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Decision

Matter of: LT4-5, LLC

File: B-421243; B-421243.2; B-421243.3

Date: January 12, 2023

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Hadeel Masseoud, Esq., and Diana Parks, Esq., Curran Legal Services Group, Inc., for Epic Consulting, LLC, the intervenor.
Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.
Michelle E. Litteken, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed when the record shows that the protester is not an interested party to maintain its protest arguing that the awardee's proposal should have been rejected as technically unacceptable.

DECISION

LT4-5, LLC, of Omaha, Nebraska, protests the award of a lease to Epic Consulting, LLC (Epic), of Washington, DC, under request for lease proposals (RLP) No. 36C26322R0096, issued by the Department of Veterans Affairs (VA) for the provision of clinical space in the Papillion, Nebraska area. The protester contends that the agency should not have awarded the lease to Epic because its proposal was technically unacceptable.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RLP, issued on July 13, 2022, as a service-disabled veteran-owned small business set-aside, provided for the award of a 20-year lease for new or existing contiguous clinical space with between 24,000 and 24,439 American National Standards Institute/Building Owners and Managers Association Office Area square feet (ABOA

SF)¹ of in the Papillion, Nebraska area. Memorandum of Law (MOL) at 1-2; Agency Report (AR), Exh. 1, RLP at 4.² The RLP informed offerors that the lease would be issued to the offeror that submitted the lowest-priced, technically acceptable (LPTA) lease proposal. RLP at 19.

As relevant here, the RLP description of the amount and type of space required stated that the agency required 140 surface/outside parking spaces. RLP at 4. Additionally, the RLP established that the agency would not award a lease for any property within a 100-year floodplain unless there was no practicable alternative. *Id.* at 9. The RLP continued: “a Lease will not be awarded for any offered [p]roperty adjacent to 100-year floodplain, where such an adjacency would, as determined by the [g]overnment, restrict ingress or egress to the [p]remises in the event of a flood, unless there is no practicable alternative.” *Id.*

The VA received six timely proposals. MOL at 2. After conducting discussions, the VA’s technical evaluation board (TEB) reviewed the proposals for technical acceptability and found five of the proposals were technically acceptable.³ *Id.*; AR, Exh. 2, Price Negotiation Memorandum at 11. The VA then conducted a present-value price evaluation and concluded that Epic’s proposal offered the lowest price. MOL at 3. The VA awarded the lease to Epic on September 28, 2022. *Id.*

After receiving notification of award, LT4-5 filed a timely agency-level protest, arguing that the property proposed by Epic could not accommodate 140 parking spaces. MOL at 3-4; AR, Exh. 15, Agency-Level Protest. The VA denied the protest, finding the question of whether Epic’s proposal complied with the parking space requirement was a matter of contract administration. MOL at 4; AR, Exh. 16, Agency-Level Protest Decision. This protest followed.

Before filing its agency report, the VA filed a request for dismissal, arguing that LT4-5 is not an interested party. Req. for Dismissal at 1. Specifically, the agency asserted that the RLP provided for award on an LPTA basis, and there were three technically acceptable, lower-priced intervening offers that the protester had not challenged. *Id.* at 6. LT4-5 subsequently filed a supplemental protest, challenging the VA’s

¹ ABOA SF refers to the area available for use by a tenant for personnel, furnishings, and equipment. See *The Metropolitan Square Assocs., LLC*, B-409904, Sept. 10, 2014, 2014 CPD ¶ 272 at 2 n.2.

² The agency used a Bates numbering system to provide page numbers in its exhibits. Citations of agency report exhibits in this decision refer to the Bates numbers assigned by the agency.

³ The agency produced its communications with each offeror during discussions as part of the offeror’s proposal submission.

acceptability determinations for each of the intervening offers.⁴ See Supp. Protest at 4-9. Our Office reviewed the supplemental protest, and we declined to dismiss the protest at that time.

DISCUSSION

The VA renews its request that we dismiss the protest because LT4-5 is not an interested party to challenge the award to Epic. For the reasons discussed below, we find that LT4-5's challenges against the technical acceptability of at least one intervening offeror are without merit. Accordingly, we dismiss the protest allegations with respect to the agency's award to Epic because LT4-5 would not be next in line for the award even if it were to prevail on its arguments concerning Epic's technical acceptability.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *DNC Parks & Resorts at Yosemite, Inc.*, B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit of the relief sought. *Id.*

In a post-award context, we have generally found that a protester is an interested party to challenge an agency's evaluation of proposals only where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *CACI, Inc.-Fed.*, B-419499, Mar. 16, 2021, 2021 CPD ¶ 125 at 5; *OnSite Sterilization, LLC*, B-405395, Oct. 25, 2011, 2011 CPD ¶ 228 at 4. In this regard, where there are intervening offerors who would be in line for the award even if the protester's challenge was sustained, the intervening offerors have a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify as an interested party. *HCR Constr., Inc.*; *Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, 2020 CPD ¶ 166 at 6-7 n.6; *Automated Power Sys., Inc.--Recon.*, B-246795.2, Feb. 20, 1992, 92-1 CPD ¶ 208 at 2.

⁴ The VA had not disclosed the existence of the intervening offerors before filing the request for dismissal. As such, LT4-5's supplemental protest was timely. 4 C.F.R. § 21.2(a)(2).

The second technically acceptable next lowest-priced proposal was submitted [REDACTED].⁵ MOL at 3. In LT4-5's supplemental protest, the protester contends that the property proposed by [REDACTED] was unacceptable because it is adjacent to and partially within a 100-year floodplain that would restrict all access to the property from the east.⁶ Supp. Protest at 4. The protester's argument is premised upon a map showing that the property proposed by [REDACTED] is to the west of--but not immediately adjacent to--a floodplain. *Id.* The agency responds that the property proposed by [REDACTED] consists of three lots, none of which are within or adjacent to a floodplain. MOL at 7 (*citing* Exh. 5, [REDACTED] Proposal at 163-174). The agency also states that the evaluators considered the floodplain restrictions when evaluating each proposal and reasonably determined that the property proposed by [REDACTED] was technically acceptable.⁷ *Id.*

The protester has not provided any evidence to refute the contents of [REDACTED]'s proposal or the evidence submitted by the agency. Comments & Supp. Protest at 7; Supp. Comments at 1. [REDACTED]'s proposal shows the property is not within or adjacent to a 100-year floodplain. AR, Exh. 5, [REDACTED] Proposal at 707. Instead,

⁵ The parties refer to the firm as "[REDACTED]" and "[REDACTED]," but the record demonstrates that [REDACTED] submitted the proposal. See AR, Exh. 5, [REDACTED] Proposal at 2.

⁶ The protester also argues that the property that [REDACTED] initially proposed did not satisfy the square footage requirement, and that the VA unfairly allowed [REDACTED] to change its proposal. Comments & Supp. Protest at 19. As noted above, the agency conducted discussions with all offerors. MOL at 2. The record demonstrates that the VA engaged in discussions with LT4-5 about several aspects of its proposal, including square footage and proximity to a floodplain. AR, Exh. 8, LT4-5 Proposal at 808-811, 818-825, 833-840, and 853-858. There is no evidence of unfair treatment in the conduct of discussions. Federal Acquisition Regulation 15.306(d)(1), (e)(1); *Integrated Med. Sols., LLC*, B-418754, B-418754.2, Aug. 20, 2020, 2020 CPD ¶ 287 at 5.

The protester also contended that [REDACTED] changed the square footage value on the form and did not make any substantive changes to its proposal to reflect the changed value. Comments & Supp. Protest at 18-19. The agency provided a substantive response to the protest argument, but LT4-5 did not respond to the agency's arguments in its comments on the supplemental agency report. Thus, we dismiss this allegation as abandoned. *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3

⁷ Further, regarding the argument that the property adjacent to [REDACTED]'s proposed parcel would restrict access to [REDACTED]'s property during a flood, the RLP makes clear that the determination of whether such adjacency would restrict ingress or egress is to be determined by the government, and not the offeror. RLP at 9. Here, LT4-5's insistence to the contrary does not show the agency's conclusions in this regard were unreasonable.

the lots that [REDACTED] proposed to use are next to a property that, itself, partially falls within a 100-year floodplain. This is confirmed by the local tax map. MOL at 7-8 (citing Sarpy County Geographic Information System Internet Map Service, <https://maps.sarpy.gov/html5viewer/index.html?Viewer=sims&query=PARCELID%3D%27011136693%27> (last visited December 27, 2022)). In this circumstance, where award was to be made on an LPTA basis, [REDACTED] would be next in line for the award, and not LT4-5, were we to sustain LT4 5's protest of the awardee's evaluation.

Accordingly, because we have concluded that LT4-5's allegations challenging the agency's evaluation of [REDACTED] are without merit--with the result that [REDACTED] would be next in line for award even if we were to sustain LT4-5's challenges directed against the agency's evaluation of the awardee, Epic--we find that LT4-5 lacks the requisite legal interest to pursue its protest concerning Epic's technical acceptability.⁸

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel

⁸ The protester also argues that the VA failed to adequately document the evaluation. Comments & Supp. Protest at 20. We disagree. An agency's evaluation must be sufficiently documented to allow our Office to review the merits of a protest. *Starlight Corp.*, B-420267.3, B-420267.4, Mar. 14, 2022, 2022 CPD ¶ 65 at 4. Stated differently, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. *Blueprint Consulting Servs., LLC d/b/a Excelicon; Trillion ERP Venture Tech LLC*, B-420190 et al., Dec. 30, 2021, 2021 CPD ¶ 19 at 12. Although LT4-5 would prefer to have more information regarding the agency's evaluation, the information provided by the VA in response to this protest adequately documented the agency's determination that [REDACTED]'s proposal was acceptable. In this regard, the agency's record includes the TEB's evaluation of [REDACTED]'s proposal and the contracting officer's correspondence with [REDACTED] about areas of concern within its proposal. See AR, Exh. 3, Submittal Checklist; AR, Exh. 9, TEB Evaluation at 16-17; Exh. 5, [REDACTED] Proposal at 674-695, 708-710, 722-725.