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Decision

Matter of: The Bowen Group

File: B-409332.3

Date: August 6, 2014

Adam Munitz, Esq., Fluet Huber & Hoang, PLLC; Christopher R. Shiplett, Esq., Randolph Law, PLLC, for the protester.
Kathryn V. Flood, Esq., Piliero Mazza PLLC, for the intervenor.
United States Marine Corps, for the agency.
Gary R. Allen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of evaluation of proposals is denied where record shows agency's evaluation was reasonable and consistent with the solicitation's evaluation factors and applicable procurement rules.
2. Allegation that agency improperly considered corporate experience of proposed subcontractor is denied where solicitation did not expressly prohibit such consideration.

DECISION

The Bowen Group, of Stafford Virginia, protests the award of a contract to Special Media Enterprises, LLC (SME), of Springfield, Oregon, under request for proposals (RFP) No. M00264-14-R-0001, issued by the United States Marine Corps for support services to the Wounded Warrior Regiment (WWR) Recovery Care Coordinator (RCC) Program. Bowen challenges the agency's technical, corporate experience, and past performance evaluations, as well as the source selection decision.

We deny the protest.

BACKGROUND

The RFP, which was issued on November 13, 2013 as a small business set-aside, contemplated the award a fixed-price contract to provide support services to the United States Marine Corps WWR RCC Program. Under this program, the agency supports wounded, ill and injured Marines in any stage of recovery to assure sustainable rehabilitation and transition to duty or civilian life. RFP, amend. 1, at 2. The RFP provided that the award would include a twelve-month base period of performance, and two one-year option periods. Id. at 4.

Award was to be made on a best value basis considering five factors: (1) experience of key personnel; (2) management plans; (3) corporate experience; (4) past performance; and (5) price. RFP, amend. 1, at 26. The non-price factors were individually more important than price, and, when combined, were significantly more important than price. Id.

Factors 1 through 3 were to be assigned adjectival ratings ranging from outstanding to unacceptable based on evaluated strengths, weaknesses, significant weaknesses and deficiencies. As it relates to the protest, the RFP defined a rating of outstanding as a proposal that met the agency's requirements, indicated an exceptional approach and understanding of the requirements and possessed strengths that far outweighed any weaknesses. RFP, amend. 1, at 27. A rating of good was defined as a proposal that met the agency's requirements, indicated a thorough approach and understanding of the requirements, and possessed strengths that outweighed any weaknesses. Id.

Regarding the experience of key personnel factor, the RFP identified key personnel positions with various qualification requirements: (1) program manager; (2) assistant program manager; (3) program analyst; (4) RCC East Coast team lead; and (5) RCC West Coast team lead. Offerors were to provide resumes and letters of commitment for their proposed key personnel and the RFP established that the agency would evaluate all resumes to determine the extent to which the offeror met or exceeded stated minimum requirements, as detailed in the RFP's performance work statement. Id. at 23-24.

Regarding the management plans factor, the RFP anticipated consideration of four subfactors: (1) communication plan; (2) quality control plan; (3) contractor personnel replacement plan; and (4) standard operating procedures. Of relevance to the protest, the contractor personnel replacement plan subfactor envisioned a plan that showed "a proactive response to ensuring all program tasks are continuously supported with qualified Contractor personnel." Id. at 27.

Regarding the corporate experience factor, the RFP required the agency to evaluate the extent to which an offeror's corporate experience related to the solicited requirement, including the "types of caseloads and duties required under

caseload management, as well as how the corporate experience reflects the depth of working knowledge of Marine Corps culture.” Id.

With regard to past performance, the RFP established that the agency would evaluate the relevance of recent past performance contract references submitted by the offerors as well as the quality of their performance on these contracts. The RFP also advised that “at least two (2) of the references must reflect past performance for contracts for which the Offeror and or its team members have served as the prime contractor.” Id. at 25 (underline in original). Based on the agency’s consideration of these elements, the RFP provided for the assignment of an overall performance confidence rating of substantial, satisfactory, limited, no confidence, or unknown confidence. Id. at 27-28.

The agency received 13 proposals by the RFP closing time, including those of Bowen and SME. The agency established three evaluation teams: a source selection evaluation team (SSET) to evaluate the first three factors; a past performance evaluation team; and a price evaluation team. Contracting Officer’s Statement (COS) at 4. After an initial evaluation, the agency established a competitive range of the four most highly-rated offerors, which did not initially include Bowen. Id.

Upon learning of its exclusion from the competition, Bowen filed a protest with our Office on April 7, 2014, challenging the agency’s evaluation of its proposal. In response, the agency advised our Office that it would take corrective action by reevaluating Bowen’s proposal. We dismissed the protest as academic. The Bowen Group, B-409332.2. Based on the reevaluation, the agency decided to include Bowen in the competitive range and forwarded written discussion questions to Bowen, with final proposals due April 15. Agency Report (AR), Tab N, Bowen Discussion Letter. After completing its evaluation of the final proposal submissions, the agency rated the remaining firms as follows:

Offeror	Experience Key Personnel	Mgmt. Plans	Corp. Experience	Past Performance	Price
A	Outstanding	Outstanding	Good	Substantial Confidence	\$19,257,050.52
B	Outstanding	Outstanding	Outstanding	Substantial Confidence	\$27,133,465.84
C	Outstanding	Good	Outstanding	Substantial Confidence	\$16,352,769.20
Bowen	Good	Good	Outstanding	Substantial Confidence	\$14,404,527.20
SME	Outstanding	Outstanding	Outstanding	Substantial Confidence	\$15,204,772.40

COS at 5.

The Source Selection Authority (SSA) performed a trade-off value analysis by comparing the proposals of Bowen and SME, as they were the two-lowest priced offers. AR, Tab T, Trade-Off Analysis. She concurred with the SSET's findings, and concluded that SME represented the best value to the agency. Id. at 2. With regard to factor 1, experience of key personnel, the SSA noted that SME possessed [deleted] strengths and highlighted the fact that several of these strengths pertained to the experience of the SME's proposed program manager, who had over [deleted] years of program management experience to include four years as program manager for the USMC RCC program. Bowen on the other hand had only [deleted] strengths all at levels below the program manager position. The SSA found that the marked disparity in strengths, particularly at the program manager and assistant program manager levels was significant and that the strengths at the program manager level would enable SME to better meet the unique and unanticipated demands associated with caring for Marines.

Regarding factor 2, management plans, the SSA noted that SME had strengths under all four required plans, whereas Bowen only received strengths under [deleted] of its plans. The SSA's selection decision details the value of SME's strengths under each of its plans. For example, the SSA noted that SME's contractor personnel replacement plan "provided an exceptional approach to ensuring continuity of services" and that SME's staffing approach "demonstrates awareness of importance of maintaining continuity of services across the entire Recovery Care Coordinator (RCC) structure." Id.

As to Bowen, the SSET had found that while Bowen's communications and quality control plans both exhibited strengths, its [deleted] and [deleted] plans merely met the agency's requirements. AR, Tab Q, SSET Final Evaluation Report at 8. When performing her trade-off analysis, the SSA further noted that Bowen had in fact included an assumption that staffing needs would decrease with the pending conclusion of operations in Afghanistan. Id. The SSA considered this assumption to be unsupported and inconsistent with the government's experience. Accordingly, the SSA questioned whether Bowen would be in a position to ensure that all program tasks would be continually supported with qualified personnel and found that Bowen's proposal presented risk to the government. This was a "significant discriminator" in the SSA's view. Id. The agency awarded a contract to SME on April 29, 2014. COS at 6. Upon learning of the award decision, and after receiving a debriefing, Bowen filed this protest.

DISCUSSION

Bowen challenges the agency's evaluation of SME's corporate experience, arguing that the agency improperly considered the corporate experience of SME's proposed subcontractors. Bowen also takes issue with its own ratings of "good" under the experience of key personnel and management plans factors arguing that it should

have instead received ratings of “outstanding.” Protest 1. Based on these evaluation errors, Bowen maintains that the SSA’s tradeoff decision was fatally flawed. Additionally, Bowen challenges the SSA’s concerns, as articulated in her tradeoff decision, about Bowen’s assumptions regarding the impact of the pending conclusion of operations in Afghanistan on the agency’s requirements. For the reasons discussed below, we find the protest to be without merit.¹

Regarding Bowen’s challenge of SME’s evaluation under the corporate experience factor, Bowen recognizes that the RFP did not expressly prohibit the consideration of a subcontractor’s experience. Id. at 14. Rather, Bowen interprets the RFP’s express reference to the agency’s consideration of an offeror’s team members’ information under the past performance factor as “a clear indication that evaluation of subcontractor experience was only permitted under the Past Performance evaluation factor.” Id. We disagree.

Our Office has previously found that the experience of a proposed subcontractor may be considered in determining whether an offeror meets experience requirements in a solicitation where the solicitation does not expressly prohibit such consideration. See The Paintworks, Inc., B-292982, B-292982.2, Dec. 23, 2003, 2003 CPD ¶ 234 at 3. Here, SME’s proposed team included the incumbent contractor, which, in the agency’s view demonstrated that SME’s team had the requisite level of experience to support the highest rating of “outstanding.” AR, Tab H, Pre-Negotiation Technical Evaluation, at 49-50.

While Bowen narrowly reads the solicitation to preclude consideration of a team member’s experience, we find Bowen’s reading to be unreasonable. Notwithstanding Bowen’s assertions to the contrary, the omission of a reference to “team members” under the corporate experience factor did not serve as an express limitation on the scope of the agency’s evaluation under the corporate experience factor. Bowen is correct that the past performance factor instructions did reference “team members”; however, this reference was tied to the solicitation requirement that offerors provide two references for the offeror or its team members where the

¹ The protester abandoned various arguments raised in its protest where the agency submitted detailed responses to the challenged issues in its report and Bowen did not further argue the matters in its comments. For example, Bowen initially complained that the agency improperly evaluated SME’s past performance as substantial confidence, because, in Bowen’s view, SME cannot satisfy the limitations on subcontracting provisions, which require SME to perform at least 50 percent of the requirement. Protest at 15, citing Federal Acquisition Regulation (FAR) § 52.219 14 (incorporated by the RFP). The agency responded to this issue and the protester did not rebut the agency’s response in its comments. Accordingly, we will not consider this and the other arguments like it. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

prime or the team member served as a prime contractor. The corporate experience factor, however, did not include a similar requirement to provide prime contractor experience information; accordingly, because there was need for the solicitation to expressly make reference to an offeror's team members under the corporate experience instructions, the absence of such a reference cannot reasonably be interpreted as reflecting a prohibition against the consideration of such information. Absent an express prohibition, it was not unreasonable for the agency to include SME's subcontractor's experience in evaluating the awardee's ability to perform the RFP's requirements.

Turning to Bowen's argument that it should have received the highest rating of "outstanding" for the experience of its key personnel and its proposed management plans, Bowen prepared two charts comparing the various features of its proposal with those of the other offerors that received "outstanding" ratings under the challenged factors. In essence, Bowen has asked our Office to compare the information provided in the charts and conclude that it should have also received ratings of "outstanding." See Protester's Comments, Exhibits 1 and 2.

Bowen's focus on the adjectival ratings, however, is fundamentally misplaced.² As our Office has previously indicated, adjectival or color ratings, and point scores, serve only as guides to intelligent decision making. Chapman Law Firm, LPA, B-293105.6 et al., Nov. 15, 2004, 2004 CPD ¶ 233 at 5. While the SSA's selection decision clearly referenced the adjectival ratings, the record reflects that the SSA's best value decision was not based on such ratings, rather it was based on a detailed assessment of the underlying strengths and weaknesses of Bowen's and SME's proposals to include the identification of key discriminators in support of the SSA's decision to select SME's higher-priced proposal. In this regard, as noted above, the SSA noted the superior experience of SME's program manager as compared to the experience of Bowen's program manager to be key discriminator. Moreover, the SSA detailed the specific advantages associated with the strengths

² In any event, based on our review of the underlying record, we do not find that the agency acted unreasonably or improperly in assigning Bowen's proposal ratings of "good" as opposed to "outstanding" under the experience of its key personnel and management plans factors. Rather, Bowen's reliance on comparative charts and its related arguments amount to little more than its disagreement with the agency's evaluation. In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, but instead examines the record to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Id.

of SME's management plans, and found that Bowen's stated assumptions associated with the winding down of the conflict in Afghanistan increased risk to the government.

To the extent Bowen takes issue with the SSA's concerns regarding future staffing level assumptions, arguing that the SSA's analysis introduced an unstated evaluation criterion, and contradicted the SSET's evaluation, Protester's Comments at 10, the protest is without merit.

In reviewing protests of allegedly flawed "best value" determinations, our Office will examine the record to determine whether the agency's judgments were reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement laws. TMM Investments, Ltd., B-402016, Dec. 23, 2009, 2009 CPD ¶ 263 at 4. Where, as here, a solicitation provides that technical factors are more important than price, source selection officials have broad discretion in determining whether one proposal's technical superiority is worth its higher price, so long as the agency's decision is reasonable, consistent with the solicitation's stated criteria, and adequately documented. Id. at 4-5.

Furthermore, agency selection officials may rely on reports and analyses prepared by others, but the ultimate selection decision reflects the selection official's independent judgment. See, e.g., Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33. A protester's disagreement with the agency's determination as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency does not establish that the source selection decision was unreasonable. ITW Military GSE, B-403866.3, Dec. 7, 2010, 2010 CPD ¶ 282 at 5.

As noted above, the SSA, in her trade-off analysis, expressed concern regarding Bowen's discussion of reductions in requirements and staffing based on the U.S. withdrawal from Afghanistan. Although she did not necessarily disagree with Bowen's good rating as assigned by the SSET, the SSA questioned the premise set forth in Bowen's proposal that staffing needs will likely decline due to the pending conclusion of operations in Afghanistan.³ AR, Tab T, Best Value Trade-Off Analysis, at 2. In this regard, the SSA noted that the incidence of ill and injured individuals covered under the program is not well-correlated to combat operations, and that issues related to combat operations are not necessarily evident until sometime after combat operations have ended. Id. As a consequence, the SSA

³ In addition to addressing the impact of the U.S. withdrawal from Afghanistan in its technical proposal, the agency's price analysis report found that Bowen had "re-examined the level of effort for this requirement as operations in Afghanistan are reduced over the next three years" and reduced its staffing level "to reflect the anticipated reduced need for services." AR, Tab R, Price Report, at 7.

found that Bowen's assumption indicated both a lack of commitment to providing proactive attention to continual staffing support, as required by the RFP, and a lack of understanding of the program needs. Id. Since these findings are logically related to the evaluation of Bowen's proposal under the personnel replacement plan--where the agency sought a plan showing "a proactive response to ensuring all program tasks are continuously supported with qualified Contractor personnel"--we have no basis to question the propriety of the SSA's consideration of the underlying staffing assumptions stated in Bowen's proposal, or any other aspect of the SSA's selection decision.

The protest is denied.

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General Counsel