



Decision

Matter of: Tower Engineering Professional, LLC

File: B-419158

Date: December 22, 2020

Charles Holstein for the protester.
Debra J. Talley, Esq., Department of the Army, for the agency.
Hannah G. Barnes, Esq., and Christina Sklarew, 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 record shows that the agency reasonably found that numerous aspects of the protester's proposal did not satisfy the solicitation criteria.
2. Protest alleging that the awardee had an unfair incumbent advantage is denied where the record reflects that any advantage arising from the awardee's past performance with the agency constituted normally occurring incumbent advantage.

DECISION

Tower Engineering Professional, LLC (Tower), a small business of Raleigh, North Carolina, protests the award of a contract to Advanced Systems Technology, Inc. (AST), a small business of Lawton, Oklahoma, under request for proposals (RFP) No. W900KK-20-R-0058, issued by the Department of the Army, U.S. Army Contracting Command-Orlando, for tactical communication services. Tower alleges that the agency unreasonably evaluated its proposal as technically unacceptable and that AST had an unfair competitive advantage.

We deny the protest.

BACKGROUND

The RFP, issued on June 10, 2020, as a small-business set-aside, contemplates the award of a contract for efforts required to replace four tactical communication towers and shelters, and to perform a tower technology refresh at the Joint Readiness Training Center (JRTC) in Fort Polk, Louisiana. It also concerns efforts required to perform a

tower technology refresh at the Joint Multinational Readiness Center (JMRC) located in Hohenfels, Germany. Agency Report (AR), Tab 027, Performance Work Statement (PWS) at 1-2. Award was to be made using the lowest-priced technically acceptable (LPTA) source selection process, based on an overall assessment of the evaluation criteria. AR, Tab 026, RFP § M.3.2.1. Specifically, the solicitation stated the following:

The Government will evaluate the [o]fferor's proposal against the requirements set out in Attachment 2, "Requirements Matrix," to determine whether the proposal is "Acceptable" or "Unacceptable" using the rating[s] and descriptions provided below. An [o]fferor's technical proposal will not be found Acceptable unless all the requirements are found Acceptable. A rating of Unacceptable for any requirement will cause the entire technical proposal to be found Unacceptable and may cause the [o]fferor not be considered for award.

Id. § M.3.1.

The RFP cautioned offerors to include sufficiently detailed information in their proposals to provide the evaluators with a clear understanding of the offeror's approach, and emphasized that "[c]larity and completeness of the proposal are of the utmost importance." *Id.* § L.6.1. Offerors were instructed to submit proposals in five volumes, one volume for each of the following evaluation factors: technical, management, logistics, past performance, and cost/price. AR, Tab 5, Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3; RFP § M.2.0. The factors included 37 evaluation criteria, which were set forth in a requirements matrix attached to the solicitation. AR, Tab 028, Requirements Matrix.

Tower and AST submitted proposals in response to the solicitation. COS/MOL at 3. The agency rated Tower's past performance as acceptable, but found the proposal unacceptable in 15 of the 37 criteria under the technical, logistics, and management factors.¹ *Id.* The agency found the proposal unacceptable in 8 of 25 areas under the technical factor, 4 of 9 areas under the management factor, and 3 of 3 areas under the logistics factor. *Id.*

The agency found AST's proposal technically acceptable and awarded the contract to AST at a price of \$24,331,428 on August 28, 2020.² AR, Tab 054, Unsuccessful Offeror Letter and Written Debrief at 1-2. The agency provided Tower with a written, post-award debriefing the same day. *See id.* On September 1, Tower submitted questions concerning the debriefing, to which the agency responded on September 9. COS/MOL

¹ The protest specifies that Tower's proposal received technically unacceptable ratings in 13 out of 37 criteria identified in the solicitation's requirements matrix, but the protester objects to the unacceptable ratings its proposal received under 15 evaluation criteria, not 13. *See* AR, Tab 002, Tower Rebuttal; COS/MOL at 5.

² The protester's total evaluated price was \$20,735,561.19.

at 4. On September 15, Tower submitted a letter to the contracting officer expressing concern about the role and size status of one of the awardee's potential subcontractors, and the contracting officer referred Tower's concerns to the Small Business Administration (SBA) on September 17. *Id.* On September 18, the SBA dismissed Tower's size challenge as untimely, noting also that Tower was not an interested party because its proposal was found technically unacceptable. *Id.* This protest followed on September 21.

DISCUSSION

Tower challenges the Army's award of a contract to AST on two grounds: (1) the agency improperly evaluated Tower as technically unacceptable in 15 of the solicitation's 37 criteria, and (2) the awardee possessed an unfair advantage as the incumbent on a similar project at this procurement's primary site of performance. We address a few representative arguments in the decision. While we do not address all of the allegations, we have considered them all, and find that none provides a basis to sustain the protest. For the reasons discussed below, we deny the protest.

Technically Unacceptable Evaluation

In challenging the agency's evaluation of proposals under this LPTA source selection process, Tower initially argues that it submitted the lowest-priced proposal and that the agency wrongly evaluated the protester as being technically unacceptable in 15 of the 37 criteria. Protest at 1. The protester specifies why it believes each of the 15 evaluation criteria should have been rated technically acceptable. See AR, Tab 002, Tower Rebuttal.

Our Office will not reevaluate proposals, but will instead examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See *Microtechnologies, LLC*, B-413091, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.* Moreover, the offeror has the burden of submitting an adequately written proposal for the agency to evaluate, and a reasonable basis exists to find a proposal technically unacceptable when it fails to include information that the solicitation requires to establish compliance with the specifications. *SBS Tech'l Servs.*, B-259934, Apr. 19, 1995, 95-1 CPD ¶ 205 at 2.

One of the specific unacceptable ratings the protester challenges was for criterion 11 under the technical factor, which required the following: "The offeror's tower and site design provides a grounding system in accordance with the IEEE [Institute of Electrical and Electronics Engineers] Standard 142. The proposed total resistance of the structure's connected primary grounds as referenced to remote earth does not exceed 10 ohms." AR, Tab 028, JRTC_Technical Tab 11. The agency rated the protester technically unacceptable for this criterion and specified in its proposal evaluation report (PER) that the protester did not provide sufficient detail to confirm it could meet this

solicitation requirement. AR, Tab 051, PER at 18. The PER detailed that the protester was technically unacceptable for the following reasons:

The [o]fferor's proposal does not provide sufficient detail on the type of grounding system being provided to ascertain understanding of the grounding system to determine if the proposed total resistance of the structure's connected primary grounds as referenced to remote earth does not exceed 10 ohms. No technical solution was provided describing the type of system to be used within the new tower sites As written in Section L, the Government considers statements that the prospective offeror understands, can or "will" comply with the specifications, and/or statements paraphrasing the requirements or parts thereof to be inadequate and unsatisfactory.

Id.

Tower argues that it should not have been rated technically unacceptable for this criterion because COVID-19 prevented site visits and the agency did not provide sufficient information for Tower to make its proposal more detailed. AR, Tab 002, Tower Rebuttal, Technical Tab 5. The protester states its assumption that "there would be ample time to develop a design that is compliant with IEEE and consistent with existing sites once site surveys and data gathering had been completed." *Id.* Tower contends that the level of detail the agency expected was better suited to "post award type deliverables." *Id.*

In response, the agency asserts that the RFP provided design documentation so offerors could develop "their individual approaches to the grounding system" and that Tower's proposal does not include the necessary level of detail. COS/MOL at 21-24. The agency notes that offerors received access to volumes of material related to the site, including comprehensive reports developed by the Army Corps of Engineers, as well as geotechnical reports that included extensive information, such as "geologic information, soil boring information and engineering analyses of each site." COS/MOL at 21. Given this level of information, the agency reasons that it expected each proposal to include sufficient detail on the type of grounding system so the agency could ensure that "the proposed total resistance of the structure's connected primary grounds do not exceed 10 ohms," in accordance with the solicitation requirements. *Id.* In contrast, the agency emphasizes that the protester simply stated it would comply with the solicitation requirements, rather than detailing how it would successfully do so. *Id.* at 22. The agency points to the following language in Tower's proposal:

Each tower will include a lightning protection system and ground system. The ground system will be compliant with IEEE Standard 142 and other standards and guidelines, including the Motorola R56 guideline for communication sites. The grounding system will be designed to meet a resistance factor of 10 Ohms from tower to earth. The installed ground system will be tested to confirm the resistance requirement is met. The

lighting arrestor system will be designed in compliance with the NFPA [National Fire Protection Association] 780 regulation to protect the sensitive communications equipment in the shelter and mounted on the tower from a destructive surge of electricity from a lightning strike.

Id.; AR, Tab 040, Volume I Technical at 11.

The agency argues that it correctly evaluated Tower's proposal as technically unacceptable with respect to technical criterion 11 because Tower's proposal language merely expresses understanding and willingness to comply, and the solicitation specifically explained that "statements that the offeror understands or will meet the requirements of the RFP Performance Work Statement or parts thereof, are **unacceptable.**" COS/MOL at 23 (emphasis added by agency).

Tower responds that it provided sufficient information about the grounding system "to demonstrate it understood the grounding requirement," and that requiring information about the importance of a grounding system is "well outside of established industry norms." Comments at 6. Tower also argues that the agency should not have rated Tower as unacceptable because "our past performance was deemed acceptable and grounding systems are an integral part of the core competencies of any successful tower design/build company." Comments at 6. With this statement, the protester appears to allege that because its past performance was rated technically acceptable by the agency, and because such performance necessarily included familiarity with grounding systems, the protester's proposal should be rated technically acceptable for its proposal language pertaining to grounding systems.

We find that the agency's evaluation of Tower's proposal was reasonable and consistent with the solicitation's evaluation criteria, and Tower's arguments to the contrary constitute disagreement with the agency's judgment. The protester's first argument, insisting that its quotation demonstrated understanding of the grounding requirement and that further information was outside of established industry norms, misses the mark. The reasonableness of the agency's judgment does not depend upon established industry norms, but rather on the stated evaluation criteria. The solicitation emphasized that statements of understanding or willingness to comply and statements paraphrasing or reiterating the solicitation requirements "are considered inadequate and unsatisfactory" and "are unacceptable." RFP § L.6.2. The solicitation requested a level of detail beyond simply professing an understanding of the grounding system, which, the record shows, the protester did not provide.³ For example, we note the agency's argument that the protester did not explain how its design would protect tower and

³ The agency has also shown that it provided sufficient information for the offerors to be able to include the requisite level of detail. Documents provided in an electronic document depository included an Army Corps of Engineers Telecommunications Tower Evaluation Report, Geotechnical Engineering Reports, Tower Photos, and other Tower Analyses. COS/MOL at 21.

shelter hardware in the event of a surge of power. COS/MOL at 22. Instead, the record shows that the protester's proposal language amounted to a restatement of the grounding system requirements.⁴

The protester's second argument, that its technically acceptable past performance should negate its technically unacceptable rating for technical criterion 11, similarly relies on an incorrect standard. The reasonableness of an agency's judgment does not depend upon "core competencies" inherent in past performance, but rather on the stated evaluation criteria. See *Microtechnologies, LLC, supra* at 4-5. Because the record shows that the protester did not provide the level of detail required by the solicitation, the agency's technically unacceptable rating was consistent with the RFP and reasonable. See *SBS Technical Services, supra* at 2. A technically acceptable rating under past performance does not negate a technically unacceptable rating in a different area.

The solicitation stated that proposals would be rated acceptable only if all requirements were rated acceptable. RFP § M.3.1. As set forth above, it emphasized that an unacceptable rating "for any requirement will cause the entire technical proposal to be found Unacceptable and may cause the [o]fferor not to be considered for award." The agency reasonably found the protester technically unacceptable under technical criterion 11. As a result, we do not discuss the other areas where the agency found the protester technically unacceptable. This protest ground is denied.

Incumbent Advantage

The protester alleges that the solicitation did not provide enough information to enable offerors to provide the level of detail in their proposals that the evaluators required, and this resulted in an unfair competitive advantage for incumbent offerors or ones that had done very similar work. Protest at 2, Comments at 4.

This argument does not provide a basis for our consideration, whether we understand it to be challenging the terms of the solicitation or the evaluation. To the extent the protester is challenging the terms of the solicitation as being insufficiently detailed to allow offerors to respond with the specificity required, the protest alleges an impropriety apparent on the face of the solicitation that could only be timely raised prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Because it was filed after that time, it is untimely.

⁴ Tower's proposal stated as follows: "Each tower will include a lightning protection system and ground system. The ground system will be compliant with IEEE Standard 142 and other standards and guidelines, including the Motorola R56 guideline for communication sites. The grounding system will be designed to meet a resistance factor of 10 Ohms from tower to earth. The installed ground system will be tested to confirm the resistance requirement is met." AR, Tab 040, Volume I Technical at 11.

To the extent the protester's argument can be understood as challenging the manner in which proposals were evaluated, by claiming that the evaluation required from all offerors a level of detail that could be met only by an incumbent contractor or a firm that had experience performing very similar work, it fails to state a valid basis for protest. This is so because, even taking the protester's assertions at face value, there is simply no requirement that an agency equalize competition to compensate for the advantage an offeror may possess based on unique information, advantages, and capabilities due to its prior experience under a government contract, either as an incumbent contractor or otherwise, absent evidence of preferential treatment or other improper action. *Millenium Corp., Inc.*, B-412866, June 14, 2016, 2016 CPD ¶ 168 at 10; see FAR 9.505.2(a)(3). Tower's allegations in this regard thus do not allege any violation of a statute or regulation, and therefore fail to state a legally valid basis for protest.

The protest is denied.

Thomas H. Armstrong
General Counsel