonably failed to question the authenticity of the letters of intent of the awardee's key personnel, based solely on allegedly apparent discrepancies in signatures on those letters. Comments & Supp. Protest at 12-13. Without specifically alleging any misrepresentation or fraud on the part of the awardee, or presenting any evidence other than the protester's own visual comparison of signatures, the protester argues that these signatures constitute information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible, and that it was unreasonable for the agency not to consider it.⁴ Id.

⁴ Although couched as a matter of responsibility, ARServices' argument about discrepancies in the signatures on the letters of intent for RightDirection's key personnel could amount to an allegation that RightDirection misrepresented the status of its key personnel to the government and therefore should be disqualified. However, we note that the protester never specifically alleges that the awardee engaged in such

(continued...)

As noted, the RFP required offerors to provide letters of intent for individuals proposed for all key personnel positions. RFP at 65. RightDirection provided letters of intent for the four individuals proposed for key positions, each letter bearing a signature represented to be that of the proposed individual. AR, Tab 14, RightDirection Revised Proposal, App. A, at 10, 23, 28, 39. The record shows that the contracting officer determined that the awardee met the applicable standards of responsibility under FAR § 9.104-1 after considering information from various sources, including the awardee's proposal, questionnaire replies, financial data, information on production equipment, and personnel information. AR, Tab 39, RightDirection Determination of Responsibility, at 2, 4.

The protester here has not shown--other than its own opinion on the adequacy of the signatures--why the agency should have questioned the veracity of RightDirection's proposal, nor shown any legal obligation on the contracting officer's part to conduct the type of comparison or authentication of signatures the protester demands. Supp. Comments at 3. The protester's speculation about the authenticity of these signatures, without more, does not constitute evidence that the contracting officer unreasonably failed to consider whether the awardee should be found responsible. FCi Fed., Inc., supra.

Under these circumstances, we find that ARServices' challenges to the adequacy and reasonableness of the contracting officer's responsibility determination do not present an exception to our rules barring consideration of challenges to an agency's affirmative determination of responsibility. See RQ Construction, LLC, B-409131, Jan. 13, 2014, 2014 CPD ¶ 30 at 5.

Source Selection Decision

Finally, ARServices contends that the agency's best-value tradeoff and source selection decision were flawed because of the alleged defects in the agency's evaluation of proposals and the source selection authority's failure to look beyond the technical ratings to compare the relative merits of their proposals. Protest at 13; Comments & Supp. Protest at 14-17. We dismiss these remaining allegations because ARServices is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or

(...continued)

misrepresentation or fraud, other than to argue that the differing appearance of signatures, on its own, should have been considered as information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Therefore, we limit our analysis here to the protester's challenge to the agency's responsibility determination.

prospective offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract. 4 C.F.R. § 21.0(a)(1).

As discussed above, the record shows that the agency reasonably assessed a deficiency in the protester's key personnel proposal and, as a result, concluded that ARServices was ineligible for award. Moreover, as noted, we found that the protester's challenges to the evaluation of the awardee had no merit. Therefore, the protester is not an interested party to challenge other aspects of the agency's evaluation and selection decision. MacAulay-Brown, Inc., B-417159, Mar. 13, 2019, 2019 CPD ¶ 108 at 5; Serka Taahut Insaat, A.S., B-416391.2, B-416391.3, Aug. 13, 2018, 2018 CPD ¶ 284 at 5. Consequently, we need not address the protester's remaining arguments challenging the agency's best-value tradeoff and award decision.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel