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Decision

Matter of: BNL, Inc.
File: B-409450; B-409450.3
Date: May 1, 2014

L. James D'Agostino, Esq. and Ryan C. Bradel, Esq., Greenberg Traurig, LLP, for the protester.
Kerry A. McGrath, Esq., and Frank V. DiNicola, Esq., Department of Veterans Affairs, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal is denied where record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest alleging that agency's evaluation of awardee's proposal was unreasonable because the awardee proposed a drastically reduced labor force or offered grossly underqualified personnel is denied where the proposal, on its face, provides no evidence supporting either allegation.
 3. Challenge that awardee's proposal should have been assessed a weakness for not providing details in response to a solicitation requirement is dismissed where the disputed portions of the proposal would not have contained such details, and challenge to the undisclosed portions of awardee's proposal is speculative.
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DECISION

BNL, Inc., of Lovettsville, Virginia, protests the failure of the Department of Veterans Affairs (VA) to award the firm a contract under solicitation No. VA 118-13-R-0220, for management, acquisition and financial service support. BNL argues that the agency improperly evaluated its proposal and the proposal of Strategy and Management Services, Inc. (SAMS), of Springfield, Virginia, one of three awardees.

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

BACKGROUND

The solicitation was issued on August 21, 2013, as a request for proposals (RFP) for commercially available management, acquisition and financial services in support of leadership offices located within the product development element of the agency's Office of Information and Technology. RFP at 8. The RFP contemplated award of up to three indefinite-delivery/indefinite-quantity (ID/IQ), task order contracts to service-disabled veteran-owned small business concerns. Id. at 90.

Proposals were to be evaluated on a best-value tradeoff basis, considering technical, past performance and price factors. Id. The non-price factors, when combined, were to be significantly more important than price. Id. The technical factor consisted of two criteria: understanding of problems and feasibility of approach. Id. at 91. With respect to the first criterion, each proposal was to be evaluated to determine the extent to which it demonstrated a clear understanding of all features involved in solving the problems and meeting and/or exceeding the solicitation's requirements and the extent to which uncertainties were identified and resolutions proposed. Id. Under the second criterion, each proposal was to be evaluated to determine the extent to which the proposed approach was "workable and the end results achievable." Id. Further, proposals were to be evaluated under this criterion to determine the "level of confidence provided the Government with respect to the Offeror's methods and approach in successfully meeting and/or exceeding the requirements in a timely manner." Id.

Offerors were required to meet various submission requirements with respect to their technical proposals. As relevant here, offerors were instructed to propose a detailed approach that addresses all elements of the performance work statement (PWS) and, specifically, an approach to meeting the performance requirements of the solicitation, including functional areas listed in paragraphs 4.2 through 4.5 of the PWS.¹ Id. at 86. Additionally, each offeror was required to describe its management methodology for executing the effort. Id.

At issue here is the PWS requirement at paragraph 4.4, which pertains to estimation and function point analysis (FPA).² Id. at 19. In this regard, the PWS requires the

¹ The PWS specified four functional areas: (1) acquisition support; (2) planning, programming, budgeting, and execution support; (3) estimation and function point analysis; and (4) advisory and assistance support to the deputy and associate deputy chief information officers. RFP at 15-20.

² The agency explains that FPA "is a well-established standard method for measuring software and software development projects based on the size of the functionality delivered to the end user and can be derived from requirements documents early in the project's lifecycle." Agency Declaration at 1.

contractor to provide “program planning and oversight estimation and [FPA] support in developing and maintaining estimation models, formalizing processes to support [FPA] and estimation processes requirements as well as technical, analytical and administrative support for project and metrics reporting.” Id. at 19.

With respect to the evaluation of price, the RFP set forth various labor categories to which the offeror was required to submit fixed-price labor rates for each year of the five-year ordering period. Id. at 88. Total evaluated price was to be calculated by multiplying the offeror’s proposed average loaded hourly labor rate by the corresponding estimated labor hours for each labor category specified in the solicitation, and adding not-to-exceed amounts provided by the government for travel. Id. at 88, 92, 108-122.

A total of 20 proposals were received by the VA in response to the solicitation. Agency Report (AR), Exh. 16, Selection Decision Document, at 1. After an initial evaluation, the agency set a competitive range of five offerors, including BNL. Id. at 2. In its initial evaluation of BNL’s technical proposal, the agency noted two strengths and one significant weakness.³ AR, Exh. 7, BNL’s Initial Technical Evaluation Report, at 1-2. The agency described this significant weakness as:

. . . The Offeror lacks sufficient detail on its approach to provide support to PWS Section 4.4, [FPA]. The Offeror proposed high level industry documented steps for this section and did not explain how it would implement these steps. For example, there is no detail on using [FPA] in relation to estimation models which is required in the PWS. Improper [FPA] can lead to poorly budgeted programs resulting in critical requirements not being met, thereby appreciably increasing risk of unsuccessful contract performance.

Id. at 2.

The agency sent the following discussion item to BNL:

Your proposal lacked sufficient detail on the approach to provide support to PWS Section 4.4, [FPA]. You proposed high level industry documented steps for this section and did not explain how you would implement these steps. For example, there is no detail on using [FPA] in relation to estimation models which is required in the PWS.

³ A significant weakness was defined as “a flaw that appreciably increases the risk of unsuccessful contract performance.” AR, Exh. 5, Source Selection Evaluation Plan, at 21.

Please discuss your approach to Estimation and [FPA]. Please provide specific details for providing [FPA] support in developing and maintaining estimation models, formalizing processes to support [FPA] and estimation process requirements as well as technical, analytical and administrative support for project and metrics reporting.

AR, Exh. 8, BNL Items for Negotiation (IFN) - Technical.

BNL submitted a response to the IFN and a final proposal revision (FPR) addressing, among other aspects of its proposal, the section pertaining to paragraph 4.4 of the PWS. AR, Exh. 10, BNL Revised Technical Proposal.

After conducting a technical evaluation of BNL's FPR, the agency retained the significant weakness, and the proposal remained rated "acceptable" under the technical factor.⁴ AR, Exh. 12, BNL's Interim Technical Evaluation Report, at 2. In its evaluation, the agency noted, "[t]he Offeror's IFN response did not provide adequate details to resolve the Significant Weakness. The Offeror's response focuses on providing definitions and on their experience with estimation instead of providing an approach to implement [FPA]. The Significant Weakness remains unchanged. The Offeror's rating remains unchanged."⁵ Id.

The agency conducted a best value tradeoff among the five offerors remaining in the competitive range and awarded three contracts. AR, Exh. 16, Selection

⁴ Technical proposals were to be rated as outstanding/blue, good/green, acceptable/yellow, and unacceptable/red. AR, Exh. 5, Source Selection Evaluation Plan, at 19-20.

⁵ While the interim evaluation report notes that the significant weakness remained unchanged, the language of the significant weakness did change to read:

The Offeror's proposal lacks sufficient detail on its approach to provide support to PWS Section 4.4, [FPA]. The Offeror's proposal merely provided definitions for this section and did not explain how it would complete [FPA]. For example, there is no detail on using function point analysis in relation to estimation models which is required in the PWS. .

..

Id.; see also AR, Exh. 14, BNL's Final Technical Evaluation, at 2.

Decision Document, at 3-10. The evaluation results for BNL and the three awardees were as follows:

	Technical	Past Performance	Price
BNL	Acceptable	Low Risk	\$44,297,548.73
Loch Harbor Group, Inc.	Good	Low Risk	\$41,683,391.44
SAMS	Good	Low Risk	\$32,494,021.66
T3 Technologies, Inc.	Good	Low Risk	\$47,788,131.55

Id.; see also AR, Exh. 17, Notice of Award, at 1-2. This protest followed.

DISCUSSION

In challenging the evaluation of its own proposal, BNL first argues that the VA’s assignment of a significant weakness for its approach to FPA was clearly erroneous. Protest at 6. BNL also argues that, according to the VA’s rating scheme, BNL should have received significant strengths instead of strengths for its proposal because the language used by the VA in its evaluation is consistent with an outstanding technical rating.⁶ Id. at 8. Finally, BNL challenges the evaluation of SAMS’ technical and price proposals. For the reasons discussed below, we deny BNL’s protest challenging its own evaluation and the evaluation of SAMS’ price proposal. We dismiss the firm’s challenge to SAMS’ technical proposal.

Evaluation of BNL’s Proposal

In reviewing a protest challenging an agency’s evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. Rather,

⁶ In its initial protest, BNL argued that the VA gave undue weight to the FPA requirement, which BNL characterized as “ancillary to the other elements” of the solicitation. Protest at 7. The VA fully responded to this protest ground in the agency report arguing, in essence, that BNL misapprehended the critical importance of the FPA requirement. AR, Memorandum of Law, at 4; Contracting Officer’s Statement at 8. BNL failed to rebut or otherwise substantively address the VA’s arguments in its comments. Therefore, we conclude that BNL abandoned this protest ground and will not consider it further. IntelliDyne, LLC, B- 409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id.

As discussed above, the VA assigned a significant weakness to BNL's proposal for failing to provide a detailed approach to satisfy paragraph 4.4 of the PWS. BNL argues that the assignment of this significant weakness "due to the perceived lack of detail in BNL's approach to FPA cannot be sustained in light of the extensive and thorough description provided by BNL which directly addressed the concerns raised by the VA in its IFN." Protest at 5. We conclude to the contrary.

The RFP required offerors to propose a detailed approach to meet the performance requirements of the solicitation, including those requirements set forth at paragraph 4.4. RFP at 86. The record shows that BNL's original proposal contained a three-paragraph section addressing estimation and FPA. AR, Exh. 6a, BNL's Proposal - Technical Volume, at 9-10. In this section, BNL described its approach to performing FPA on the resulting contract; that is, the firm described how it would perform the FPA requirement. Id. The agency's review of this aspect of BNL's proposal led it to conclude that the proposal lacked sufficient detail, and as an example pointed to the proposal's lack of detail on using FPA in relation to estimation models. AR, Exh. 7, BNL's Initial Technical Evaluation Report, at 2.

In its FPR, BNL completely replaced the three-paragraph section found in its initial proposal with a more expansive response almost two pages in length. However, consistent with the agency's evaluation,⁷ our review shows that the response consists mainly of a description of BNL's experience in this area, a discussion of high-level concepts, and definitions of various terms. In other words, instead of expanding on its approach to accomplishing the requirements of paragraph 4.4, which was the concern expressed in the IFN, the firm deleted its approach and included the information discussed above. We conclude that the VA's assignment of a significant weakness to BNL's proposal was reasonable, as BNL's FPR did not propose a detailed approach (or any meaningful approach for that matter) in response to paragraph 4.4, as it was required to do by the terms of the solicitation.

BNL next argues that its proposal should have been assigned at least two significant strengths, because the VA's assessment of the proposal was consistent with the definition of an outstanding rating.⁸ Specifically, BNL argues that the

⁷ In evaluating the FPR, the VA stated that this response "focuses on providing definitions and on their experience with estimation instead of providing an approach to implement [FPA]." AR, Exh. 12, BNL's Interim Technical Evaluation Report, at 2.

⁸ An outstanding rating was defined as "[a] proposal that meets or exceeds all of the Government's requirements, contains extensive detail, demonstrates a thorough
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agency's use of the words "extensive detail" and "exhibited a thorough understanding," with regards to the Planning, Programming, Budgeting and Execution Support functional area, demonstrate that the proposal should have received an outstanding technical rating. Protest at 7. With respect to the other assigned strength, BNL argues that the phrases "BNL demonstrates an understanding of translating technical requirements into acquisition strategies" and "provides extensive detail on the PMAS framework" properly warranted assignment of a significant strength to the firm's proposal. Id.

The VA responds that its evaluation of BNL's proposal was reasonable and that the protester's disagreement does not demonstrate otherwise. Memorandum of Law at 3-10. With respect to the first evaluated strength, the contracting officer states that, while this element enhanced the merit of BNL's proposal and increased the probability of successful performance, it did not appreciably enhance the proposal's merit or appreciably increase the probability of successful contract performance.⁹ Contracting Officer's Statement at 9. With respect to the second strength, the contracting officer notes that, while BNL's proposal did provide extensive detail in regards to one aspect of the functional area, it did not offer as extensive detail with respect to other aspects of the functional area. Id. at 10.

We will not sustain a protest where the agency's evaluation is reasonable, and the protester's challenge amounts to nothing more than disagreement with the agency's considered technical judgments regarding the specific elements of an offeror's proposal. ITT Industries Space Systems, LLC, B-309964, B-309964.2, Nov. 9, 2007, 2007 CPD ¶ 217 at 12-13. We find no basis to conclude that the VA's characterization of the relevant aspects of BNL's proposal as strengths, instead of significant strengths, was unreasonable. Under the evaluation scheme, whether an element of BNL's proposal was to be considered a strength or significant strength was a function of the extent to which the element enhanced the merit of the proposal or increased the probability of successful performance of the contract, not necessarily the depth of the detail or level of understanding expressed in its proposal.

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understanding of the problems, and is highly feasible (low risk)." AR, Exh. 5, Source Selection Evaluation Plan, at 19.

⁹ Under the agency's evaluation scheme a strength was defined as "[a]ny aspect of a proposal when judged against a stated evaluation criterion, which enhances the merit of the proposal or increases the probability of successful performance of the contract." AR, Exh. 5, Source Selection Evaluation Plan, at 20. A significant strength is one that "appreciably enhances the merit of a proposal or appreciably increases the probability of successful contract performance." Id.

Moreover, as a general matter, adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. Science Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 7. Other than citing to the discussed language in challenging the assigned adjectival ratings, BNL has provided no additional support for its contention that the agency misevaluated its proposal. Importantly, BNL does not challenge the narrative assessment of its proposal, which was considered by the source selection authority (SSA) in the award decision. Contracting Officer's Statement at 9; AR, Exh. 15, SSA Briefing Slides - Final, at 15; Exh. 16, Selection Decision Document, at 3. Since the record clearly shows that the SSA considered the merits of BNL's proposal, we have no basis to question the evaluation here.

Evaluation of SAMS' Price

BNL next challenges the agency's evaluation of SAMS' proposal, arguing that the firm could not meet the technical requirements of the solicitation at its offered price, and would put the government at high risk of non-performance. Protest at 8. According to the protester, the only way SAMS could have met the technical requirements at its offered price was if it proposed a drastically reduced labor force for the effort or offered grossly underqualified personnel. Id.

There is no evidence in the record that SAMS proposed a drastically reduced labor force or unqualified workforce. Under the terms of the RFP, the agency provided the labor categories and labor hours for use in its price evaluation, while the offeror was required to provide labor rates. There is no evidence that SAMS diverged from the stated labor hours or failed to propose a price for a required labor category. AR, Exh. 24, SAMS Price Proposal. Further, labor category descriptions, including minimum qualifications were set by the government, and there is no evidence that SAMS took exception to any of the requirements. RFP at 102-107. As the record does not support BNL's allegation, the protest ground is denied.¹⁰

Evaluation of SAMS' Technical Proposal

As discussed above, BNL's initial protest challenged the agency's evaluation of SAMS' proposal relating to the firm's proposed labor hours and workforce qualifications. In response to that protest allegation, the agency produced the relevant portions of SAMS' proposal consisting of the firm's management methodology and price volume, and SAMS' technical evaluation. After its receipt of this information, BNL filed a supplemental protest challenging the agency's

¹⁰ To the extent BNL argues that the agency should have evaluated SAMS' proposal for price realism, such an analysis was neither required nor permitted by the terms of the solicitation. Triad Int'l Maintenance Corp., B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 8.

evaluation of SAMS' proposal with respect to the firm's proposed response to paragraph 4.4 of the PWS.

Specifically, BNL argues that its review of the provided sections of SAMS' proposal shows that it does not contain any details with respect to how SAMS would use FPA to perform cost estimation. Supp. Protest at 3. The protester observes that the only details related to FPA in the provided portions of SAMS' proposal are a chart referring to FPA as a function the firm will perform, and a flow chart showing where FPA cost estimation fits into SAMS' task order management scheme. Id. at 3. Based on its review, BNL argues that the VA evaluated the offerors unequally because SAMS should have received the same significant weakness as it did. Id. at 2-4.

The VA counters that BNL's supplemental protest fails to set forth a detailed statement of the legal and factual basis of protest. Supp. Legal Memorandum at 3. We agree.

Our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest and that the grounds be legally sufficient. Systems Dynamics Int'l, Inc.--Recon., B-253957.4, Apr. 12, 1994, 94-1 CPD ¶ 251 at 3; see also 4 C.F.R. § 21.1(c)(4) and (f) (2013). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Id. Protesters must provide more than a bare allegation; the allegation must be supported by some explanation that establishes the likelihood that the protester will prevail in its claim of improper agency action. Federal Computer Int'l Corp.--Recon., B-257618.2, July 14, 1994, 94-2 CPD ¶ 24; see also Coffman Specialties, Inc., B-400706.2, Nov. 12, 2008, 2008 CPD ¶ 211 (bare assertions that an award was improper, with neither evidence nor explanation of the protester's theory regarding the alleged violation, are insufficient to satisfy this Office's requirements). Unsupported assertions that are mere speculation on the part of the protester do not provide an adequate basis for protest. Science Applications Int'l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99.

We agree with the agency that neither the management methodology section nor the price volume of SAMS' proposal would--or should--address FPA or cost estimation in any great detail. Supp. Legal Memorandum, at 3; RFP at 86-88. As a result, BNL's allegation that SAMS should have been assigned a weakness for only making passing reference to FPA and cost estimation in these sections of its proposal does not give us any basis to conclude that there is any likelihood that the protester will prevail in its claim of improper agency action.

Further, to the extent that BNL's challenge extends to the remainder of SAMS' proposal, which was not produced by the agency, such an argument amounts to nothing more than mere speculation. BNL makes no claim to knowledge of the

remainder of SAMS' proposal, nor does it make any substantive allegation as to its content. While we do not believe access to, or knowledge of an awardee's proposal is necessary to advance a sufficiently supported ground of protest (as we recognize that protesters rarely, if ever, have access to proposals at the time they file a protest, see, e.g., Davey Compressor Co., B-195425, Nov. 14, 1979, 79-2 CPD ¶ 351), the protester must provide some basis to support its allegation of improper agency action. It has provided no such basis here.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel