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Decision

Matter of: Endeavor Enterprise Solutions, LLC

File: B-407760; B-407760.2; B-407760.3

Date: January 31, 2013

William A. Shook, Esq., and George Matthew Koehl, Esq., William A. Shook, PLLC, for the protester.

Pamela J. Mazza, Esq., and Brian F. Wilbourn, Esq., PilieroMazza PLLC, for GET-NSA, LLC, the intervenor.

Young H. Cho, Esq., Melissa M. Mortimer, Esq., and Kristopher D. Muse, Esq., Department of Energy, for the agency.

Tania Calhoun, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly evaluated protester's proposal is denied where the record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.

DECISION

Endeavor Enterprise Solutions, LLC, (EES) of Laurel, Maryland, protests the award of a contract to GET-NSA, LLC, of Oak Ridge, Tennessee, under request for proposals (RFP) No. DE-SOL-0003183, issued by the Department of Energy (DOE) to obtain information technology infrastructure and support services for its Oak Ridge, Tennessee, office. EES argues that the agency misevaluated its technical proposal.

We deny the protest.

BACKGROUND

The solicitation, issued on January 18, 2012, as an 8(a) set-aside, anticipated the award of an indefinite-delivery/indefinite-quantity contract with cost-plus-award-fee and fixed-price task elements. The contract is for a broad array of support services including user services, system engineering and development, infrastructure, and

cyber-security, to be performed over a 1-year base period, with up to two 1-year option periods. RFP at 1.

Award was to be made on a best value basis, considering price and three non-price evaluation criteria: (1) management approach; (2) key personnel; and (3) corporate experience and past performance. Id. at § M.7. The three non-price criteria were significantly more important than the evaluated price. Id. at § M.4.

Management approach--the most important criterion¹ and the only one at issue here--was comprised of three equally important sub-criteria: (1) organizational framework; (2) program and integration; and (3) managing human resources. Id. at § M.7. The RFP included detailed instructions for the contents of proposals, as well as detailed evaluation criteria. RFP §§ L.24, M.7.

The agency received 11 proposals by the closing date of March 1, including those from EES and GET-NSA. A source evaluation board (SEB) evaluated proposals and assigned consensus point scores and adjectival ratings to each proposal under each criterion and sub-criterion. The maximum score available was 1,000 points, and the available adjectival ratings were outstanding, good, satisfactory, marginal, or unsatisfactory. Agency Report (AR), Exh. 3, SEB Report at 16-19.

The SEB assigned EES 820 points for its technical, management, and business proposal, making it the third highest-rated proposal, with the lowest evaluated price of \$9,017,588.73. As discussed below, the firm's lowest scores were under the management approach criterion. GET-NSA's proposal, with 900 points, had an evaluated price of \$10,612,885.37. AR, Exh. 5, Source Selection Decision at 9-10; Agency Legal Memorandum at 6-7.

The source selection official reviewed and was briefed on the SEB report. After conducting a technical/price tradeoff analysis, the source selection official selected GET-NSA as the best value offeror. EES filed its protest after its debriefing.²

¹ The management approach criterion was worth 60 percent of the value of the non-price evaluation criteria; each other criterion was worth 20 percent. Id.

² EES' protest also alleged that DOE did not evaluate offers equally. During the course of the protest, our Office dismissed this allegation as lacking a valid basis. Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f) (2012). EES' initial protest did not challenge the evaluation of any other firm's proposal or any aspect of the source selection decision. After it received a redacted version of the source selection decision, EES filed a supplemental protest arguing that the tradeoff decision had no basis. We dismiss this allegation as lacking a valid basis as well since EES did not provide any factual support for its contention.

DISCUSSION

EES challenges the evaluation of its proposal under the management sub-criteria. With respect to the first two sub-criteria, EES contends that its proposal should have been rated higher, and received more points, for its strengths. With respect to the third sub-criterion, EES argues that the agency should not have identified a feature of its proposal as a weakness.

The essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. Stateside Assocs., Inc., B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 8. It is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. Burchick Constr. Co., B-400342.3, Apr. 20, 2009, 2009 CPD ¶ 102 at 4-5. 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 Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. Thus, in reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. In this case, our review of the record affords us no basis to find the evaluation of EES' proposal unreasonable.

Under the organizational framework sub-criterion, the solicitation read as follows:

The Government will evaluate the extent to which the offeror's organizational elements and staff are structured to efficiently and effectively meet the requirements of the [performance work statement (PWS)]. It will include evaluating the extent to which the offeror demonstrates an integrated corporate, program, project, and business configuration.

If the offeror is proposing a teaming arrangement as defined in 48 C.F.R. 9.601, the Government will evaluate the extent to which the offeror can demonstrate a clear and concise delineation of each organization's authorities, roles, responsibilities, and involvement in managing the contract, performance, and business work functions, and interactions in a seamless operation.

The Government will evaluate the extent to which the offeror's plan for transition of the work and the workforce provides for an effective and efficient transition of contract responsibilities while minimizing impacts on the continuity of operations.

RFP § M.7.

The SEB rated EES' proposal "satisfactory" under this sub-criterion, with 100 of the 200 available points. AR, Exh. 3, SEB Report at 38. The SEB identified one strength, associated with the EES transition plan, finding that it provided a "nominal benefit" to the government. The SEB found that this aspect of the proposal increased the probability of successful contract performance because the plan afforded an efficient and effective transition of contract responsibilities and minimized impacts on continuity of operations. Id. The source selection official concurred with the SEB's evaluation. AR, Exh. 5, Source Selection Decision at 12.

EES argues that this strength offers more than a "nominal benefit," and, as a result, its proposal should have been rated "good" and received at least 60 additional points. Comments at 3-4. In support of its contention, EES asserts that a strong transition plan was one of only two equally important areas to be considered under the sub-criterion. We disagree.

As an initial matter, the solicitation did not establish that the transition plan element, which comprised one of the three paragraphs of information to be evaluated under the sub-criterion, was of equal importance to the other areas discussed. For example, EES does not explain, nor is it otherwise apparent, how a strong transition plan was of equal importance when compared to the assessment of an offeror's ability to meet the requirements of the performance work statement over the life of the contract. Moreover, the relative importance of transition under the organizational framework sub-criterion is beside the point. Of significance is the fact that after considering the strength associated with EES's proposed transition plan, the SSA concluded that it provided only a "nominal benefit"--a "good" rating was to be assigned where, among other things, a proposal presented "one or more significant strengths or strength(s) that will provide **notable benefit** to the Government." AR, Exh. 3, SEB Report at 17-18 (emphasis added). While EES ultimately disagrees with the agency's conclusion in this regard, it has given us no reason to find it unreasonable.

Under the program and integration sub-criterion, the solicitation provided for DOE to evaluate the offeror's approach to accomplish the requirements of the performance work statement; the offeror's ability to perform in a customer-focused and timely manner while integrating safety, quality assurance, and security; the offeror's approach to augmenting staff; and the offeror's staffing plan. RFP § M.7.

The SEB rated EES' proposal "good" here, with 160 of the 200 available points. The SEB identified three strengths that were found to provide "notable benefit" to the government. These strengths were associated with: (1) EES' commitment to integrating quality assurance, safety, and security into its performance of the work; (2) the firm's approach of integrating the management of the work with the financial management, accounting and reporting functions; and (3) the firm's approach for

managing staff. AR, Exh. 3, SEB Report at 39-40. The source selection official concurred with the SEB's evaluation. AR, Exh. 5, Source Selection Decision at 13.

Citing the definitions for the adjectival ratings set forth in the SEB report, EES argues that its proposal should have been rated "outstanding" and should have received 200 points. EES fails to appreciate that the essence of an agency's evaluation is reflected in the evaluation record itself, not in adjectival ratings or point scores. Stateside Assocs., Inc., supra.

First, as noted above, 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 Applied Tech. Sys., Inc., supra. Thus, the mere fact that EES' proposal was evaluated as having three strengths here does not dictate that it receive the highest ratings. Second, an "outstanding" rating was to be assigned to a proposal that, among other things, "[p]resents significant strength(s) and/or numerous strengths that **significantly benefit** the Government, and demonstrates no weaknesses, significant weaknesses, or deficiencies."³ AR, Exh. 3, SEB Report at 17-18 (emphasis added). Again, the fact that EES disagrees with the SEB's finding that its strengths offered a "notable benefit," and not a "significant benefit," does not render the SEB's conclusion unreasonable.

Finally, under the managing human resources sub-criterion, the government was to evaluate the offeror's demonstrated ability to develop and administer a comprehensive human resources management program, as well as its approach to expeditiously fill vacancies, supplement personnel to respond to program funding changes, and provide continued service for each of the areas identified in the performance work statement without lapses in support during absences or vacancies. RFP § M.7.

The SEB rated EES' proposal "good" here, and assigned it 160 of 200 available points. The SEB identified one strength concerning EES' compensation system and process for addressing employee concerns which it thought provided "notable benefit" to the government. AR, Exh. 3, SEB Report at 40. The SEB also identified a weakness in that the proposal did not suitably discuss labor laws that apply to human resources issues. As a result of this omission, the SEB found that the proposal did not demonstrate the offeror's ability to develop and administer a

³ As noted above, a "good" rating was to be assigned to a proposal that, among other things, presented "one or more significant strengths or strength(s) that will provide **notable benefit** to the Government and more than offset any weaknesses and/or significant weaknesses demonstrated." AR, Exh. 3, SEB Report at 17-18 (emphasis added).

comprehensive human resource management program. Id. In this regard, in the instructions for proposal submission, the RFP required offerors to, among other things, “discuss labor laws that apply to human resources issues.” RFP § L.24(b). The SEB ultimately concluded, however, that the EES strength “more than offset” its weakness. AR, Exh. 3, SEB Report at 40.

In challenging the agency’s evaluation, EES argues that its proposal clearly discussed the relevant labor laws, citing to a particular section of its proposal wherein the proposal indicates that EES understands and complies with all federal and state labor laws, and lists a few examples of those laws.⁴ Protest at 6-7; AR, Exh. 2, EES Proposal at § 2.1.26.2. This section of EES’ proposal, however, merely confirms the agency’s view that EES provided a partial listing of applicable labor laws, and that it did not include a specific discussion of the labor laws that apply to human resources issues as required by the RFP.

The protest is denied.

Susan A. Poling
General Counsel

⁴ EES complains that the requirement to discuss these labor laws was not in section M of the RFP. However, the instructions in section L of the RFP clearly put offerors on notice that, in evaluating an offeror’s ability to develop and administer a comprehensive human resources management program, one thing it would consider was a discussion of these labor laws.