



Decision

Matter of: DKMT Consulting, LLC

File: B-421223

Date: January 12, 2023

Donald Harker, DKMT Consulting, LLC, for the protester.
Edward Kee, Nuclear Economics Consulting Group, for the intervenor.
Garth Hibbert, Esq., and John C. Mantini, Esq., U.S. Trade and Development Agency, for the agency.
Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated the protester's proposal is denied where the record shows that the agency evaluated the proposal reasonably and in accordance with the terms of the solicitation.

DECISION

DKMT Consulting, LLC, a small business of Orefield, Pennsylvania, protests the award of a contract to Nuclear Economics Consulting Group (NECG), a small business of Alexandria, Virginia, under request for proposals (RFP) No. 1131PL22RD21271, issued by the U.S. Trade and Development Agency for desk study reports on civil nuclear energy projects. The protester contends that the agency improperly evaluated its proposal.¹

We deny the protest.

¹ Our Office did not issue a protective order in this protest because the protester did not retain counsel and is proceeding *pro se*, that is, without counsel. Therefore, our Office reviewed much of the information provided by the agency *in camera*. Because this information is source selection sensitive, our discussion here is necessarily general in nature.

BACKGROUND

The agency issued the RFP as a set-aside for small business on August 17, 2022. The RFP is a combined synopsis/solicitation of commercial items in accordance with Federal Acquisition Regulation (FAR) subparts 12.6 and 13.1. Agency Report (AR), Tab 1, RFP at 1.² These subparts refer to the FAR's procedures for the solicitation of commercial products and services and simplified acquisition procedures, respectively. The RFP contemplated the award of a fixed-price contract for the preparation of reports on proposals the agency receives for global civil nuclear energy project planning activities. RFP at 14. These reports assist the agency in deciding whether to fund project planning activities in the civil nuclear energy sector. *Id.* The contract will be performed over a 2-year period. *Id.* at 23.

Award would be made to the offeror whose proposal provided the best value to the government considering technical, past performance, and price factors. *Id.* at 50, 53. The two non-price factors were equally important and, when combined, were significantly more important than price. *Id.*

The technical factor consisted of two subfactors: relevant technical experience and expertise; and relevant financing experience and expertise. *Id.* The first subfactor required in relevant part that the offeror "shall have significant expertise in the civil nuclear energy sector related to regulations for both traditional and new civil nuclear energy technologies and the development of civil nuclear energy regulatory infrastructure." *Id.* The second subfactor required in relevant part that the offeror "shall have at least 10 years of relevant experience specifically related to the financing of civil nuclear energy projects that demonstrate the capacity to evaluate projects involving large light water reactor and Small Modular Reactor (SMR) technologies." *Id.* These subfactors were of equal importance; the technical factor and its subfactors were to be evaluated using adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 51-52.

DKMT and NCEG timely submitted proposals. DKMT's proposal received ratings of acceptable under both technical subfactors, for an overall technical rating of acceptable. AR, Tab 9, Technical Evaluation at 2. The technical evaluator concluded that while DKMT proposed a strong technical team, its proposal merited a rating of acceptable because it did not adequately address several key competencies required to perform the requirement. *Id.* Under the past performance factor, DKMT's proposal received a rating of satisfactory confidence. The technical evaluator noted that of the four past performance references DKMT submitted, only two included the required past

² Where possible, page citations refer to pre-existing pagination. Otherwise, page citations refer to the Adobe PDF page numbers.

performance questionnaires (PPQs), and only one of the two was found to be relevant.³ *Id.* at 6.

NECG's proposal received ratings of outstanding under both technical subfactors and an overall technical rating of outstanding. *Id.* at 2. NECG's proposal also received a rating of substantial confidence under the past performance factor. *Id.* The technical evaluator recommended that NECG be awarded the contract because its technical proposal was superior and there was substantial confidence that NECG could successfully perform the contract. *Id.*

In the source selection decision, the source selection authority (SSA) noted under the first technical subfactor that, although DKMT's proposed key personnel⁴ had ample experience performing most of the required work, DKMT's proposal did not "adequately address the regulatory aspects" of the subfactor. AR, Tab 11, Source Selection Decision (SSD) at 2. Under the second technical subfactor, the SSA noted that DKMT's proposal did not provide adequate information regarding its financial experience. *Id.* Lastly, the SSA concluded that DKMT's past performance provided the agency with satisfactory confidence and its total price was determined to be complete, reasonable, and realistic. *Id.* at 3.

When comparing DKMT and NECG's proposals, the SSA determined that NECG's proposal provided the best value to the government because its technical superiority and low-risk of non-performance warranted its price premium. *Id.* The agency awarded the contract to NECG on September 26 for \$529,500.⁵ Contracting Officer's Statement at 1-2. On September 28, the protester requested a debriefing. The agency acknowledged the request, but did not provide a debriefing. This protest followed.

DISCUSSION

The protester primarily argues that the agency unreasonably evaluated its proposal under both subfactors of the technical factor; relevant technical experience and

³ Past performance was to be evaluated using adjectival ratings of substantial, satisfactory, limited, no, and unknown (neutral) confidence. RFP at 52-53. DKMT does not dispute that two of its references lacked the required PPQs or challenge the agency's reasons for concluding that only one of its references was relevant.

⁴ Key personnel are not a separate aspect of the RFP's evaluation criterion. The RFP instructed that offerors should include an executive summary in their proposal, and within their summaries, include such detail as proposed key personnel. RFP at 48.

⁵ A contingency fee line item was added to NECG's total price, resulting in a total award price of \$529,500. SSD at 4.

expertise; and relevant financing experience and expertise.⁶ Where a protester challenges the evaluation of its proposal in a procurement using simplified acquisition procedures, we will review the record to ensure the agency conducted the procurement consistent with a concern for fair and equitable competition, evaluated proposals in accordance with the terms of the solicitation, and exercised its discretion reasonably. *MindPetal Software Solutions, Inc.*, B-420070, B-420070.2, Nov. 18, 2021, 2021 CPD ¶ 375 at 4. As discussed below, we conclude that DKMT has not provided a basis to sustain the protest.

Relevant Technical Experience and Expertise

DKMT first argues that the agency's assignment of a weakness to its proposal under this subfactor for not adequately demonstrating certain required experience was unreasonable because its proposal did demonstrate this experience. As noted above, the first technical subfactor required in relevant part that "[t]he Offeror shall have significant expertise in the civil nuclear energy sector related to regulations for both traditional and new civil nuclear energy technologies and the development of civil nuclear energy regulatory infrastructure." RFP at 50. Among other things, in evaluating offerors' technical proposals, the agency would determine whether the offeror's methods and approach have adequately and completely satisfied the solicitation's requirements. *Id.* at 51.

The technical evaluator noted that DKMT's proposal demonstrated experience with the requirements in the performance work statement and presented a team of personnel with experience with traditional and new civil nuclear energy technologies. AR, Tab 9, Technical Evaluation at 5. The evaluator assigned DKMT's proposal one strength for its approach to evaluating project planning activities. *Id.* The evaluator also assigned DKMT's proposal one weakness for not adequately demonstrating its experience with the regulations for traditional and new civil nuclear energy technologies. *Id.*; AR, Tab 5, DKMT Proposal at TA-3.⁷

⁶ The protester also asserts that the agency failed to provide it a debriefing. The award of a contract under FAR part 13 does not require a debriefing, but may require a brief explanation of the basis for the agency's award decision. To that end, FAR section 13.106-3(d) provides, "[i]f a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see [FAR] 15.503(b)(2))." Although the agency did not provide DKMT with a brief explanation, an objection to a brief explanation, or the lack thereof, does not form a basis of protest. *Triple Point Security, Inc.--Recon.*, B-419375.2, Feb. 11, 2021, 2021 CPD ¶ 80 at 54 n.4; *Colonna's Shipyard, Inc.*, B-418896, Sept. 29, 2020, 2020 CPD ¶ 320 at 7.

⁷ The evaluator also noted that one of DKMT's proposed key personnel had some regulatory experience, but it was not clear whether this individual's experience was intended to demonstrate the required regulatory experience. AR, Tab 9, Technical Evaluation at 5. DKMT states that this individual's experience was not provided to

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DKMT argues that the agency unreasonably evaluated its proposal and cites to various portions of its proposal that it contends demonstrate the requisite experience. Comments at 2; Supp. Comments at 2. One example of DKMT's proposal cited by the protester to support its contention describes the experience of one of DKMT's proposed key personnel.⁸ AR, Tab 5, DKMT Proposal at TA-1. While this description references some regulatory experience, the proposal does not state how long this member of DKMT's team engaged in the regulatory activities, or what specific role the team member had in the activities. As a result, the agency reasonably concluded that it was not clear from the proposal whether DKMT's key personnel had the requisite regulatory experience.

DKMT also argues the agency inconsistently evaluated its proposal because DKMT received a strength for its approach to evaluating project planning activities and asserts its approach demonstrates its regulatory experience. Comments at 2. DKMT's approach received a strength because the evaluator concluded its approach demonstrated that DKMT understood the requirement. AR, Tab 9, Technical Evaluation at 5. The agency's assignment of a strength for DKMT's approach had nothing to do with the regulatory experience requirement, and DKMT's approach says nothing about its regulatory experience.

An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, allows a meaningful review by the procuring agency, and contains all the

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demonstrate DKMT's regulatory experience. Comments at 2. In any event, this portion of DKMT's proposal does not add any additional clarity regarding the extent of DKMT's regulatory experience.

⁸ DKMT also asserts that the agency unequally evaluated the years of experience of the proposed team members of the offerors. The agency responds that the reference to DKMT's team's experience in the source selection decision was a typographical error and, in any event, it had no impact on the final award decision. Supp. Memorandum of Law (MOL) at 2. Our review of the record confirms that, while the agency did refer to the number of years of general experience possessed by each offeror's team, this was not a deciding factor or a basis for the award decision. Rather, as discussed herein, the agency concluded that NECG's proposal provided the best value because it was technically superior and presented a lower risk of performance. SSD at 3. Therefore, even if the agency unequally evaluated the quantity of each teams' experience, this error did not cause DKMT to suffer competitive prejudice. Competitive prejudice is an essential element of every protest, and our Office will not sustain a protest unless the protester proves that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Integrity Management Consulting, Inc.*, B-418776.5, June 22, 2021, 2021 CPD ¶ 245 at 9. Accordingly, we deny this protest allegation.

information necessary to demonstrate its capabilities in response to the solicitation. *Britz & Company*, B-419163, Dec. 17, 2020, 2020 CPD ¶ 406 at 4. Here, we conclude that the agency reasonably determined that DKMT's proposal failed to clearly demonstrate the requisite experience and expertise with regulations for both traditional and new civil nuclear energy technologies.

Relevant Financing Experience and Expertise

DKMT argues that the agency's assignment of a weakness in its proposal under this subfactor for not clearly demonstrating the requisite experience is unreasonable because its proposal does adequately explain its experience. The second technical subfactor required in part that offerors had to demonstrate "at least 10 years of relevant experience specifically related to the financing of civil nuclear energy projects that demonstrate the capacity to evaluate projects involving large light water reactor and Small Modular Reactor (SMR) technologies." RFP at 50.

Under this subfactor, the agency assigned DKMT's proposal a weakness because its proposal did not clearly demonstrate 10 years of relevant experience related to the financing of civil nuclear energy projects involving large light water reactor and SMR technologies. AR, Tab 9, Technical Evaluation at 5. DKMT asserts generally that its proposal does clearly demonstrate this experience, and cites, without elaboration, to its proposal. Comments at 2-3. In its response, the agency cites to the technical evaluator's conclusions that DKMT's proposal does not make clear that it had at least 10 years of relevant experience related to the financing of civil nuclear energy projects that demonstrate the capacity to evaluate projects involving large light water reactor and SMR technologies. Supp. MOL at 2. We have reviewed DKMT's entire proposal and find no basis to question the agency's conclusion that DKMT's proposal did not meet the requirement under this subfactor.

The protest is denied.

Edda Emmanuelli Perez
General Counsel