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Decision

Matter of: Ecolog Deutschland GmbH

File: B-421531

Date: May 9, 2023

Sareesh Rawat, Esq., Marshall & White, PC, for the protester.
Major Michael R. Tregle, Jr., Department of the Army, 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 challenging the agency's evaluation of the protester's proposal as technically unacceptable is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Ecolog Deutschland GmbH (Ecolog), of Dusseldorf, Germany, protests the award of a contract to ACCL International DMCC (ACCL), of Dubai, United Arab Emirates, under request for proposals (RFP) No. W912PB23D3011, issued by the Department of the Army for full food services at an Army dining facility in Illesheim, Germany. The protester challenges the agency's evaluation of the protester's technical proposal, the agency's price evaluation, and the resulting award decision.

We deny the protest.

BACKGROUND

On December 19, 2022, the Army issued the solicitation pursuant to the procedures in Federal Acquisition Regulation (FAR) part 12, acquisition of commercial services, seeking a contractor to provide food services, food preparation, headcount, and food service sanitation services at the Flight Line Inn Dining Facility located at Storck Barracks, Illesheim, Germany. Req. for Dismissal at 2-3. The solicitation contemplated a fixed-price contract with a 1-year base period and four 1-year option periods. *Id.*; Protest, exh. 3, RFP at 3.

The solicitation established that award would be made on a lowest-price, technically acceptable (LPTA) basis considering the following three factors: technical, subcontracting, and price. RFP at 21. Consistent with an LPTA source selection, the nonprice factors were to be evaluated as acceptable or unacceptable. *Id.*

The technical factor consisted of two subfactors: (1) offeror experience and (2) dining facility manager and alternate dining facility manager experience (referred to here as personnel experience). RFP at 68. As relevant here, for the personnel experience subfactor, the agency would evaluate whether the proposal demonstrated that the proposed dining facility manager and alternate dining facility manager met the following minimum experience requirements: (1) 5 years of experience working in a Department of Defense (DOD) dining facility providing complete meal services within the last 10 years; (2) 3 years of experience as an assistant manager or a manager of a DOD dining facility; and (3) 2 years of experience using automated food management systems within the past 5 years. *Id.* at 22. With respect to price, the solicitation provided that the agency would evaluate each offeror's proposed price to determine whether it was fair and reasonable, and whether option prices were unbalanced. *Id.* at 22-23.

The Army received eight proposals before the deadline for proposal submission. Req. for Dismissal at 4. The agency ranked the proposals based on the offerors' total evaluated prices. *Id.* at 4. ACCL offered the lowest price, and Ecolog offered the [REDACTED] lowest price. *Id.* The Army rated Ecolog's proposal as unacceptable under the personnel experience subfactor because the protester's proposal did not demonstrate that its alternate dining facility manager had at least 3 years of experience as a manager or assistant manager of a DOD dining facility. Req. for Dismissal, exh. 1, Source Selection Decision Document (SSDD) at 7. Ecolog's proposal stated that the candidate had been an assistant manager from 2021 to the present. *Id.*; Req. for Dismissal, exh. 2, Ecolog Technical Proposal at 47. The agency concluded that Ecolog's proposal was therefore technically unacceptable and ineligible for award.¹ The Army found that ACCL had submitted the lowest-price, technically acceptable offer, and that its proposed price was fair and reasonable. Req. for Dismissal, exh. 1, SSDD at 11. Accordingly, the agency selected ACCL's proposal for award. *Id.*

On March 1, 2023, the Army notified Ecolog that its proposal had not been selected for award. After requesting and receiving a debriefing, Ecolog filed this protest.²

¹ The RFP defined an unacceptable technical rating as reflecting a proposal that "does not clearly meet the minimum requirements of the solicitation." RFP at 21.

² Before the deadline for the submission of the agency report, the agency filed a request for dismissal, arguing that the protester is not an interested party to challenge the award; that the protester's challenges to the agency's evaluation of proposals were speculative and factually and legally insufficient; and that the protester's allegation regarding the use of the LPTA source selection method is untimely. Req. for Dismissal at 2. After reviewing the protester's response, our Office advised the parties that we intended to issue a decision resolving the protest based on the existing record, but we

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DISCUSSION

Ecolog argues that the Army improperly found that its proposal was technically unacceptable because Ecolog's proposed alternate dining facility manager has the required experience, and the agency's determination was based on a clerical error in the protester's proposal. Protest at 3.

The agency responds that there was nothing unreasonable about the evaluation because the protester's proposal stated that the candidate had been an assistant manager of a DOD dining facility only since 2021--meaning the individual did not have at least 3 years of experience as an assistant manager or manager of a DOD dining facility. Req. for Dismissal at 8-9.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Here, as discussed above, the solicitation specifically required proposals to demonstrate that the proposed alternate dining facility manager have at least 3 years of experience serving as an assistant manager or manager of a DOD dining facility. RFP at 22. It is undisputed that the protester's proposal stated that Ecolog's proposed alternate dining facility manager had been an assistant dining facility manager only since 2021, and had not previously served as the assistant manager or manager of a DOD dining facility. Req. for Dismissal, exh. 2, Ecolog Technical Proposal at 47.

Ecolog nonetheless attempts to demonstrate that Ecolog's proposed alternate manager had 3 years of experience, by submitting a statement from an Ecolog employee and a corrected resume as exhibits to its protest. The protester's attempts to correct its proposal after award are unavailing. It is an offeror's burden to submit an adequately written proposal for the agency to evaluate; otherwise it runs the risk of having its proposal found technically unacceptable. *Regency Enters. Servs., LLC*, B-418448, B-418448.2, May 6, 2020, 2020 CPD ¶ 165 at 3. Similarly, the protester argues that the agency should have known that the candidate had sufficient experience because Ecolog is the incumbent contractor, and the candidate is currently performing as the assistant dining facility manager. Resp. to Req. for Dismissal at 3. Here, again, we find

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afforded the agency the opportunity to file an additional submission, and the protester to respond to any such submission.

no merit to the argument. Our Office has consistently found that the evaluation of an offeror's technical proposal is dependent on the information furnished by the offeror in its proposal, rather than any outside information not included in the proposal. *Xenith Grp., LLC*, B-420706, July 14, 2022, 2022 CPD ¶ 184 at 5; *Strategi Consulting LLC; Signature Consulting Grp., LLC*, B-416867, B-416867.4 , Dec. 21, 2018, 2019 CPD ¶ 10 at 13; *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 9.

In short, we find nothing unreasonable in the agency's determination that Ecolog's proposal failed to show that the proposed alternate dining facility manager met the solicitation's minimum experience requirement. Accordingly, we deny the protest on this basis.

The protester raises several additional arguments, such as contending that the Army failed to conduct a price realism evaluation; the agency's evaluation of price reasonableness and balance was unreasonable; and the agency improperly made award on an LPTA basis. Protest at 4-6. Ecolog is not an interested party to maintain these remaining allegations because, as discussed above, its technical proposal was reasonably found unacceptable. As a result, even if we found that Ecolog's remaining allegations had merit, Ecolog's proposal would still be unacceptable under the technical factor, and we would have no basis to disagree with the agency's decision to eliminate the protester's proposal from the competition. 4 C.F.R. § 21.0(a); *Benaka Inc.*, B-418639, July 9, 2020, 2020 CPD ¶ 371 at 5. Accordingly, we dismiss the remaining allegations.

The protest is denied.

Edda Emmanuelli Perez
General Counsel