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Decision

Matter of: North State Resources, Inc.

File: B-282140

Date: June 7, 1999

Jefferey J. Swanson, Esq., for the protester.

William L. Henson, Esq., and Daniel J. Dykstra, Jr., Esq., U.S. Army Corps of Engineers, for the agency.

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DIGEST

1. Protest against price evaluation which was limited to evaluation of an undisclosed hypothetical task order based on line item prices furnished by offerors, without agency obtaining technical input from the offerors, is untimely where price evaluation methodology was clear on face of solicitation, and protester did not file its protest prior to closing time for receipt of initial proposals.
2. Failure of individual evaluators to comment upon proposals under each evaluation factor in evaluation worksheets does not render evaluation flawed--there is no general requirement for such all-inclusive comments--particularly where consensus evaluation sheet contained references to proposal advantages and disadvantages, as well as consensus scores.
3. Where solicitation contemplated award of service contract to a firm qualifying under section 8(a) of the Small Business Act, and included the provision at Federal Acquisition Regulation § 52.219-14 concerning limitation on subcontracting, agency properly limited its consideration to the offeror's experience as prime contractor.

DECISION

North State Resources, Inc. (NSR) protests the award of a contract to Dean Ryan Consultants & Designers, Inc. under request for proposals (RFP) No. DACW05-98-R-0013, issued by the U.S. Army Corps of Engineers for environmental studies, evaluations and consulting work for portions of eight western states. NSR principally asserts that the agency misevaluated proposals.

We deny the protest.

The RFP contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract under the section 8(a) (small disadvantaged business) program, for a base year, with 4 option years, to the responsible firm whose proposal was determined to be most advantageous to the government. RFP § 4, at M-3.¹ The evaluation was to be based on the following major evaluation factors, together with price: (1) past performance on completed projects; (2) technical capabilities of key personnel; (3) organizational experience and approach; and (4) small, small-disadvantaged, women-owned, minority business partnership compliance. RFP § 8, at M-4 to M-8. The non-price factors together were weighted equally with price. RFP § 4, at M-3.

Concerning price, the RFP stated that the hourly rates, other direct costs, and escalation factors would be evaluated “as a whole, hypothetical task order [HTO], to reflect the actual mix of hours, other direct costs and escalation factors anticipated during the life of the contract.” RFP § 5, at M-3. The HTO was not disclosed in the RFP. Finally, the RFP stated that the agency would use cost or price analysis to evaluate price not only to determine whether the price was reasonable, but also to determine the offeror’s understanding of the work and ability to perform the contract. RFP § 5, at M-3. The RFP also stated that it was possible that an award would be made after receipt of proposals, without further negotiations; therefore, it was important that all proposals be submitted initially on the most favorable terms. RFP § 4, at M-3.

Four offers were received from 8(a) firms. Evaluation of these offers was performed by an agency source selection evaluation board (SSEB). The individual members of the SSEB reviewed each proposal; the SSEB then discussed the proposals relative to each factor, and reached a consensus (not an average) on each proposal’s technical score, strengths and weaknesses. The SSEB’s overall ratings were as follows:

¹Another contract was to be awarded to a large business. That award is not relevant here.

Offeror	Technical Score (300 Maximum)	Overall Determination of Technical Ability	Price (based on hypothetical task order) ²
NSR	246.3 (82.0%)	Very Good	[deleted]
Ryan	240.1 (80.0%)	Very Good	17,152
Offeror A	226.0 (75.3%)	Satisfactory	[deleted]
Offeror B	Not Scored	Unsatisfactory	N/A

SSEB Report at 1; SSEB Best Value Comparative Analysis, Jan. 27, 1999.

The SSEB found that NSR’s proposal presented a strong team with considerable depth of experience. The team was especially strong with regard to cultural resources, and appeared to have good experience working in the Central Valley of California and the Sacramento/San Joaquin River Delta. There also was a strong National Environmental Policy Act (NEPA) capability as well as experience working with federal agencies, including the military. On the other hand, NSR appeared weak in the area of Environmental Impact Statement (EIS) preparation, fish and wildlife mitigation/restoration, and threatened and endangered (T&E) species issues in the Delta and Central Valley. The SSEB estimated that about 60 percent of the work would be accomplished by [deleted], and found that the division of labor and [deleted] controls were not clear.³ SSEB Report at 2.

The SSEB found that Ryan’s proposal demonstrated its ability to perform the types of work described in the solicitation. In particular, the firm had successfully performed both military and civil work directly relevant to the work required by the solicitation. The team had excellent cultural resources capability, was well located geographically and had sufficient depth to perform the tasks required. However, the SSEB also found that the proposal did not adequately demonstrate that the firm had completed long-term complex projects, especially in the Central Valley of California and the Sacramento/San Joaquin River Delta. Id.

²The price figure represented one HTO per year for a period of 5 years. NSR’s evaluated price of [deleted] was [deleted] higher than Ryan’s of \$17,152. For each contract year, this proportional difference was calculated to represent an estimated [deleted] for the base year and 4 option years. SSEB Best Value Comparative Analysis, Jan. 27, 1999.

³The SSEB noted that, while NSR’s (and Offeror A’s) proposing of [deleted], it also seemed to defeat the purpose of [deleted]. However, and notwithstanding the SSEB’s estimate that, under NSR’s proposal, [deleted] would be [deleted], the SSEB specifically stated that it did “not specifically deduct points from these offerors [deleted] but [did] want to express [its] consensus opinion.” SSEB Report at 3.

The SSEB found the three top proposals, with evaluation scores within a 20-point range, to be essentially equivalent in terms of capabilities. The SSEB performed a best value comparative tradeoff based on the technical factors and price, and concluded that the technical benefits of NSR's proposal were too minimal to warrant paying NSR's higher price.⁴ Best Value Comparative Analysis. The SSEB thus recommended award to Ryan, and the source selection official adopted this recommendation. SSEB Report at 3; SSEB Best Value Comparative Analysis, Jan. 27, 1999.

NSR challenges the evaluation on numerous grounds. We have reviewed all of NSR's arguments and, based on our assessment of the record, find that they are without merit. We address NSR's principal arguments below.

PRICE EVALUATION

NSR argues that the agency failed to evaluate price in the manner described in the solicitation. Specifically, the protester asserts that the HTO approach was improperly applied because the agency permitted offerors to submit only hourly rates and other such financial information, without providing offerors an opportunity for their own technical input into the HTO through discussions.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1998), require that protests based on alleged improprieties apparent on the face of an RFP be filed not later than the time set for receipt of initial proposals. As indicated above, the RFP stated that price information would be evaluated "as a whole, [HTO], to reflect the actual mix of hours, other direct costs and escalation factors anticipated during the life of the contract," RFP § 5, at M-3, and that award may be made without discussions. RFP § 4, at M-3. The RFP did not disclose the HTO, and did not contain a provision permitting firms to offer any technical input into the formulation or evaluation of the HTO itself. Therefore, to the extent that NSR believed it should have been given an opportunity to provide input into the HTO used in the price evaluation, or to engage in discussions with regard to this aspect of its proposal, it was required to protest on this basis prior to the closing time for receipt of initial proposals. Because NSR did not protest until after award, this aspect of the protest is untimely and will not be considered.

In its comments on the agency's report, NSR advances additional arguments concerning the propriety of the price evaluation. Specifically, it asserts that, although the RFP stated that the agency would use the price analysis to determine the offeror's understanding of the work and the ability to perform the contract, the

⁴Offeror A's proposal was eliminated because there was a competing offer with a higher technical score at a lower price. Best Value Comparative Analysis, Jan. 27, 1999.

agency failed to do so; the agency improperly used the SSEB to evaluate offerors' technical and price proposals; and the agency evaluated and extrapolated the HTO beyond its proper scope. Protester's Comments at 20-22. Under our Regulations, 4 C.F.R. § 21.2(a)(2), protests other than those based on alleged solicitation improprieties must be filed within 10 days after the basis of protest is known or should have been known. The protester knew these bases of protest no later than the time it received the agency's report. However, its comments containing these additional protest allegations were filed more than 10 days after its receipt of that report (due to a filing extension granted by our Office at NSR's request). Therefore, these arguments also are untimely. See Dial Page, Inc., B-256210, May 16, 1994, 94-1 CPD ¶ 311 at 5.⁵

WEIGHTINGS OF EVALUATION FACTORS

NSR argues that the agency failed to weigh the technical and cost factors in the manner described in the solicitation. Specifically, according to the protester, the evaluation performed failed to produce a sufficient spread in the technical proposal scores to justify a simple side-by-side comparison with the cost evaluation. Rather, NSR asserts, the closeness of the scores shows that the agency failed to conduct a meaningful technical evaluation that could be used to discriminate among the offers. As a result, the protester maintains, price was accorded inordinate weight in the award decision. Protest at 2.

This argument is without merit. The record shows that the SSEB evaluated proposals and prepared individual and consensus evaluation records to document its findings. This resulted in one proposal being eliminated, one found satisfactory, and two found very good. There is nothing unusual or improper in these rankings or findings. The mere fact that two proposals were rated essentially equal does not constitute evidence that the agency somehow improperly failed to discriminate among proposals; rather, absent a showing of some specific impropriety in the evaluation, it simply means that two of the proposals submitted were perceived to have similar merit.

NSR's argument is heavily based on the fact that the evaluation sheets completed by the SSEB members show that not all items of information which the RFP, under each criterion in section M, requested offerors to address were evaluated by each of

⁵The protester also argues that Ryan did not have the appropriate standard industrial classification (SIC) code in its Small Business Administration (SBA)-approved business plan, as required by the solicitation. We do not generally consider issues of size status of a particular firm, which are reviewed solely by the SBA. 4 C.F.R. § 21.5(b). To the extent that the protester is alleging that Ryan misrepresented its qualifications under a specific SIC code, this protest ground is untimely for the reasons mentioned above.

the evaluators. However, there simply is no requirement that all individual evaluators comment upon each such item of information or write about it in their worksheets. The record shows that the agency's evaluation methodology provided a legitimate basis for the SSEB's recommendation to the source selection official. Specifically, all evaluators prepared an "Evaluation Sheet" for each factor relating to each proposal, which contained notes by the evaluator, including advantages and disadvantages, and their tentative score for the factor involved. Each evaluator then prepared a "Summary Evaluation Worksheet" compiling his or her summary of ratings and points for all of the factors reviewed for each proposal. These were then compiled by the SSEB chairperson into the "Consensus Sheet" for each factor, which contained references to advantages and disadvantages for each factor involving each proposal, as well as the consensus score for that factor. Thus, while the protester gives examples as to where the evaluators could have commented more extensively,⁶ this is not a valid basis for questioning the evaluation.

⁶As an example, the protester argues, Protester's Comments at 7, that the following portion of the consensus sheet was defective for failure to perform a proper comparative assessment of the proposals:

Ryan: Advantages --excellent cultural resources capability

--good Mojave Desert experience

--sufficient Dean Ryan staff to complete work.

Disadvantages --limited experience in Central Valley/Delta

Questions: none

Score : Very Good

NSR: Advantages --excellent cultural resources capability.

--[deleted] has very good technical capabilities

--strong NEPA capability

Disadvantages--weak in flood control EIS [environmental impact statement] preparation, [Fish and Wildlife] mitigation/restoration, T&E in Delta and Central Valley.

--[deleted]

Questions: none

Score: Satisfactory

(continued...)

UNDISCLOSED EVALUATION CRITERIA

NSR argues that the agency improperly applied evaluation criteria that were not disclosed in the solicitation and were not bona fide bases for distinguishing between the offers. Specifically, NSR states that the agency found NSR weak in certain areas (*i.e.*, EIS, fish and wildlife mitigation and “T&E” species in the Delta and Central Valley), without crediting the firm for the capabilities of [deleted] in these areas. Protest at 3. NSR notes that the RFP did not state that the experience of the [deleted] would be evaluated separately and distinct from other members of the [deleted] team.

Where a solicitation contemplates the evaluation of offerors’ past performance, the agency has discretion to determine the scope of the offerors’ performance history to be considered, provided all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the RFP. USATREX Int’l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 3. While agencies may consider the prior relevant experience of subcontractors in the absence of a solicitation provision to the contrary, there is no broad requirement that they do so. Jim Welch Co., Inc., B-233925.2, July 12, 1989, 89-2 CPD ¶ 34 at 3-4.

We have held that an agency need not consider subcontractor experience where the solicitation contemplates award of a service contract to a section 8(a) firm, and includes the provision at Federal Acquisition Regulation (FAR) § 52.219-14, which imposes a limitation on subcontracting to an amount less than 50 percent of the cost of contract performance. USATREX Int’l, Inc. *supra* at 4. In such cases, the agency properly may determine that only the offeror’s own capabilities are relevant for purposes of discriminating among the proposals. Since the RFP here provided for award of a service contract and contained the cited FAR provision, we think it properly could limit its evaluation to the prime contractor’s capabilities.

In any case, the agency in fact did not ignore [deleted] in evaluating NSR’s proposal. The evaluation record contains numerous examples, both in the consensus sheets and the individual member evaluation sheets, where use of [deleted] was viewed as an advantage by the evaluators. For example, the evaluation consensus sheet states

(...continued)

Consensus Sheets, Factor 2.

Contrary to the protester’s assertions, these evaluation findings are typical of evaluation findings employed by agencies to discriminate among proposals. They in no way evidence an impropriety in the evaluation process.

that “[deleted].” The individual evaluators also noted the strengths of [deleted], and considered the firm a [deleted]. We conclude that there is no basis for questioning this aspect of the evaluation.

The protest is denied.

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