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Decision

Matter of: Trailboss Enterprises, Inc.

File: B-419209

Date: December 23, 2020

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DIGEST

1. Protest challenging the agency's evaluation of protester's technical proposal is denied where the evaluation was reasonable and consistent with the stated evaluation factor, and did not employ unstated evaluation criteria.
 2. Protester is not an interested party to challenge other aspects of the agency's evaluation of offerors' proposals where the protester's proposal was reasonably determined technically unacceptable and ineligible for award.
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DECISION

Trailboss Enterprises, Inc., of Fort Worth, Texas, protests the award of a contract to G4S Secure Solutions (USA) Inc., of Jupiter, Florida, under request for proposals (RFP) No. 70CDR20R00000005, issued by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), for detainee transportation services in the San Antonio, Texas, area. Trailboss contends that the agency's evaluation of offerors' proposals and resulting award decision were improper.

We deny the protest.

BACKGROUND

The ICE is responsible for the detention, health, welfare, transportation, and deportation of immigrants in removal proceedings and immigrants subject to final orders of removal.

Agency Report (AR), Tab 9, RFP amend. 4, Performance Work Statement (PWS) at 4. Within ICE, the Office of Enforcement and Removal Operations (ERO) is responsible for carrying out all orders for the required departure of immigrants handed down in removal proceedings, or prior thereto, and arranging for the detention of immigrants when such becomes necessary. *Id.* To accomplish its responsibilities, ERO developed the PWS here, which defined the agency's requirements for detention and transportation services for the ICE San Antonio Field Office area of responsibility. *Id.*

The RFP, issued on June 2, 2020, contemplated the award of an indefinite-delivery, indefinite-quantity contract under which fixed-price and time-and-materials task orders could be issued for a 1-year base period with four 1-year options. AR, Tab 8, RFP amend. 4 at 1, 16.¹ In general terms, the contractor was to provide all personnel, supplies, and equipment necessary to perform the specified PWS requirements. RFP at 1; Contracting Officer's Statement (COS) at 1.

The RFP established that contract award would be made on a best-value tradeoff basis based on five evaluation factors: (1) corporate experience; (2) technical approach; (3) management approach; (4) past performance; and (5) price. RFP at 90-91. The RFP also contemplated award would be made without discussions, and established that the evaluation would be conducted using a two-phase approach. In the first phase, offerors would be evaluated under the corporate experience factor, to be followed by the agency's issuance of an "advisory down-select notification," whereby offerors would be informed whether they were encouraged to participate in the procurement's second phase.² *Id.* In the second phase, offerors would be evaluated under the remaining evaluation factors, which were previously identified in descending order of importance.³ RFP at 93. The technical approach, management approach, and past performance factors, when combined, were significantly more important than price. *Id.* The protest here concerns the phase two evaluation of offerors' proposals.

Eight offerors, including G4S and Trailboss submitted phase two proposals by the July 29 closing date. An agency technical evaluation team (TET) evaluated the proposals using an adjectival rating scheme that was set forth in the RFP as follows: high confidence, some confidence, low confidence, and with regard to the past

¹ The RFP was subsequently amended four times. Unless otherwise stated, all references are to amendment 4, the final, conformed version of the solicitation.

² The intent of the agency's advisory down-select notification was to minimize proposal development costs for those offerors with little chance of receiving an award. Offerors who were not among the most highly rated were to be advised that they were unlikely to be viable competitors, along with the general basis for that opinion. The agency's advice, however, was a recommendation only, and offerors were not precluded from participating in the second phase of the procurement regardless of the phase one notification received. RFP at 89.

³ The RFP established that the corporate experience evaluation factor would not be considered in the agency's best-value tradeoff determination. *Id.* at 93; COS at 3.

performance factor, unknown confidence. *Id.* at 91-92. Offerors' prices were not to be rated, but assessed for completeness, unbalanced pricing, reasonableness, and consistency with the offeror's technical approach. *Id.* at 95.

On September 11, the agency completed its evaluation, with the final evaluation ratings and prices of the G4S and Trailboss proposals as follows:

	G4S	Trailboss
Technical Approach	High Confidence	Low Confidence
Management Approach	High Confidence	Low Confidence
Past Performance	High Confidence	High Confidence
Price	\$151,612,552	\$182,365,769

AR, Tab 18, Source Selection Decision Document (SSDD) at 21.

The agency evaluators also identified strengths, weaknesses, significant weaknesses, and deficiencies in the proposals in support of the assigned ratings.⁴

On September 11, the contracting officer as source selection authority (SSA) received and reviewed the evaluation findings for all eight offerors, including G4S and Trailboss. AR, Tab 18, SSDD at 1-25. The SSA determined that G4S's technical advantages outweighed the relative price advantage of each lower-priced offeror, and concluded that G4S's proposal represented the overall best value to the agency. *Id.* at 21-24. Additionally, the SSA found that insofar as G4S was both higher technically rated and lower-priced than Trailboss, no price/technical tradeoff was required between these two offerors as part of the award decision. *Id.* at 21.

The agency provided Trailboss with notice of contract award to G4S on September 17, and a debriefing on September 23. This protest followed.

DISCUSSION

Trailboss raises various challenges to the award to G4S. The protester argues that the agency's evaluation of its technical approach proposal, as well its management approach proposal, was unreasonable. The protester also alleges the agency "abandoned" the solicitation's requirement to evaluate prices for consistency with

⁴ Although not identified as strengths and weaknesses, the evaluators made similar narrative findings in support of the assigned past performance ratings. AR, Tab 14, Past Performance Evaluation Report at 1-65.

offerors' proposed technical approach.⁵ Had the agency performed a proper evaluation, the protester argues, ICE would have selected Trailboss for contract award. Protest at 24-35. As detailed below, we find reasonable the agency's evaluation of Trailboss's technical approach, including the assigned technical deficiencies, and, on that basis, conclude that Trailboss is not an interested party with respect to its remaining protest grounds.

Technical Approach Evaluation of Trailboss

Trailboss challenges the evaluation of its technical approach proposal. The protester essentially disputes all of the shortcomings (*i.e.*, deficiencies, significant weakness, and weaknesses) identified in its submission.⁶ Although we do not address every technical approach evaluation issue raised by the protester, we have considered them all and find Trailboss's arguments are without merit.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. *CACI, Inc.-Fed.*, B-418110.3 *et al.*, May 22, 2020, 2020 CPD ¶ 181 at 4; *G4S Secure Solutions (USA), Inc.*, B-414755, Sept. 8, 2017, 2017 CPD ¶ 281 at 3. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and adequately documented. *Management Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5; *Shumaker*

⁵ Trailboss also alleged that the evaluation of proposals was disparate, *i.e.*, "there is little doubt that G4S's proposal was not subjected to the same irrational evaluation scrutiny by the [a]gency." Protest at 33. We found this aspect of the Trailboss protest to be factually and legally insufficient, and dismissed it as such prior to the submission of the agency report. GAO Ruling on Partial Dismissal Request, Oct. 15, 2020.

⁶ With regard to Trailboss, the TET found four strengths, two weaknesses, one significant weakness, and two deficiencies in the offeror's technical approach, and three significant weaknesses in the offeror's management approach. AR, Tab 13, Technical Evaluation Report at 24-27. The protester challenged the second assigned technical approach weakness, as well as the third management approach significant weakness. Trailboss also argued that the evaluators failed to recognize three distinct strengths within Trailboss's management approach proposal. Protest at 27-28, 30-31. The agency responded to these assertions in its agency report, and the protester did not take issue with or seek to rebut the agency response in its comments on the report; thus, we consider Trailboss to have effectively abandoned these issues. See *A-B Computer Sols., Inc.--Recon.*, B-415819.2, Aug. 27, 2018, 2018 CPD ¶ 306 at 6-7; *Engineering Design Techs., Inc.*, B-413281, Sept. 21, 2016, 2016 CPD ¶ 265 at 6 (protest grounds abandoned where protester did not take issue with or seek to rebut an agency response in its comments on an agency report).

Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Lanmark Tech., Inc.*, B-408892, Dec. 19, 2013, 2013 CPD ¶ 295 at 5.

For example, Trailboss challenges the deficiency assigned to its technical approach for failing to demonstrate how the offeror would meet the PWS's information technology (IT) security requirements. Protest at 25-26. The RFP instructed offerors to propose a technical approach to feasibly meet or exceed the requirements, as specified in the PWS: "[t]he technical approach shall provide a clear and full understanding of all elements of the technical requirements." RFP at 82-83. The PWS included, among other things, an in-depth list of IT security requirements, with 28 enumerated subtasks.⁷ PWS at 45-46. The RFP also established that, for the technical approach factor, "[t]he Government will evaluate the [o]fferor's demonstrated understanding of all elements of the technical requirements described in the RFP, the soundness and technical ability of the proposed technical approach, and the validity of the proposed methodology to meet the requirements of the solicitation." RFP at 94.

In its proposal Trailboss stated, "Trailboss adheres to all basic [IT] security requirements outlined in the PWS. We will provide our IT Security Plan (CDRL #7) within 30 days of contract award."⁸ AR, Tab 21, Trailboss Proposal, Vol. II, Technical Proposal at 21. The agency evaluators identified this aspect of Trailboss's proposal to be a deficiency.⁹ AR, Tab 13, TET Report at 25. Specifically, the TET stated "[t]he proposal does not provide any detail on how it meets ICE information technology security requirements. Only that it does, with no supporting documentation or explanation. . . . The evaluation team cannot just take the offeror's word and cannot assume information outside what is presented in the proposal." *Id.*

⁷ For example: "Establish and maintain baseline configurations and inventories of organizational information systems (including hardware, software, firmware, and documentation) throughout the respective system development life cycles"; "Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems)"; "Provide effective controls on the tools, techniques, mechanisms, and personnel used to conduct information system maintenance." PWS at 45-46.

⁸ The CDRL, or Contract Data Requirements List, is a list of data requirements that the contractor must deliver as part of contract performance (e.g., quality control plan, emergency plan, subcontracting plan). See *Leidos, Inc.*, B-409214.4, Jan. 6, 2015, 2015 CPD ¶ 63 at 3. The RFP here specified 40 CDRLs, including IT security plan, which were to be delivered by the contractor subsequent to award. RFP at 18-21.

⁹ The solicitation defined "deficiency" as "[a] material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." RFP at 92; see Federal Acquisition Regulation (FAR) 15.001.

We find the agency's evaluation here to be reasonable. The RFP established that the agency would evaluate the offeror's understanding of the PWS technical requirements, which included IT security requirements. By contrast, Trailboss's proposal provided only a conclusory statement that the offeror adhered to all IT security requirements and would submit its IT security plan after award. It is an offeror's responsibility to submit a well-written proposal that clearly demonstrates compliance with all solicitation requirements, and where a proposal fails to do so, the offeror runs the risk that its proposal will be rejected. *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 5; *CACI Techs., Inc.*, B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Here, the agency evaluators reasonably found Trailboss's statement of adherence was insufficient to demonstrate how the offeror would actually meet the solicitation's IT security requirements.

Trailboss does not dispute the limited content of its proposal regarding the PWS's IT security requirements. Rather, Trailboss argues that because the IT security requirements were the subject of a post-award data deliverable (*i.e.*, CDRL), they did not also need to be addressed in its technical approach proposal, and the agency's consideration of such represented an unstated evaluation criterion. Protest at 25-26; Comments at 9-10. We disagree.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to specifically identify each and every element an agency considers during an evaluation. FAR 15-304(d). Rather, as a general matter, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 14; *Portage, Inc.*, B-410702, B-410702.4, Jan. 26, 2015, 2015 CPD ¶ 66 at 5-6. Here, inasmuch as the agency was evaluating offerors' understanding of the PWS requirements--and IT security requirements were part of the PWS requirements--the agency's consideration of such, as part of the technical approach factor, was not an unstated evaluation criterion. We also find no merit in the protester's assertion that because the IT security requirements were the subject of a post-award data submission they could not properly be considered as part of the agency's evaluation.

As another example, Trailboss challenges the deficiency assigned to its technical approach for the lack of a detailed description of its web-based service portal. Relevant to the protest here, the RFP instructed offerors to "[p]rovide a detailed description of the proposed web-based service portal, including how the system addresses performance, scheduling, dispatch, and ensures compliance with the required standards." RFP at 83. Further, as set forth above, the technical approach factor involved "evaluat[ing] the Offeror's demonstrated understanding of all elements of the technical requirements described in the RFP, the soundness and technical ability of the proposed technical approach, and the validity of the proposed methodology to meet the requirements of the solicitation." *Id.* at 94.

Trailboss's proposal provided an overview of its web-based portal and stated, "[t]he portal allows the Government to submit mission requests . . . to schedule transports and other special remote guard services; receive verification when a mission is completed, and query data and mission status (CDRL #11)." AR, Tab 21, Trailboss Proposal, Vol. II, Technical Proposal at 16. The TET found Trailboss's lack of an adequate description of its web-based portal to be a deficiency. AR, Tab 13, TET Report at 25. Specifically, the agency evaluators stated:

Per [RFP] Section L.7(4)(1), the offeror shall, "provide a detailed description of the proposed web-based service portal, including how the system addresses performance, scheduling, dispatch, and ensures compliance with the required standards". The offeror did not detail the capabilities of the portal, beyond receipt of missions and the G-391 [authorization to transport form] process. The vendor does not address performance, scheduling, dispatch or how the system will comply with the standards. This is a large risk as the evaluators cannot assume or bring in outside knowledge, only evaluating what is presented in the proposal.

Id.

We again find the agency's evaluation to be a reasonable one. Offerors were expressly instructed to provide a "detailed description" of their proposed web-based service portal, RFP at 83, and were advised that an offeror's technical approach would be evaluated based on an offeror's demonstrated understanding of all RFP technical requirements. *Id.* at 94. The cursory overview provided by Trailboss of its web-based portal was reasonably considered deficient by the agency evaluators in light of the stated solicitation requirements.

Trailboss argues the RFP merely required the submission of a "conceptual description" of its web-based portal, and that Trailboss provided such in its proposal. Protest at 26. In support thereof, Trailboss alleges the solicitation contained a latent ambiguity with respect to what offerors were required to submit regarding the web-based service portal. Comments at 12. The protester points to the fact that although section L of the RFP instructed offerors to provide a "detailed description" of their web-based portal as part of proposal submissions, CDRL No. 11 (Schedule/Dispatch/Tracking and Reporting System) only required the following: "Conceptual description plan due with proposal; finalized working system due after award." *Id.*, citing RFP at 18, 83.

An ambiguity exists where two or more reasonable interpretations of the solicitation are possible.¹⁰ *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. If the ambiguity is an obvious, gross, or glaring error in the solicitation (for example, where solicitation provisions appear inconsistent on their face), then it is a patent ambiguity; a latent ambiguity is more subtle. *A-P-T Research, Inc.*, B-414825, B-414825.2, Sept. 27,

¹⁰ Trailboss does not dispute that the agency's interpretation, *i.e.*, that the RFP's proposal preparation instructions controlled here, was a reasonable one.

2017, 2017 CPD ¶ 337 at 12; *Harper Constr. Co., Inc.*, B-415042, B-415042.2, Nov. 7, 2017, 2018 CPD ¶ 47 at 4. In order to be considered timely, a protest of a patent ambiguity must be filed prior to the closing time for submission of proposals. *DCR Servs. & Constr., Inc.*, B-415565.2, B-415565.3, Feb. 13, 2018, 2018 CPD ¶ 125 at 4 n.6; 4 C.F.R. § 21.2(a)(1).

To the extent that there was any ambiguity in the solicitation, we find the ambiguity regarding the web-based portal submission requirements to be a patent, not latent, one. As the protester's comments adroitly demonstrate, the RFP contained two provisions regarding the web-based portal submission requirements--one in the proposal preparation instructions and one in the post-award data deliverables list--which appear inconsistent on their face. See Comments at 12. If Trailboss considered these proposal submission requirements to be ambiguous in light of the apparently conflicting provisions, Trailboss was required to raise these concerns prior to the phase two closing date. See *Strategic Mgmt. Sols., LLC*, B-416598.3, B-416598.4, Dec. 17, 2019, 2019 CPD ¶ 426 at 16. As Trailboss instead waited until after contract award to challenge this apparent solicitation defect, its allegation now is untimely and is dismissed on that basis. *DCR Servs. & Constr., Inc.*, *supra*; 4 C.F.R. § 21.2(a)(1).

Remaining Evaluation Challenges

Trailboss also protests the evaluation of its proposal under the management approach factor, as well as the evaluation of G4S's proposal under the price evaluation factor. The protester, however, does not dispute G4S's eligibility for contract award. Comments at 3. With respect to Trailboss's remaining challenges to the agency's evaluation, both ICE and intervenor G4S argue that Trailboss is not an interested party to pursue the remaining contentions because it is not eligible for award, and not next in line for award.¹¹ Memorandum of Law at 3; G4S Comments at 2-4.

In order for a protest to be considered by our Office, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. §§ 21.0(a)(1), 21.1(a); *Cattlemen's Meat Co.*, B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A firm is not an interested party if it is ineligible to receive award under the protested solicitation, *TrailBlazer Health Enters., LLC*, B-407486.2, B-407486.3, Apr. 16, 2013, 2013 CPD ¶ 103 at 14; *Acquest Dev. LLC*, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 6, or if it would not be in line for award if the protest were sustained. *VSolvit, LLC*, B-418265.2, B-418265.3, July 30, 2020, 2020 CPD ¶ 259 at 6; *CyberData Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 9.

Here, Trailboss is ineligible for contract award because, as discussed above, the agency reasonably found multiple deficiencies in the offeror's proposal that rendered it technically unacceptable, and an unacceptable proposal cannot form the basis for

¹¹ The record reflects that, in addition to GDIT, there were other offerors that were both higher-rated and lower-priced than Trailboss. AR, Tab 18, SSDD at 21.

award (which the protester does not dispute). See FAR 15.001; *Strategi Consulting LLC; Signature Consulting Grp., LLC*, B-416867, B-416867.4, Dec. 21, 2018, 2019 CPD ¶ 10 at 14; *NSR Sols., Inc.*, B-406337, B-406337.2, Apr. 18, 2012, 2012 CPD ¶ 154 at 2. The firm therefore lacks the direct economic interest necessary to be an interested party to otherwise protest the evaluation of proposals; even if the protest were sustained in these regards, Trailboss remains ineligible for award.

The protest is denied.

Thomas H. Armstrong
General Counsel