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Decision

Matter of: Davis Defense Group, Inc.

File: B-420481.2

Date: November 7, 2022

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DIGEST

Protest that agency unreasonably assigned a deficiency to protester's proposal is denied where protester failed to comply with solicitation requirement.

DECISION

Davis Defense Group, of Stafford, Virginia, protests the evaluation of its proposal as unacceptable, and the resulting award of a task order to The Tauri Group, Inc., of Alexandria, Virginia, under solicitation No. W911QY-21-R-JE13, issued by the Department of the Army for contractor support services for various Joint Program Executive Officer Chemical, Biological, Radiological and Nuclear Defense Programs. Davis protests that the agency unreasonably assigned its proposal weaknesses and deficiencies. Davis also asserts that in evaluating Davis's offer following corrective action on an earlier protest, the Army unreasonably removed strengths that had been awarded to its proposal.

We deny the protest.

BACKGROUND

The solicitation was issued on August 2, 2021, to all contract holders under the Army Contracting Command Joint Enterprise Omnibus Program, Engineering and Technical Support multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract for the logistics/medical business area and associated labor categories. Contracting Officer's

Statement and Memorandum of Law (COS/MOL) at 3. The procurement was conducted in accordance with Federal Acquisition Regulation section 16.505. The Army issued the task order to Davis on January 10, 2022. On January 25, Tauri timely protested to GAO that the agency unreasonably issued the task order to Davis. On February 2, the Army notified our Office that it would take corrective action on the protest, which included re-evaluating the proposals, and making a new source selection decision. *Id.* at 1. Agency Report (AR), Tab 21, Notice of Corrective Action at 1. On February 8, GAO dismissed Tauri's protest as academic. *Tauri Group, Inc.*, B-420481, Feb. 8, 2022 (unpublished decision). Subsequently, the Army revised the solicitation, and received and evaluated new proposals.

The solicitation provided that the task order would be issued on a best-value tradeoff basis considering the following factors: (1) technical, with four elements--technical/management organization; recruitment and retention; transition plan; and management of resources; (2) past performance; and (3) price. The non-price factors were considered equal for purposes of the award determination, and each was considered significantly more important than price. AR, Tab 5, Request for Proposals (RFP), Amendment 5, at 13-16.¹

The technical elements, and the overall technical factor were assigned an adjectival rating based on an assessment of whether a proposal met the requirements, and the evaluated strengths, weaknesses, significant weaknesses, and deficiencies. RFP at 13. As relevant here, a deficiency was defined as a "significant failure of Offeror's performance 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 14. A proposal that was rated unacceptable under the technical elements or factor was un-awardable. *Id.* Past performance was assigned a confidence rating.² RFP at 15.

Following the initial evaluation (before the agency took corrective action) the agency assigned Davis's proposal multiple strengths in each of the technical elements and one weakness in management of resources. The agency assigned Davis's proposal a rating of good for technical management, outstanding for recruitment and retention, acceptable for transition plan and management of resources, and good for the overall technical factor. AR, Tab 26, Pre-Corrective Action Evaluation Report at 1.

Upon reevaluation after corrective action, the agency assigned Davis's proposal two weaknesses and no strengths for technical management; a deficiency for recruitment

¹ Amendment 5, which comprised the RFP with revisions, was issued following the Army's decision to take corrective action. We cite to this version of the RFP in this decision. The revisions are not material to the protest or our decision.

² The ratings assigned to the technical factor were outstanding, good, acceptable, marginal, and unacceptable. The confidence ratings assigned to past performance were substantial, satisfactory, limited, no confidence, and unknown. RFP at 13, 15.

and retention; one weakness for transition; and one deficiency and one strength for management of resources. AR, Tab 15, Technical Evaluation at 5, 9, 11, 13, 14. The agency also assigned Davis's proposal ratings of marginal for technical management, unacceptable for recruitment and retention, marginal for transition plan, unacceptable for management of resources, and unacceptable for the overall technical factor. AR, Tab 16, Source Selection Decision Document (SSDD) at 4.

The source selection official conducted a technical price tradeoff and selected Tauri for award.³ AR, Tab 16, SSDD at 13. The source selection official noted that Davis was assigned a deficiency under recruitment and retention, and a deficiency under management of resources, with a resultant rating of unacceptable for failing to meet solicitation requirements. *Id.* at 6. As a result, the source selection official concluded that Davis was ineligible for award. *Id.* at 14. After receiving a debriefing, Davis timely filed its protest with our office.⁴

DISCUSSION

Davis protests that the agency unreasonably assigned its proposal weaknesses and deficiencies. Davis further protests that in evaluating Davis's offer following corrective action the Army unreasonably removed strengths that previously had been assigned to its proposal.⁵ As discussed below, we find that the agency reasonably assigned Davis's proposal a deficiency under the management of resources element. Since this deficiency makes Davis's technical proposal unacceptable, and ineligible for award, we deny the protest, and do not address Davis's challenges to the removal of strengths and the remaining deficiency and weaknesses assigned to its proposal.

³ Tauri was rated good for technical management, outstanding for recruitment and retention, good for transition plan, outstanding for management of resources, and outstanding for the overall technical factor. Both Tauri and Davis were rated satisfactory confidence for past performance. Tauri's proposed price was \$41,353,062.40, and Davis's proposed price was \$42,005,338.33.40. AR, Tab 16, SSDD at 4.

⁴ Because the value of the task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award, IDIQ contracts awarded under the authority granted in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

⁵ GAO previously dismissed Davis's allegations that the Army engaged in unequal treatment in evaluating the proposals of Davis and Tauri, and unreasonably evaluated the technical and price proposals of Tauri. These arguments were based on speculation regarding the contents of Tauri's proposal, and failed to set forth sufficient legal and factual information to provide an adequate basis of protest. See 4 C.F.R. § 21.1(c)(4); *CAMRIS International, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 3.

The evaluation of quotations and proposals is a matter within the discretion of the procuring agency. See *Innovative Mgmt. & Tech. Approaches, Inc.*, B-413084, B-413084.2, Aug. 10, 2016, 2016 CPD ¶ 217 at 4. Our Office does not independently evaluate quotations or proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. *Id.*

Davis protests that the agency unreasonably assigned a deficiency to its proposal under the management of resources element under the technical evaluation factor. The management of resources element required offerors to describe their plan for managing personnel, ensuring quality, and mitigating risk. RFP at 11. As relevant here, offerors were required to demonstrate the ability to continuously identify, assess, and address risks in real time related to supporting performance work statement requirements. *Id.*

Davis's proposal received a deficiency under management of resources because the evaluators concluded that Davis paraphrased and restated the requirement to identify risks in real time, but did not provide any details. The agency viewed this as an indication that Davis did not understand how to address risks in real time. AR, Tab 15, Technical Evaluation at 14.

Davis protests that in assigning this deficiency to its proposal the agency overlooked relevant information. According to Davis, it proposed its **[DELETED]** and **[DELETED]** as the lead identifiers of real-time risks. Specifically, it explained that risks are identified in real time due to its experienced and focused **[DELETED]**. Protest at 27. Davis asserts it further explained that when the **[DELETED]** identified issues, the **[DELETED]** would coordinate with the contracting officer's representative to resolve them without the loss of transition momentum. *Id.* Davis further asserts that it specifically identified five risks and proposed mitigation strategies. *Id.* Thus, according to the protester, its proposal sufficiently explained Davis's capability for continuously identifying, assessing, and addressing risks because of ongoing oversight from the **[DELETED]** team, a team that **[DELETED]** and the contracting officer's representative.

Davis concludes that in any case, a deficiency was to be assigned only where there was a significant failure of an offeror's performance to meet a government requirement or a combination of significant weaknesses in a proposal that increase the risk of unsuccessful performance to an unacceptable level. According to Davis, the agency has not explained how its alleged failure to address how it would assess risks or the process of addressing risks in real time constitutes a deficiency.

We find that the agency reasonably assigned the deficiency to Davis's proposal under the management of resources element. As noted above, the solicitation required offerors to "demonstrate the ability to continuously identify, assess and address risks in real-time related to supporting performance work statement requirements." RFP at 11. To address this requirement, in its proposal Davis stated, "**[DELETED]** will monitor all

transition activities **[DELETED]** resolving or reporting issues in real time to the Government COR [contracting officer's representative], and with unlimited access to **[DELETED]** if a significant unforeseen issue arises. A summary of known risks and mitigation strategy is presented in Figure 13." AR, Tab 14, Davis Technical Proposal at 28. Figure 13 then lists five risks and Davis's proposed mitigation strategies for the risks. *Id.* at 28-29.

For example, the first risk listed is **[DELETED]**. The mitigation strategy is **[DELETED]** *Id.* at 28. As another example, the fifth listed risk is **[DELETED]**. Davis's proposed mitigation strategy is "[r]isks are identified and assessed in real-time due to our experienced, focused and resourced **[DELETED]**. **[DELETED]** will coordinate with the COR immediately when the **[DELETED]** identifies issues to jointly agree on resolution, without loss of transition momentum." *Id.* at 29.

As the agency noted in its technical evaluation, the proposal merely stated that the **[DELETED]** will monitor all **[DELETED]** and coordinate with the contracting officer's representative immediately when the **[DELETED]** team identifies issues to jointly agree on resolution. AR, Tab 15, Technical Evaluation at 14. It did not provide any details or discussion of how the **[DELETED]** would identify, assess, or address any issues in real time. See *id.*, see also COS/MOL at 16.

Further, to the extent Davis's proposal identifies five risks and mitigation strategies, as the agency points out, this is a list of known risks. COS/MOL at 17. It is not a discussion of how risks will be identified in real time. Moreover, while Davis's proposal stated that its mitigation strategy for **[DELETED]** is to identify and assess risks in real time due to the experienced, focused and resourced **[DELETED]**, Davis provided no discussion, explanation, or context for how the risks are identified, assessed, or resolved in real time. *Id.*

Finally, Davis's entire focus in discussing risk is on **[DELETED]**. COS/MOL at 4. Davis does not discuss any other potential performance risks despite the fact that the solicitation instructed offerors to demonstrate the ability to continually identify, assess, and address risks in real time related to supporting the performance work statement requirements. *Id.*

Given these factors, we find that the agency reasonably assigned a deficiency to Davis's proposal for failing to address its ability to continually identify, assess and address risks in real time related to supporting the performance work statement requirements. While Davis asserts that the agency has not justified this as a deficiency, as the Army explains, the requirement is to have processes in place during performance to identify and address risks as they arise. Instead, Davis's proposal focused on currently known risks, without explaining Davis's process for assessing risks during performance. *Id.* In our view, based on Davis's proposal, the Army reasonably concluded that it could not determine if or how Davis would meet this express solicitation requirement and assigned a deficiency to Davis's proposal. Davis's disagreement with the assignment of the deficiency does not make it unreasonable.

Davis also challenges the agency's assignment of the remaining deficiency and weaknesses to its proposal, and the agency's removal of the strengths that were assigned to the proposal during the initial evaluation. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions it would have had a substantial chance of receiving the award. *Booz Allen Hamilton, Inc.*, B-417418, *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 4. Here, pursuant to the solicitation, a proposal that was rated unacceptable under the technical factor was ineligible for award. RFP at 14. The solicitation further provided that a proposal that contained one or more deficiencies would be rated unacceptable. *Id.* Since the agency reasonably assigned the deficiency under the management of resources element to Davis's proposal, the proposal was unacceptable under the technical factor, and Davis is not eligible for award. Accordingly, Davis is not prejudiced even if the remainder of the evaluation was unreasonable. *Zolon PCS, LLC*, B-419283, Jan. 14, 2021, 2021 CPD ¶ 26 at 8.

The protest is denied.

Edda Emmanuelli Perez
General Counsel