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Decision

Matter of: Insight Technology Solutions, LLC

File: B-421764.6; B-421764.7

Date: March 27, 2024

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Stephen P. Ramaley, Esq., Roger V. Abbott, Esq., and Lauren S. Fleming, Esq., Miles & Stockbridge P.C., for THOR Solutions, LLC, the intervenor.

Gabriel D. Soll, Esq., Department of Homeland Security, for the agency.

Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's evaluation of proposals was unreasonable is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
 2. Protest that the agency failed to credit protester's corporate experience reference with American Bureau of Shipping experience is dismissed where the protester first raised this protest ground more than 10 days after it knew or should have known the basis for protest.
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DECISION

Insight Technology Solutions, LLC, of Annapolis, Maryland, protests the issuance of a task order to THOR Solutions, LLC (THOR), of Arlington, Virginia, under task order request for proposals (TORFP) No. 70Z02323R45900001, issued by the Department of Homeland Security, United States Coast Guard (USCG), for contractor support services. Insight asserts that USCG's evaluation of its proposal and THOR's proposal was unreasonable.

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

BACKGROUND

This task order competition was conducted pursuant to Federal Acquisition Regulation (FAR) subpart 16.5. The TORFP was issued to holders of the General Services Administration, One Acquisition Solution for Integrated Services indefinite-delivery,

indefinite-quantity (IDIQ) contract to obtain contractor support services for the Ship Design and Systems Engineering Division, Human Systems Integration Division, and Surface Forces Logistics Center Engineering Services Division. Agency Report (AR), Tab A.1, TORFP Conformed at 2. Services would include “complete life cycle management of surface assets from concept development through disposal” and “studying, analyzing, and evaluating engineering problems, and developing solutions.” *Id.* The TORFP anticipated issuance of a fixed-priced task order with a 12-month base period, a 1-year option period, and an optional 6-month extension period under FAR clause 52.217-8. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 3. The initial due date for proposals was April 3, 2023. *Id.*

The solicitation contemplated issuance of the task order to the offeror whose proposal represented the best value to the government, considering three factors: corporate experience, management approach, and price. TORFP at 8, 41-42. The corporate experience factor was more important than the management approach factor. Those two factors, when combined, were significantly more important than the price factor. *Id.* at 42.

Under the corporate experience factor, proposals were required to provide at least one--but no more than four--references that described “experience performing requirements similar in scope and complexity to those in the solicitation.” *Id.* at 38. The TORFP provided that, “to be considered similar in scope and complexity, at a minimum, the contract reference should show similar technical difficulty, show relevant requirements, and show the company’s experience providing specialized engineering capabilities similar to the requirements of this solicitation.” *Id.* The TORFP “encouraged” offerors “to identify relevant experiences with a large number of specialized engineers and experience performing the highly technical naval/marine engineering tasks identified in the solicitation.” *Id.*

The solicitation provided that the government would consider recency, relevance, and length of experience in its evaluation of offeror experience; references would not be considered recent if they began before February 2016. *Id.* at 41-42. Regarding relevance, “[s]imilarity of scope and complexity [would] be considered based on the types of services performed under each reference effort, as well as the type and number of specialized FTEs [full-time equivalent] provided under those efforts.” *Id.* at 41. The TORFP advised offerors that the “government may rate proposals demonstrating experience managing 50 or more FTEs more favorably,” and that the “government may also rate proposals demonstrating experience in highly technical naval/marine engineering tasks more favorably.” *Id.*

The solicitation provided for ratings of outstanding, good, satisfactory, marginal, or unsatisfactory under both the corporate experience and the management approach

factors.¹ AR, Tab A.7, TORFP attach. 6, Adjectival Ratings at 2-3. The degrees of relevance were not defined in the TORFP or the evaluation plan. COS/MOL at 2.

Under the management approach factor, proposals were to “provide a sound, compliant approach that meets all requirements listed in the [statement of work (SOW)] and demonstrates a thorough knowledge and understanding of the requirements.” TORFP at 40. “At a minimum,” offerors were to address the following: an effective approach for ensuring that the USCG receives well-qualified staff that will continue to meet the evolving needs of the USCG; an effective approach for managing relationships with teaming partners and subcontractors; and a summary of a total compensation plan (TCP) that adheres to the provision at FAR clause 52.222-46, Evaluation of Compensation for Professional Employees. *Id.*

The TORFP required offerors to submit a completed price proposal in accordance with the contract line item number structure outlined in attachment 3, pricing worksheet, and attachment 4, TCP. *Id.* Insight does not challenge USCG’s evaluation of price proposals.

Initial Source Selection Decision and Protest

¹ A rating of outstanding under the corporate experience factor indicated:

Proposal demonstrates the highest degree of prior recent and relevant efforts. Proposal includes multiple instances of performance of similar efforts, including at least one effort performing highly specialized marine engineering work. If subcontractors/teaming partners experiences are proposed, at least one prior relevant effort showed the offeror acting as a prime. Includes at least one prior experience of similar scope performed for multiple years under the same contract, or as a follow-on effort for the same customer. Weaknesses, if any, are of small impact. No significant weaknesses or deficiencies are identified in the evaluation. Risk of unsuccessful performance is low.

AR, Tab A.7, Adjectival Ratings at 2. A rating of good indicated:

Proposal demonstrates a high degree of prior recent and relevant efforts. Proposal includes multiple instances of performance of similar efforts and may include at least one effort performing highly specialized marine engineering work. If subcontractors/teaming partners are proposed, at least one prior relevant effort showed the offeror acting as a prime. May include one prior experience of similar scope performed for multiple years under the same contract, or as a follow-on effort for the same customer. No significant weaknesses or deficiencies are identified in the evaluation. Risk of unsuccessful performance is low to moderate.

Id.

USCG received five proposals by April 3, 2023, the closing date for receipt of proposals, including proposals from Insight and THOR. COS/MOL at 5. The evaluation results for Insight and THOR were as follows:

Offeror	Factor		
	Corporate Experience	Management Approach	Price
Insight	Good	Good	\$64,601,850
THOR	Outstanding	Satisfactory	\$63,191,077

Id. USCG issued its initial source selection decision document (SSDD) on June 9, 2023, and selected THOR’s proposal as representing the best value. *Id.* Insight filed a protest with our Office following the issuance of the task order to THOR. *Id.* Our Office sustained Insight’s protest, concluding that the USCG unreasonably evaluated technical proposals and conducted a flawed best-value tradeoff analysis. *See Insight Tech. Sols., LLC, B-421764.2 et al., Sept. 29, 2023, 2023 CPD ¶ 224 at 1.* Our Office recommended that USCG conduct and document a reevaluation of proposals and perform a new best-value tradeoff analysis. *Id.* at 9.

Current Protest

In response to our recommendation, the agency reevaluated proposals. The results of the revised evaluation were as follows:

Offeror	Factor		
	Corporate Experience	Management Approach	Price
Insight	Good	Good	\$64,601,850
THOR	Outstanding	Satisfactory	\$63,191,077

AR, Tab F.2, Addendum to SSDD at 2. USCG explains that although some changes were made to the evaluation, the overall adjectival ratings remained the same. COS/MOL at 6.

Following the reevaluation, the source selection authority (SSA) again selected THOR’s proposal for issuance of the task order. *Id.* The SSA found that while Insight’s proposal showed a high degree of relevant prior experience overall, with two contract references of the highest relevance and two contract references of some relevance, THOR’s proposal showed the highest degree of relevant prior experience, with two contract references of the highest relevance, one reference considered highly relevant, and one considered relevant. AR, Tab F.2, Addendum to SSDD at 4. The SSA further noted that “while the experiences of the proposed teams with regard to ABS [American Bureau of Shipping] and NVR [Naval Vessel Rules] rules is comparable, THOR’s team does include a slight advantage with an additional third team member with specific

experience in ABS rules.”² *Id.* The SSA also noted that “[b]ecause THOR demonstrated its own experience performing highly technical work in support of naval and marine engineering efforts, it will better understand how to manage its team in performance of this effort.” *Id.* In summary, the SSA found that while Insight’s proposal was rated higher than THOR’s under the management approach factor, the differences between the proposals under that factor were minor and insufficient to overcome the price premium associated with Insight’s proposal and THOR’s advantages under the corporate experience factor. *Id.* at 5.

USCG informed Insight that it was not selected to receive the task order on December 15, 2023. Protest at 4. This protest followed.³

DISCUSSION

Initially, Insight argues that USCG unreasonably assigned its proposal a rating of good under the corporate experience factor despite its proposal exceeding the criteria required for a rating of outstanding. Protest at 2. In its supplemental protest, Insight challenges two of the agency’s findings pertaining to offeror corporate experience. The protester argues that USCG unreasonably concluded that only THOR submitted a third reference under the corporate experience factor that demonstrated ABS experience. Supp. Protest and Comments at 2-3. Insight also argues that the agency’s evaluation went beyond the terms of the solicitation when it found that THOR’s experience would make it better able to manage its team. *Id.* at 3. For reasons discussed below, we deny the protest in part and dismiss it in part.⁴

In reviewing protests of an award in a task order competition, we do not reevaluate proposals, but examine the record to determine whether the evaluation and source

² In the earlier protest, USCG explained that ABS is a classification organization that “develops, maintains, and promulgates vessel classification rules that refer to safety rules, guidelines, standards, and other criteria for the design, construction, and survey of marine vessels and structures.” *Insight Tech. Sols, LLC, supra*, at 4 n.3. USCG further explained that one set of these rules is the Naval Vessel Rules (NVR); the NVR pertain to United States Navy (USN) shipbuilding practices and are intended to permit the USN to capture best practices from the commercial shipbuilding industry while maintaining the ability to leverage and integrate modern technologies. *Id.* USCG noted that each shipbuilding program has a different requirement for the type of ABS classification, which in turn implicates different ABS rules. *Id.* Some shipbuilding programs will utilize NVR. *Id.* For that reason, USCG maintains that “familiarity with either or both rulesets is useful as it may be part of tasking under the instant effort.” *Id.*

³ As noted above, the total evaluated price of the task order at issue here is over \$10 million; accordingly, this procurement is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

⁴ Although we do not address every argument raised by the protester, we have considered them and find none to be meritorious.

selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Ohio KePRO, Inc.*, B-417836, B-417836.2, Nov. 18, 2019, 2020 CPD ¶ 47 at 4.

For its first protest ground, Insight argues that a "sentence-by-sentence review" of the descriptions for the adjectival ratings indicates that its proposal deserved a rating of outstanding under this factor instead of a rating of good. Protest at 34. In support of this argument, Insight compares its proposal to the definition for outstanding in four areas. First, Insight argues that its proposal provided multiple instances of performance of similar efforts, including at least one effort performing highly specialized marine engineering work. *Id.* Second, Insight argues that three of its references have been performed for multiple years for the same customer, which, according to Insight, is triple the amount of experience required for a rating of outstanding. *Id.* Third, Insight argues that it submitted a reference for itself performing as a prime contractor. *Id.* at 35. Fourth, Insight points out that its proposal received no weaknesses, significant weaknesses, or deficiencies. *Id.* Taking into consideration these facts, Insight argues that it was unreasonable for its proposal to receive any rating other than outstanding under the corporate experience factor. *Id.*

USCG responds that Insight's protest misapplies the adjectival rating system. Specifically, USCG argues that the definitions of the adjectival ratings listed prerequisites that a proposal must satisfy to be eligible to receive a specific rating, but satisfying the prerequisites did not necessarily guarantee that a proposal would receive that rating. COS/MOL at 7.

We have no basis to object to the USCG's assignment of a rating of good to Insight's proposal under the corporate experience factor. Regarding the four specific challenges raised by Insight, we agree with USCG that Insight misapplies the adjectival ratings. The rating system provided a list of prerequisites that a proposal must satisfy before it would be eligible to receive a specific rating, but the rating system did not guarantee a proposal would receive that rating simply because the prerequisites were satisfied. For instance, a rating of outstanding provided that the proposal must include multiple instances of performance of similar efforts, including at least one effort performing highly specialized marine engineering work. AR, Tab A.7, Adjectival Ratings at 2. The solicitation did not provide that the proposal would receive a rating of outstanding if it demonstrated this experience; it provided only that it was necessary to have this level of experience. Therefore, Insight's argument that meeting these requirements, without more, mandated that it receive a rating of outstanding is without merit. For these reasons, we deny this protest ground.

As its next protest ground, Insight argues that USCG unreasonably concluded that only THOR submitted a third reference with ABS experience. Supp. Protest and Comments at 22. According to Insight, it also should have received credit for submitting three

references that demonstrated ABS experience.⁵ *Id.* USCG requests dismissal of this argument as untimely because Insight knew, prior to its debriefing on December 20, 2023, and at the time it filed its protest, that the agency had not given its third reference credit for ABS experience; yet, Insight failed to raise the argument until it filed its supplemental protest in the current proceeding. Supp. COS/MOL at 3. In response, Insight argues that it was unaware that a reference could receive credit for ABS experience alone until it received the agency report in the current proceeding. Comments on Supp. AR at 2.

We agree with USCG that this protest ground is untimely. Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Saalex Sols., Inc.*, B-418729.3, July 23, 2021, 2021 CPD ¶ 298 at 3. Under our timeliness rules, protests based on allegations other than alleged improprieties in a solicitation must be filed not later than 10 days after the protester knew or should have known of the basis for its protest, whichever is earlier, or within 10 days of the date a required debriefing is held. 4 C.F.R. § 21.2(a)(2).

Here, Insight was provided the results of its proposal's reevaluation during its debriefing on December 20, 2023, which alerted Insight that its proposal did not receive credit for a third reference that demonstrated ABS experience. Protest, exh. A, Unsuccessful Offeror Notice and Debriefing at 5-13. Although Insight argues that it had no reason to believe that proposals could receive credit for ABS experience alone, the record does not support this position. The initial technical evaluation team (TET) report noted that the TET had identified ABS experience alone in Insight's fourth reference. AR, Tab F.2, Addendum to SSDD at 3. In our view, this was sufficient to put the protester on notice that credit for ABS experience alone was possible. Therefore, if Insight believed that a third reference demonstrated ABS experience and should have received credit for this experience, the time to raise this argument was no later than 10 days after Insight received the results of its proposal's reevaluation. Insight instead raised this argument for the first time in its supplemental protest filed on February 1. This protest ground is thus untimely and is dismissed.

Finally, Insight argues that USCG improperly evaluated THOR's proposal by crediting it for subcontractor management under the corporate experience factor instead of the management approach factor. Supp. Protest at 24. Insight bases this argument on the SSA's statement in the SSDD that THOR's experience performing highly technical work indicated that "it will better understand how to manage its team." *Id.* at 23. USCG explains, however, that the SSA was not assessing THOR's ability to manage

⁵ We note that in its supplemental protest, the protester challenged only the agency's failure to also credit its proposal for three references with ABS experience; that is, it did not assert that the awardee should not have received credit for its third reference. See Comments and Supp. Protest at 21-23 (arguing that Insight submitted three references that "plainly demonstrated ABS experience and should have been credited with such experience").

subcontractors but was explaining that THOR's corporate experience with highly technical work demonstrated that THOR would be able to successfully perform this effort. Supp. COS/MOL at 9. We have no basis to object to the SSA's conclusion.

The solicitation provided that USCG would evaluate corporate experience to assess, among other things, the offeror's ability to successfully perform the task order requirements. TORFP Conformed at 2. As USCG points out, the conclusion that THOR demonstrated the ability to manage its team did not concern the management of subcontractors, nor did it pertain to the management subfactor. Supp. COS/MOL at 9 n.6. Instead, it was a reasonable inference concerning THOR's management of its personnel based on its prior experience. *Id.* at 9. In other words, the consideration of team management was reasonably encompassed within the stated evaluation criteria for corporate experience.

In this regard, our Office has explained that an agency properly may apply evaluation considerations that are not expressly outlined in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation criteria so long as there is a clear nexus between the stated criteria and the unstated consideration. *Information Int'l Assocs., Inc., B-416826.2 et al.*, May 28, 2019, 2019 CPD ¶ 200 at 4. Here, we conclude that USCG's consideration of an offeror's ability to manage personnel is reasonably encompassed within the corporate experience factor. For instance, under the corporate experience factor, offerors were "encouraged to identify relevant experiences with a large number of specialized engineers." TORFP at 38. This preference indicates that USCG planned to consider an offeror's experience with a large team of employees under the corporate experience factor. Accordingly, this protest ground is denied.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel