



Decision

Matter of: Tactical Revolution, LLC

File: B-422269

Date: February 27, 2024

Theodore K. Pernal and Timo Tervola for the protester.
Robert D. English, Esq., Carlos Pedraza, Esq., Ethan S. Chae, Esq., and Camille Small-Simon, Esq., Department of Justice, for the agency.
Nathaniel S. Canfield, Esq., and Evan D. Wesser, 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 by failing to review product instructions is denied where the protester has not demonstrated how reviewing those instructions would have resulted in a more favorable evaluation.

DECISION

Tactical Revolution, LLC, a small business of Jupiter, Florida, protests the decision of the Department of Justice, Federal Bureau of Investigation, not to award the protester a contract for ballistic resistant shields under request for proposals (RFP) No. 15F06723R0000173. The protester contends that the agency unreasonably evaluated the protester's proposal.

We deny the protest.¹

¹ Because the protester elected to proceed with its protest *pro se*, *i.e.*, without counsel and therefore no protective order was issued, protected information cannot be included in this decision. Accordingly, our discussion of some aspects of the procurement is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

BACKGROUND

The agency issued the RFP on May 17, 2023, pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15 and amended it three times. Contracting Officer's Statement (COS) at 1; Agency Report (AR), Tab 3-1, RFP at 7. The RFP sought proposals for the provision of multiple types of ballistic resistant shields: pistol-rated shield (with viewport or alternate viewing system); rifle-rated, compact size shield (with viewport or alternate viewing system); rifle-rated, large size shield with viewport; and rifle-rated, large size shield without viewport. RFP at 7. Only the rifle-rated, large size shield without viewport category is relevant here.

The RFP anticipated award of two indefinite-delivery, indefinite-quantity (IDIQ) contracts for the provision of rifle-rated, large size shields without viewport. *Id.* The RFP contemplated award of contracts with a 12-month base ordering period and four 12-month option periods, as well as a 6-month option to extend services. *Id.* at 15, 37. Additionally, the RFP anticipated that the primary and secondary awardees' IDIQ contracts would have maximum values of \$14,000,000 and \$4,000,000, respectively. *Id.* at 8.

Pursuant to the RFP's instructions, proposals were to consist of a technical proposal, a price proposal, past performance information, and ballistic resistant shield samples. *Id.* at 78. Relevant to the issues presented in this protest, the RFP required each technical proposal to include various supporting information, including "[d]etailed instructions on the proper set-up and use of the shield and all submitted accessories." *Id.* With respect to the ballistic resistant shield samples, the RFP instructed offerors to provide five shields, as well as two "samples of each accessory that the [o]fferor plans to make available on the contract." *Id.* at 80. Offerors further were to provide "[d]etailed operating instructions for any/all accessories." *Id.*

As relevant here, the RFP provided for evaluation of technical proposals and ballistic resistant shield samples through a three-phase evaluation process. *Id.* at 84. In phase I, the agency would evaluate the technical proposal to determine whether it included all of the required information. *Id.* at 85. Additionally, a technical evaluation board (TEB) would evaluate the sample shields to determine whether they met specifications set forth in the RFP's statement of work. *Id.* The agency would assess both of these aspects on a pass/fail basis, with those submissions successfully passing the phase I evaluations advancing to the phase II evaluation. *Id.*

The phase II evaluation was to consist of an assessment of the submitted ballistic resistant shield samples and, if applicable, accessories, to be performed by Department of Justice law enforcement professionals, to whom the RFP referred as assessors. *Id.* The assessors would evaluate the shields and accessories through a controlled series of events. *Id.* As set forth in the RFP, the assessors would participate in shooting events, consisting of a series of drills that may include dry fire, live fire, and/or non-lethal training ammunition. *Id.* at 86. The assessors also would participate in practical

application events, consisting of scenarios such as arrest, structure clearing, low light operations, and vehicle containment. *Id.*

The assessors were to evaluate the shields and accessories in each of the following six categories:

1. Perceived weight - the user should consider the overall weight of the shield system (shield and accessories). The user should anticipate carrying the shield for an extended period of time. The user should consider any design features that allow the load of the shield to be distributed, thereby making the perceived weight more tolerable.
2. Useability and Design - the user should consider the shield system and determine the degree to which it would be helpful in real-world law enforcement applications. Does the shield system perform in a manner that would be of benefit to law enforcement as it relates to their team tactics and standard operating procedures? Does the design of the shield aid in the safe operation of the user and his/her team?
3. Comfort - after wearing and utilizing the shield over a period of time, do the design features contribute to the user's overall comfort and minimize discomfort felt by the user? Does use of the shield result in significant fatigue or discomfort?
4. Size - is the size of the shield adequate for the intended purpose[?] Users should consider all available size options for a particular submission.
5. Durability/craftsmanship - the sample shield and accessories should exhibit high standards of construction: straight lines, consistent thickness, secure handles and accessories, no loose threads, no stitching errors, or material imperfections. The shield and accessories should maintain their appearances and integrity throughout the assessment events.
6. Features/accessories - The user should consider the features inherent to the shield's design as well as the included accessories and determine if those are of benefit to law enforcement. Do the design features and accessories enhance the shield system? If the shield utilizes a weight distribution system, does that system allow the user to quickly jettison the shield?

Id. at 86-87.

Each of the 10 assessors would score the samples in each category on a numerical scale of 1 to 7; thus, the maximum score possible in phase II was 420 points. *Id.* at 86. The RFP provided that only the top two scoring submissions would advance to

phase III, which would consist of ballistic resistance testing of the sample shields. *Id.* at 87. If any of the advancing samples failed during the phase III testing, the RFP permitted the agency to advance the next-highest-scoring sample from phase II to the phase III testing. *Id.* at 88.

The agency received 10 proposals in the rifle-rated, large size shield without viewport category, including the protester’s proposal. COS at 3. The TEB assigned the protester’s proposal a passing rating in the phase I evaluation, which included the conclusion that the protester had submitted instructions for its samples. AR, Tab 5-1, Technical Evaluation Report at 19-20. Consequently, the agency proceeded to evaluate the protester’s samples in phase II. COS at 4.

In the phase II evaluation, the agency’s assessors scored the protester’s samples as follows:

Perceived Weight	Useability and Design	Comfort	Size	Durability/ Craftsmanship	Features/ Accessories	Total
2	1	2	5	4	1	15
2	2	2	2	4	4	16
6	3	3	5	3	2	22
3	3	3	3	4	3	19
3	3	2	2	3	3	16
3	1	3	1	2	2	12
5	5	5	6	5	4	30
4	2	2	4	4	3	19
6	6	5	6	5	6	34
3	3	3	4	4	4	21

AR, Tab 5-2, User Assessment Spreadsheet.

Thus, the protester’s proposal received a total score of 204 out of a possible 420 points in the phase II evaluation, which ranked it eighth among the 10 proposals the agency evaluated. AR, Tab 5-1, Technical Evaluation Report at 23. As the protester’s proposal was not one of the top two scoring submissions, it did not advance to the phase III evaluation. COS at 5.

On December 13, 2023, the agency notified the protester that its proposal was unsuccessful and that the agency had made awards to two other offerors. AR, Tab 6, Unsuccessful Offer Letter at 1-2. That same day, the protester requested a debriefing, which the agency provided in writing on December 19. AR, Tab 7, Request for Debriefing at 2; Tab 8-1, Debriefing Email; Tab 8-2, Debriefing. This protest followed.

DISCUSSION

The protester alleges that the agency's evaluation of its ballistic shield samples in phase II was unreasonable because the agency's assessors did not review instructional videos, links to which the protester included in its proposal. Protest at 2-3. Had the assessors reviewed those videos, the protester contends, its proposal would have received a higher score in phase II and advanced to phase III.² *Id.* The agency raises several arguments in response, see Memorandum of Law at 6-13, but we deny the protest because the protester has not clearly articulated how the agency's evaluation would have changed if the assessors had reviewed the instructional videos.

The evaluation of an offeror's proposal is a matter within the agency's discretion. *National Gov't Servs., Inc.*, B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *22nd Century Techs., Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 8. An offeror's disagreement with the agency's evaluation judgment, without more, is insufficient to establish that the agency acted unreasonably. See *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 3.

Additionally, competitive prejudice is an essential element of a viable protest. *Coast to Coast Computer Prods., Inc.*, B-419116, B-419116.2, Dec. 18, 2020, 2020 CPD ¶ 370 at 10-11. 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. *Id.* Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

As an initial matter, we note that the RFP did not contemplate a qualitative evaluation of offerors' instructions. As discussed above, the RFP stated that the agency would evaluate instructions only as part of the pass/fail phase I evaluation to determine whether proposals included the instructions as required. See RFP at 78, 85. The protester does not contend, however, that the agency failed to qualitatively evaluate its instructions. Rather, the protester alleges that the agency's assessors failed to review those instructions prior to conducting the phase II evaluation, and contends that if they had done so, the protester's shields would have scored more highly.

² The protester also alleged unequal treatment and that the terms of the RFP were vague regarding how the agency would conduct the phase II evaluation; we dismissed those allegations for failing to clearly state a legally sufficient ground of protest and for presenting an untimely challenge to the terms of the solicitation, respectively. Notice of Resolution of Req. for Dismissal at 1-2.

In support of this argument, however, the protester provides only the assertion that its shields would have scored higher if the assessors had viewed the videos, without any substantive explanation how viewing the videos would have led to higher scores under the evaluation criteria set forth in the RFP. For example, the protester states that the assessors “could not effectively and properly operate the shield during the scenarios and shooting drills” without viewing the videos, Protest at 2, but provides little to no explanation why failure to view the videos would lead to improper operation or, more importantly, how that improper operation would lead to lower scores in the phase II evaluation categories. The protester contends that “the videos would have provided essential insights into the weight distribution system,” Protest, exh. 3.d.iv., Scoring Analysis at 5, but does not demonstrate how those insights would have led to a more favorable evaluation. Similarly, the protester initially contended that its phase II score might have increased by as much as 40 points if the assessors had viewed the video instructions, *id.*, but did not meaningfully articulate how viewing the instructions would have resulted in a higher point score.³ In its comments, the protester revised this figure, contending that there was a “clear potential for a significant positive point swing (from 40-149)[,]” Comments at 4, but again provided no explanation how the agency’s evaluation would have been affected in that manner by review of the instructional videos.

In this regard, we have recognized that technical evaluations involve both objective and subjective judgments, and procuring agencies have considerable discretion in making subjective judgments regarding the relative merits of competing proposals. *Science Applications Int’l Corp.*, B-421660, B-421660.2, Aug. 8, 2023, 2023 CPD ¶ 225 at 12; *WorldWide Language Res., Inc.*, B-420900.3, B-420900.5, Apr. 26, 2023, 2023 CPD ¶ 95 at 9. The RFP here clearly contemplated that the assessors would make subjective judgments. For example, with respect to perceived weight, assessors were charged with, among other considerations, “consider[ing] the overall weight of the shield system (shield and accessories),” including “anticipat[ing] carrying the shield for an extended period of time.” RFP at 86. Similarly, for comfort, the assessors were to consider “after wearing and utilizing the shield over a period of time, [whether] the design features contribute to the user’s overall comfort and minimize discomfort felt by the user,” and whether “use of the shield result[s] in significant fatigue or discomfort[.]” *Id.* And for size, the assessors were to consider whether the shield is “adequate for the intended purpose.” *Id.*

As these examples reflect, the RFP charged the assessors with making a number of subjective determinations, such as whether the assessor found a proposed shield too heavy, comfortable, or adequately sized. As reflected in the unredacted evaluation report submitted by the agency for GAO’s *in camera* review, many of the assessors’

³ As the record demonstrates, even if the protester’s phase II score had increased by 40 points, its proposal nevertheless would have remained ranked eighth, and therefore would not have been one of the top two scoring submissions, as required by the RFP to advance to the phase III evaluation. See AR, Tab 5-1, Technical Evaluation Report at 23.

comments with respect to the protester's proposed shields reflected such subjective judgments involving weight, comfort, and size/layout. See AR, Tab 5-2, Technical Evaluation User Assessment. In light of the nature of the assessors' evaluation findings based on their use of the protester's shields and in the absence of any compelling argument from the protester on how its instructional videos would have directly borne on the assessors' perceptions in using the shields, we find no basis on which to sustain the protest.

In short, the protester's bare assertion that its ballistic shields would have been more favorably evaluated if the assessors had viewed the instructional videos amounts to nothing more than disagreement with the agency's judgment, which, alone, is not sufficient to show that the agency's evaluation was unreasonable. See, e.g., *ESAC, Inc.*, B-413104.34, Apr. 17, 2019, 2019 CPD ¶ 162 at 6 (protest allegation denied where the protester provided no explanation how its proposal or other documents detailed information that rendered the evaluation unreasonable); *Globecomm Sys., Inc.*, B-405303.2, B-405303.3, Oct. 31, 2011, 2011 CPD ¶ 243 at 9 (denying protest where the protester "copied portions of its proposal--yet provided virtually no supporting explanation as to why the various copied portions of its proposal render[ed] the agency's criticisms invalid"). Additionally, because the protester has not reasonably explained how viewing the instructions would have led to the agency evaluating the protester's proposal as one of the top two scoring submissions in phase II, the protester has not demonstrated that it was prejudiced by any failure by the assessors to view the video instructions.

The protest is denied.

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General Counsel