



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Wilson 5 Service Company, Inc.

File: B-407047

Date: October 18, 2012

James S. DelSordo, Esq., Argus Legal, LLC, for the protester.
Michael A. Gordon, Esq., and Fran Baskin, Esq., Michael A. Gordon PLLC, for Urban Services Group, Inc., an intervenor.
Dennis C. O'Connell, Esq., General Services Administration, for the agency.
Noah B. Bleicher, Esq., Matthew T. Crosby, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal under technical/inspection factor is denied where record shows that the agency's evaluation was consistent with the terms of the solicitation.

DECISION

Wilson 5 Service Company, Inc., of Kittery, Maine, a small business, protests the award of a contract to Urban Services Group, Inc., of Atlanta, Georgia, also a small business, under request for proposals (RFP) No. GS-06P-12-GX-D-0021, issued by the General Services Administration (GSA), Public Buildings Service (PBS), for operations and mechanical maintenance services at the Robert A. Young Federal Building in St. Louis, Missouri. Wilson challenges certain aspects of the agency's evaluation of its technical proposal.

We deny the protest.

BACKGROUND

PBS published the solicitation at issue on April 3, 2012, seeking proposals from small businesses for these building operation services. The RFP contemplated the award of a fixed-price requirements contract with a 3-year base period of performance, two 3-year option periods, and an additional 1-year option period. RFP at 84, 114, 203. The solicitation identified four technical evaluation factors, two of which contained subfactors. RFP at 204. The three subfactors under factor 1,

experience, were assessed on a “Go/No-Go” basis; an offer had to receive a Go under each of the experience subfactors to be considered further. Id. All other factors and subfactors were assigned point scores which were then weighted. Id. In this regard, the chart below identifies, by factor and subfactor, total points possible, weights, and total weighted points possible:

| Technical Evaluation Criteria | Total Points Possible | Weight | Total Weighted Points Possible |
|--------------------------------------|-----------------------|--------|--------------------------------|
| (1) Experience | | | |
| (a) Work Experience | 0 | | Go/No-Go |
| (b) EMCS Experience ¹ | 0 | | Go/No-Go |
| (c) CMMS Experience ² | 0 | | Go/No-Go |
| (2) Past Performance | 5 | 25 | 125 |
| (3) Technical/Inspection | | | |
| (a) Preventative Maintenance Program | 5 | 20 | 100 |
| (b) Project Manager/Supervisor | 5 | 20 | 100 |
| (c) Personnel | 5 | 20 | 100 |
| (d) Quality Control Plan | 5 | 10 | 50 |
| (4) Site Visit | 5 | 5 | 25 |
| Maximum Points Awardable | | | 500 |

See Agency Report (AR), attach. 7, Source Selection Plan, at 3. Based on the evaluation scheme used by the agency, the maximum point score an offeror could achieve was 500. Id. Moreover, the total points possible, or “raw score” assigned, for each factor and subfactor correlated to an adjectival rating where a score of 5 points was considered excellent, a score of 4 was above average, a score of 3 was acceptable, a score of 2 was below average, and a score of 1 was unacceptable. See generally id. at 5-13; AR, attach. 6, Amended Source Selection Evaluation Board (SSEB) Report, at 5.

Award was to be made on a best-value basis considering price and the technical factors. RFP at 204. For purposes of award, the RFP stated that “technical excellence” was “significantly more important than price,” and as offerors’ technical scores became more equal, price would become more important. Id.

For each factor or subfactor, the solicitation included a description of what the agency would be evaluating as well as the minimum requirements necessary to meet the standard of the factor or subfactor. In addition to these criteria, the RFP identified a number of items that the agency would consider to be “value added.”

¹ Energy management and control systems (EMCS).

² Computerized maintenance management systems (CMMS).

See, e.g., RFP at 206. For example, as relevant here, the solicitation stated for subfactor 3(a), preventative maintenance program, that “a plan of action how to prevent similar discrepancies [was] value added.” RFP at 206. Similarly, under subfactor 3(c), personnel, identifying “what duties are self-performed and which duties will be subcontracted” was a value-added item. Id.

Wilson, Urban Services, and eight other firms submitted proposals in response to the RFP. Contracting Officer’s Statement at 2. Wilson’s evaluated price of \$10,784,388 made it the lowest-priced offeror; Urban Services’ evaluated price was \$12,663,816. AR, attach. 3, Price Analysis Abstract, at 7. The agency reviewed the technical proposals and determined that five of the 10 offerors, including Wilson, did not meet the requirements under the work experience subfactor. AR, attach. 1, SSEB Report, at 4. The agency assigned these five offers No-Go ratings, and they were not further evaluated for award. Id.; see RFP at 204. Following the evaluation of the five remaining offers, the agency assigned Urban Services’ technical proposal 478.50 points--the most for any proposal. AR, attach. 1, SSEB Report, at 23. The SSEB recommended that contract award be made to Urban Services. Id. at 24.

By letter dated June 5, the agency informed Wilson that its proposal was excluded from consideration for award because it “failed to meet” the work experience factor. Motion to Dismiss, exh. 6, Notification of Award Letter, at 1. In this respect, the agency explained that the firm’s experience references “did not have the appropriate length of time.” Id. On June 12, Wilson filed an agency-level protest with GSA challenging the agency’s evaluation of the firm’s technical proposal under the work experience factor and objecting to the selection of a higher-priced offeror for contract award.

In response to the agency protest, PBS agreed to reevaluate Wilson’s proposal “in its entirety.” Contracting Officer’s Statement at 5. In essence, PBS upheld Wilson’s agency protest. Upon reevaluation, the agency concluded that Wilson’s proposal indicated “ample space and length of time in the work experience provided” and assigned the proposal a Go rating under the experience subfactors. Motion to Dismiss, Exh. 2, Agency Protest Decision, at 1; AR, attach. 6, Amended SSEB Report, at 4.

As part of the agency’s technical evaluation conducted after the agency-level protest,³ GSA noted various weaknesses in Wilson’s proposal as well as areas where the proposal did not provide items the solicitation identified as value added. See AR, attach. 2, Wilson 5 Technical Evaluation, Consensus Evaluation at 24-40; see also RFP at 205-207. As relevant here, the agency assigned Wilson’s proposal a raw score of 3 points out of 5 (60 out of 100 weighted points), an acceptable

³ Since Wilson’s proposal was evaluated No-Go in the initial review, the remainder of the proposal was not scored until after the agency-level protest was upheld.

rating, under the preventative maintenance program subfactor because the proposal did not include the value-added “procedure to prevent discrepancies.” AR, attach. 2, Wilson 5 Technical Evaluation, Consensus Evaluation, at 34. Similarly, under the personnel subfactor, the agency assigned Wilson’s proposal a raw score of 3 points out of 5 (60 out of 100 weighted points), an acceptable rating. Id. at 38. The agency expressed concerns about Wilson’s proposed number of HVAC personnel and the proposed schedule for coverage of the facilities, and the agency noted that Wilson’s proposal did not list the job duties its subcontractors would be performing, which the RFP identified as a value-added item. Id. Overall, PBS assigned Wilson’s technical proposal 384.85 total points, making it the third highest-ranked offer, with the lowest price. AR, attach. 6, Amended SSEB Report, at 4. However, PBS concluded that Urban still represented the best value to the agency. Id.

After a second agency-level protest was denied, Wilson protested to our Office.

DISCUSSION

Wilson objects to the agency’s evaluation of the firm’s proposal under the technical/inspection factor. Specifically, Wilson challenges the agency’s finding that the firm did not include a list of tasks that its subcontractors would be performing. Protest at 6. Wilson also argues that the agency should not have criticized its proposal for failing to include a “procedure to prevent discrepancies,” because such a procedure was a value added item under the RFP. Id.

The evaluation of technical proposals is generally a matter within the agency’s discretion, which our Office will not disturb unless it is shown to be unreasonable or inconsistent with the RFP’s evaluation criteria. See, e.g., METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 4; Manassas Travel, Inc., B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 2-3. In this regard, a protester’s mere disagreement with the agency’s judgments does not render an evaluation unreasonable. Id. Further, there is no legal requirement that an agency must award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. See, e.g., Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9; Archer Western Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5.

The RFP here stated that the agency would evaluate the proposed “number and type and job duties of personnel, the types of subcontractors the Contractor proposes to use . . . and a proposed roster showing what times all staff will be on-site at the building.” RFP at 206. The RFP further explained that including information specifically related to “what duties are self-performed and which duties will be subcontracted” was considered value added. Id.

In response to the solicitation requirement to provide information about subcontractors, see id., Wilson included a “subcontracting list” in the personnel section of its proposal. AR, attach. 5, Wilson 5 Proposal, at 3c-2. The list read as follows:

| Service | Source |
|---|-----------|
| Pressure Vessel Testing | [deleted] |
| Water Chemical | [deleted] |
| Electrical Testing | [deleted] |
| Controls | [deleted] |
| Chillers | [deleted] |
| Boiler | [deleted] |
| Fire Suppression Systems | [deleted] |
| Generator | [deleted] |
| Fire Extinguisher/Kitchen Suppression Systems | [deleted] |

AR, attach. 5, Wilson 5 Proposal, at 3c-2. The protester argues that this list “met the [RFP’s] requirement” and its proposal “should not have been downgraded on this point.” Comments at 7.

While we agree that Wilson’s proposal met the solicitation’s requirement to identify the “types of subcontractors,” the proposal did not include specific information that the solicitation identified as value added. See RFP at 206. In this regard, the list of subcontractors Wilson submitted in its proposal did not contain any information related to the number or “job duties” of personnel, or provide any detail about the tasks its subcontractors would perform. On this record, it was reasonable for the agency to assign Wilson’s proposal a raw score of 3 out of 5 possible points (weighted score of 60 out of 100), an acceptable rating, under the personnel subfactor due, in part, to Wilson’s failure to include this value-added item. In essence, Wilson is arguing that its proposal should have been assigned the highest maximum score for meeting some of the solicitation requirements, despite not including items identified as value added. As noted above, an agency is not required to assign the maximum point score simply because the proposal meets the solicitation’s minimum requirements. See Applied Tech. Sys., Inc., supra, at 9; Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 at 4. Accordingly, we see no basis to conclude that the agency evaluation was unreasonable, or inconsistent with the terms of the solicitation, by awarding less than the maximum possible points to a proposal that did not include the value-added item of a list of tasks or job duties its subcontractor would perform.

In any event, the fact that Wilson received a raw score of 3 points (out of 5) for this subfactor was not based solely on the firm’s failure to include the job duties of its proposed subcontractors. Instead, the record reflects that the agency identified several weaknesses and deficiencies with Wilson’s proposal under the personnel factor, none of which Wilson has challenged. For example, PBS assigned the offer

a deficiency due to its proposed “schedule for coverage of facilities.” AR, attach. 2, Wilson 5 Technical Evaluation, Consensus Evaluation, at 38. Similarly, the agency expressed concern that Wilson proposed only [deleted] personnel for HVAC work. Id. Accordingly, even if Wilson prevailed on its challenge to the agency’s evaluation regarding its subcontractor list, there is no basis for concluding that the assigned subfactor raw score of 3 would have increased. Competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain a protest. E.g., Booz Allen Hamilton, Inc., B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 14. On this record, we see no basis to question the reasonableness of the agency’s evaluation under the personnel subfactor.

Similarly, Wilson complains that the agency misevaluated the firm’s proposal when PBS assigned it less than the maximum points under the preventative maintenance program subfactor, even though the proposal did not include a procedure to prevent discrepancies. Protest at 6. Wilson again argues that the “absence” of this information should not be counted against Wilson because the information was a “value added item.” Id.; see RFP at 206. The agency responded to the allegation, but, in Wilson’s comments on the agency report, Wilson did not address the agency’s response. Accordingly, we consider the protester to have abandoned this argument. See JSR, Inc., B-405463, Nov. 8, 2011, 2011 CPD ¶ 265 at 5 n.6.

In fact, instead of responding to the agency’s position, Wilson asserts for the first time in its comments that its proposal actually did “address the prevention of future discrepancies.” Comments at 5. This objection was not raised in Wilson’s agency-level protest or in its protest to our Office. Since the objection was not raised within 10 days of when the protester knew or should have known its basis for protest, it is untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2) (2012); ITI Electronic Sys., B-406405, B-406405.2, May 21, 2012, 2012 CPD ¶ 174 at 12-13. In any event, we have reviewed the record and find no basis to question the agency’s judgment that Wilson’s proposal failed to meaningfully identify the cause of maintenance discrepancies and describe a procedure to prevent them. See Applied Tech. Sys., Inc., supra, at 9.

In summary, Wilson’s protest does not present any basis for us to question GSA’s evaluation of the firm’s proposal under the technical/inspection factor. Further, based on our review of the record, GSA reasonably concluded that Urban Services’ higher technical rating outweighed the price difference between its proposal and Wilson’s lower-rated, lower-priced proposal.

The protest is denied.

Lynn H. Gibson
General Counsel