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Decision

Matter of: G-W Management Services, LLC

File: B-421886; B-421886.2

Date: November 8, 2023

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Ann L. Giddings, Esq., and Kimberly Fedinatz, Esq., Department of the Navy, for the agency.
Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's technical evaluation of the protester's proposal is denied where the record shows that the agency reasonably evaluated the protester's proposal as technically unacceptable for failing to meet an experience requirement.
2. Protester is not an interested party to challenge the agency's best-value tradeoff decision where the agency reasonably found the protester's proposal to be ineligible for award.

DECISION

G-W Management Services, LLC, of Rockville, Maryland, protests the award of a contract to Encon Desbuild JV3, LLC, of Hyattsville, Maryland, under request for proposals (RFP) No. N4008023R0007, issued by the Department of the Navy, Naval Facilities Engineering Command, for construction services at the Marine Corps base in Quantico, Virginia. The protester contends the agency unreasonably evaluated the protester's technical proposal and conducted a flawed source selection decision.

We deny the protest.

BACKGROUND

The solicitation, issued on November 23, 2022, sought a fixed-price contract for the construction of a vehicle inspection and visitor control center at the Marine Corps base

in Quantico, Virginia. RFP at 1, 24.¹ Among other things, the contractor would be responsible for the construction of: a visitor control center; a commercial vehicle inspection building; a four-bay commercial vehicle inspection canopy; and a sentry booth that provides pass and identification services to visitors and government employees. *Id.* at 24.

Award was to be made on a best-value tradeoff basis, considering price and the following non-price factors: experience, safety, small business utilization, and past performance. *Id.* at 28. All technical factors (experience, safety, and small business utilization), when combined, were of equal importance to past performance, and all non-price factors, when combined, were approximately equal to price.² *Id.* at 29.

The agency received three proposals in response to the RFP. On January 23, 2023, the source selection evaluation board (SSEB) conducted its initial evaluation of proposals. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. The agency then established a competitive range and conducted discussions with offerors within the range, including G-W Management. *Id.* at 4; Protest, exh. 4, Discussion Letter at 1. At the close of discussions, the Navy requested revised technical proposals from offerors by May 12, and final proposal prices by June 5. Protest, exh. 4, Discussion Letter; AR, Exh. 9, Req. for Final Revised Prices at 1. G-W Management submitted its revised technical proposal, as well as its final proposed prices by the respective deadlines. AR, Exh. 6, Protester Revised Technical Proposal; AR, Exh. 10, Protester Final Revised Price.

On August 2, the Navy notified G-W Management that award had been made to Encon Desbuild for \$22,643,738.86. AR, Exh. 12, Contract Award at 2. After receiving a debriefing on August 10, G-W Management filed this protest with our Office on August 14. COS/MOL at 4-5.

DISCUSSION

G-W Management primarily contends that the agency's evaluation of its technical proposal under the experience factor was unreasonable and that the agency's tradeoff

¹ Unless otherwise noted, references to page numbers are to sequential numbering on the pages of the Adobe PDF documents provided by the agency.

² While each technical evaluation factor would be assigned an individual adjectival rating, the agency would also assign an overall rating for the combined technical factors. Agency Report (AR), Exh. 1, Source Selection Plan (SSP) at 21. The available adjectival ratings for the technical factors are: outstanding, good, acceptable, marginal, and unacceptable. *Id.*

decision was flawed.³ Protest at 4-6. We have reviewed the record and find no basis to sustain the protest.

Protester's Experience

G-W Management argues that the agency's evaluation of its experience was unreasonable because the protester had submitted references that were similar in size, scope, and complexity to the current requirement. Protest at 4. The agency responds that it evaluated the protester's proposal in accordance with the solicitation criteria and reasonably found G-W Management's experience to be unacceptable. COS/MOL at 5. We agree.

Here, the solicitation instructed offerors to submit construction experience references that best demonstrated an offeror's depth of experience at successfully completing projects that were similar in size, scope, and complexity to the current requirement. RFP at 109. Specifically, the solicitation provided:

Construction Experience:

Submit a maximum of five (5) relevant construction projects for the Offeror that best demonstrates your experience on relevant projects that are similar in size, scope, and complexity to the RFP. For purposes of this evaluation, a relevant project is further defined as:

Size: a new construction project with a final construction contract value of \$25,000,000 or greater.

Id. at 30. Through subsequent amendments, the agency provided questions and answers (Q&A) responding to queries regarding the solicitation. In Q&A No. 18 to amendment 3, the agency clarified the project reference requirement, indicating that, in addition to the limit of a maximum of five project submissions, "[t]he Offeror shall submit a minimum of (3) projects that are over \$25M." *Id.* at 109. Furthermore, the solicitation warned: "Any proposal found to have a deficiency in meeting the stated solicitation requirements . . . will be considered ineligible for award, unless the deficiency is corrected through discussions." *Id.* at 29.

In its initial proposal, G-W Management submitted three experience references. The value of those respective projects totaled: (1) \$20,168,636.00; (2) \$24,075,102.00; and (3) \$16,240,589.00. AR, Exh. 2, Initial Technical Proposal at 4, 6, 8. Relevant here, when evaluating initial proposals, the SSEB assessed a deficiency to

³ The protester also argues the solicitation's size requirement under the experience evaluation factor is unduly restrictive of competition. Protest at 5. Prior to the deadline for submission of the agency report, the agency requested--and we granted--dismissal of this allegation, as an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1); Notice of Ruling on Req. for Dismissal.

G-W Management's proposal under the experience factor. AR, Exh. 4, January SSEB Report at 30. Specifically, the evaluators found:

Of the three submitted projects, three projects did not meet criteria for Size per the RFP and were considered Not Relevant. All three Projects did meet criteria for complexity, while two projects (1, 3) did not meet criteria for scope. This factor contains no strengths, no weaknesses, no significant weaknesses, and one deficiency.

Id. at 7. Because of the assessed deficiency, the SSEB assigned a rating of "unacceptable" to G-W Management's proposal under the experience evaluation factor.⁴

Id. During discussions, the Navy advised G-W Management that, among other things, the firm "failed to provide three submitted projects [that] met the min Size requirements for a new construction project value of \$25,000,000 or greater as required by the Solicitation," and the protester was requested to "provide any information to address the deficiency." Protest, exh. 4, Protester Discussion Letter at 2.

G-W Management submitted its revised technical proposal on May 12, responding to the concerns in the discussion letter. AR, Exh. 6, Protester's Revised Technical Proposal. With respect to the experience factor, the protester resubmitted the same three references, with the following annotation after each project submission: "Although the proposal past performance project does not meet the required new construction value of \$25,000,000.00, G-W Management Services feels that the proposed project is relevant in scope and cost due to P-656 price not meeting \$25,000,000.00 budget solicited." AR, Exh. 6, Protester Revised Technical Proposal at 4, 6, 8.

After reviewing G-W Management's revised proposal, the SSEB found that the protester had not addressed the concerns regarding the firm's relevant experience and determined that the assessed deficiency remained uncorrected. As a result, the SSEB rated the protester's revised technical proposal as "unacceptable" for failing to meet the experience reference size requirement. AR, Exh. 8, May SSEB Report at 3, 6-7. Specifically, the SSEB noted:

Upon review of the Offeror's responses to the discussion questions, the Offeror has failed to submit a minimum of 3 projects that are over \$25M as incorporated in Amendment 0003. Of the three submitted projects, three projects did not meet criteria for Size per the RFP. Therefore, the deficiency remains unchanged, and the rating remains unchanged as **UNACCEPTABLE**.

Id. at 6.

⁴ An adjectival rating of "unacceptable" was defined as: "Proposal does not meet requirements of the solicitation and, thus, contains one or more deficiencies and is unawardable, and/or risk of performance is unacceptably high." AR, Exh. 1, SSP at 21.

An agency's evaluation of experience is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. *JSF Sys., LLC*, B-410217, Oct. 30, 2014, 2014 CPD ¶ 328 at 3. A protester's disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. *Korea Res. Env't Co. Ltd.*, B-409996, Oct. 3, 2014, 2014 CPD ¶ 298 at 3. Further, a clearly stated RFP requirement is considered material to the needs of the government. *Trace Sys., Inc.*, B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 3. A proposal that fails to conform to a material term of the solicitation is unacceptable and may not form the basis for award. *JSF Sys., LLC, supra*.

Here, the solicitation clearly stated that offerors were required to submit projects that were each valued at \$25 million or greater. RFP at 30, 109. The protester did not submit any project references with values that met the \$25 million threshold.⁵ As such, we find that the agency reasonably assessed the protester's proposal as containing a deficiency for failing to meet the material requirement of submitting projects that were similar in size to the current requirement--i.e., projects valued at \$25 million dollars or greater. See *Herve Cody Contractor, Inc.*, B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 4 (finding protester's argument that cumulative experience was relevant was inconsistent with RFP's unambiguous requirement that offeror identify a minimum of three projects of similar scope). Further, we find that the agency acted in accordance with the solicitation when the Navy found the protester's proposal to be ineligible for award. In this regard, we find nothing objectionable with the agency's determination that:

Per the RFP, any proposal found to have a deficiency in meeting the stated solicitation requirements or performance objectives will be

⁵ G-W Management, for the first time in its comments, alleges that the contract values in its references did, in fact, exceed the threshold values when considering inflation. Comments & Supp. Protest at 2. Nothing in the solicitation, however, required the agency to account for inflation when determining whether experience references were similar in size to the current requirement. Nor for that matter, did the protester assert such in either its initial or revised technical proposals. As such, we find the protester's arguments here to be an untimely piecemeal presentation of the issues.

Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *Star Food Serv., Inc.*, B-408535, Nov. 1, 2013, 2013 CPD ¶ 246 at 4. We will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3 n.2. To the extent the protester now presents additional arguments in its comments, there is no evidence that the arguments could not have been timely asserted in its initial protest. Accordingly, this allegation is untimely and will not be considered. *Id.*; 4 C.F.R. § 21.2(a)(2).

considered ineligible for award, unless the deficiency is corrected through discussions. Discussions were held, however, this offeror failed to correct the deficiency noted, therefore, remaining ineligible for award.

AR, Exh. 8, May SSEB Report at 21; see RFP at 29; *JSF Sys., LLC, supra*. Accordingly, we find no merit to this allegation, and it is denied.

Competitive Range

Next, the protester alleges that the Navy violated section 15.503(a)(1) of the Federal Acquisition Regulation (FAR), by failing to notify the protester that its proposal had been eliminated from the competitive range. Comments & Supp. Protest at 7. The agency defends its evaluation and asserts the allegation is meritless. Supp. COS/MOL at 4-5. We agree.

The FAR's pre-award notice provision states: "The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered." FAR 15.503(a)(1). The protester's allegation is based on the mistaken premise that the firm had been eliminated from the competitive range. Comments & Supp. Protest at 6 ("[T]he Contracting Officer should have provided G-W notice that G-W was no longer in the competitive range.").

The record before us, however, provides no support for this contention. In fact, the record reveals the following: (1) the agency evaluated initial proposals from all offerors; (2) the SSEB assessed a deficiency and assigned a rating of "unacceptable" under the experience factor to the protester's proposal; (3) the agency notified G-W Management that it was within the competitive range and entered into discussions with the protester; (4) the agency sought a revised technical proposal and final revised prices from the protester; (5) the SSEB evaluated the protester's revised technical proposal; and (6) the agency determined that the assessed deficiency had not been addressed by the protester's revised proposal and was therefore ineligible for award.⁶

Thus, the record does not support the protester's contention that the firm's proposal had been excluded from the competitive range. On the contrary, the record clearly demonstrates that the agency's evaluation was consistent with terms of the solicitation

⁶ Citations to the numbered items are as follows: (1) COS/MOL at 3-4; (2) AR, Exh. 4, January SSEB Report at 7-8; (3) Protest, exh. 4, Discussion Letter at 1 ("Your proposal has been determined to be within the competitive range for the purpose of entering into discussions."); (4) *Id.* ("The revision to your proposal is due 12 May 2023 by 10:00 am (EST)."); (5) AR, Exh. 8, May SSEB Report; and (6) *Id.* at 21; AR, Exh. 11, Source Selection Decision at 1.

and the provisions of the FAR regarding the conduct of discussions. Because there is no factual basis to conclude that the protester was excluded from the competitive range, we find no merit to this argument, and the allegation is denied. See *Institute for Advanced Safety Stud.--Recon.*, B-221330.2, July 25, 1986, 86-2 CPD ¶ 110 at 3 (finding circumstances did not meet FAR provision's requirement for pre-award notice).

Tradeoff Determination

G-W Management also challenges the agency's best-value tradeoff analysis. Protest at 5. Because we conclude that the Navy reasonably found the protester's proposal ineligible for award, we need not address this allegation, as G-W Management is not an interested party to challenge that tradeoff decision.

Under our Bid Protest Regulations, only interested parties may protest procurement actions by federal agencies. 4 C.F.R. § 21.1(a). 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 by the failure to award a contract. 4 C.F.R. §21.0(a)(1). A protester is not an interested party where it would not be in line for an award if its protest were sustained. *TASC, Inc.*, B-412674.2 *et al.*, Aug. 25, 2016, 2016 CPD ¶ 230 at 8; *JSF Sys., LLC*, *supra* at 4.

As discussed above, the agency reasonably assessed a deficiency to the protester's proposal under the experience factor. Despite raising this concern in discussions, the Navy determined that the protester failed to correct or sufficiently address the deficiency in the firm's revised technical proposal. Therefore, consistent with the terms of the solicitation, the Navy deemed G-W Management's proposal to be ineligible for award. RFP at 29; AR, Exh. 8, May SSEB Report at 21. As such, G-W Management cannot establish that it is an actual or prospective bidder or offeror whose direct economic interest would be affected by the agency's best-value tradeoff decision because its proposal is ineligible for award. *J&J Worldwide Servs.*, B-418148.3, June 30, 2020, 2020 CPD ¶ 312 at 7.

The protest is denied.

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General Counsel