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Decision

Matter of: Zel Technologies, LLC

File: B-409641; B-409641.2

Date: July 2, 2014

Edward J. Kinberg, Esq., and R. Brent Blackburn, Esq., Kinberg & Associates, LLC, and Michael H. Kahn, Esq., for the protester.

Capt. George P. Farley, Sonja C. King, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency.

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DIGEST

Protest of the exclusion of the protester's proposal from the competitive range is denied where the agency reasonably determined, consistent with the solicitation's evaluation criteria, that the protester's proposal was not among the most highly rated.

DECISION

Zel Technologies, LLC, (ZelTech) of Hampton, Virginia, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. STOC II-13-KOL-0008, issued by the Department of the Army for a combat training instrumentation system. The protester challenges the agency's evaluation of proposals and its exclusion from the competitive range.

We deny the protest.

BACKGROUND

The RFP was issued to vendors holding Program Executive Office for Simulation, Training and Instrumentation multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts with the Army. The solicitation provides for the award of a 5-year,

fixed-price delivery order with cost-plus-fixed-fee and time-and-materials contract line items.¹ Agency Report (AR) at 1; RFP at 1, 47, 91, 94.

A detailed statement of work (SOW), as well as a list of extensive performance specifications, was provided that requires the vendor to design, install, and test an integrated Army Mobile Instrumented Training System (AMITS). AMITS will provide wireless communications services and infrastructure, including radios, mobile antenna towers, mobile training command centers, and related equipment, for land and aerial combat training in the United States and overseas. See SOW, at 1, 4; Performance Specifications, at 1-2.

Vendors were informed that award would be made on a best-value basis, considering price and the following non-price factors, listed in descending order of importance: technical, demonstration, small business participation plan, and program management. RFP at 99. The RFP stated that all non-price factors, when combined, were significantly more important than the price factor. Id. Vendors were also informed that to be considered for award, a vendor's proposal would have to receive a rating of acceptable or higher under the technical, small business participation plan, and program management factors, and an acceptable rating under the demonstration factor, which would be rated on an acceptable/unacceptable (i.e., pass/fail) basis.² Id. Detailed instructions were provided for the preparation of proposals under each of the factors.

With respect to the technical factor, vendors were required to provide (for themselves and any other equipment vendor) narrative descriptions of various management, performance, and production elements, including the following: domestic and secondary/overseas supply sources for end items such as radios and trailers; estimated lead times over 90 days; sole source items; similar product production, including quantities, timeframes, and cost drivers; prior efforts, including steps and time required for adding or changing product capability; and size and utilization rates of current assembly facilities, including current personnel and an expansion plan if needed. RFP at 95-96; attach. 9, Vendor Verification Matrix, at 1-2. Vendors were informed that the agency would evaluate the firms' proposed

¹ The value of this task order is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

² The RFP provided that the technical, small business participation plan, and program management factors would be rated as either outstanding, good, acceptable, marginal, or unacceptable. RFP, encl. 4, Evaluation Rating Scheme, at 1. As relevant here, marginal was defined as a rating for a proposal that does not clearly meet requirements, and does not demonstrate an adequate approach and understanding of the requirements. Id.

policies, methods, and tools to assess the feasibility of a vendor's approach with respect to procurements, anticipated sources, and identification of long-lead times. See RFP at 99-100.

With respect to the program management factor, vendors were required to describe their processes and procedures for managing the integration of various AMITS components and their sample management tools and proposed risk reduction efforts. Id. at 97. Vendors were also required to cite examples of similar, prior integration efforts. See id. Moreover, vendors were to describe their proposed processes and procedures for managing multiple, concurrent AMITS deliveries, and their allocation of resources for the first two AMITS deliveries, as well as provide a schedule for the second AMITS delivery and an integrated master schedule. Id. The RFP stated that the agency would evaluate the feasibility and effectiveness of the vendor's plans and master schedule for managing the integration of AMITS components, as well as the risk of integrating and supporting the first AMITS delivery while managing the production and delivery of the second AMITS. Id. at 100.

With respect to price, vendors were warned "that unreasonably high or unrealistically low prices may be grounds for eliminating a proposal from the competitive range." Id. at 99.

The Army received proposals from three vendors, including ZelTech, which were evaluated by an agency source selection evaluation board (SSEB) as follows:

	ZelTech	Vendor B	Vendor C
Technical	Acceptable (Marginal)	[DELETED]	[DELETED]
Demonstration	Acceptable	[DELETED]	[DELETED]
Small Business Participation Plan	Good	[DELETED]	[DELETED]
Program Management	Marginal	[DELETED]	[DELETED]
Price	\$269,649,451	[DELETED]	[DELETED]

AR, Tab 11, Performance Evaluation Report, at 9-10. The SSEB's adjectival ratings were supported by detailed narrative discussions--including specific citations to the relevant SOW requirements, performance specifications, and applicable evaluation provisions--that identified each vendor's respective strengths and weaknesses.

With respect to the evaluation of the protester's proposal under the technical factor, the SSEB found that ZelTech showed an adequate approach and understanding of

the requirement, with one significant strength, five strengths, and six weaknesses. Id. at 10. As relevant here, the SSEB assessed a weakness in ZelTech's proposal for its use of two different suppliers for "similar" equipment and "common component[s] whenever possible." Id. at 15-16. The SSEB observed that because the specifications require that AMITS mobile network nodes be of identical configuration, ZelTech's approach could result in the Army having to support different configurations of the same equipment and increase life cycle costs. Id. The SSEB noted as another weakness that ZelTech's proposal did not provide sufficient detail, and contained contradictions regarding its procurement and manufacturing methods, and that it had not demonstrated high volume production capability nor adequately addressed its plans for training and doubling its workforce, among other things. Id. at 20-21. A majority of the SSEB concluded that ZelTech's technical proposal was acceptable despite the weaknesses, while a minority concluded that ZelTech's proposal should have received a marginal rating under this factor, because the two weaknesses discussed above were "critical" negative aspects undercutting the firm's approach. See id. at 11.

With respect to the evaluation of the protester's proposal under the program management factor, the SSEB rated ZelTech's proposal as marginal, finding that ZelTech did not show an adequate understanding of the requirement. The SSEB assessed the following five weaknesses (and no strengths) in that regard: (1) ZelTech failed to provide sufficient information regarding similar integration efforts; (2) it failed to explain the details of its risk management approach; (3) it failed to provide details for managing and integrating engineering change proposals into multiple production lines; (4) it failed to explain policies and procedures for managing AMITS; and (5) it failed to adequately explain how it proposed to monitor and track key costs, the integrated master schedule, performance, and supportability metrics. See id. at 30-36.

The contracting officer reviewed the SSEB's evaluations and established a competitive range that included the higher-rated proposals of vendors B and C, but excluded ZelTech's proposal. AR, Tab 5, Competitive Range Determination, at 1-5. The contracting officer noted that ZelTech's proposal received an acceptable rating under the technical factor from a majority of the SSEB, but she accepted the minority view that ZelTech's proposal should be rated as marginal under this factor. See id. at 3 (minority view is "supported with sound rationale"). The contracting officer found that ZelTech's proposal should not be included in the competitive range in light of its marginal program management rating and the two technical weaknesses discussed above. See id. at 4.

DISCUSSION

ZelTech objects to the exclusion of its proposal from the competitive range, challenging the agency's technical, program management, and price evaluations.³ The protester disputes some of the weaknesses assessed in its proposal under the technical and program management factors, and argues that these weaknesses could have been resolved during discussions.⁴ Protest at 7-10, 15; see Comments at 2, 7-9, 14-15. ZelTech argues in this respect that it was unfair to exclude ZelTech from the competitive range, because the agency also found that all vendors' proposals contained weaknesses. Comments at 2; Supp. Comments at 7. In this regard, ZelTech complains that the agency noted that vendor B's proposal, like ZelTech's, had a weakness under the program management factor for failing to sufficiently describe how it would implement and manage the integration of engineering change proposals, see AR, Tab 11, Performance Evaluation Report, at 51, but that vendor B's proposal received an acceptable rating under this factor, as compared to ZelTech's marginal rating. See Comments at 3; Supp. Comments at 6. ZelTech also complains that the Army did not evaluate the realism of vendor C's low proposed price.

The Army maintains that it evaluated proposals reasonably and consistent with the solicitation's evaluation criteria, and properly excluded ZelTech's proposal from the competitive range because it was not among the most highly-rated. See AR at 25. In this regard, the agency does not agree with ZelTech that the weaknesses assessed in ZelTech's proposal were minor. Supp. AR at 7-9. The Army responds that each weakness assessed in ZelTech's proposal is fully documented and thoroughly supported, and points out that the protester ignores the other weaknesses assessed in its proposal. See id.; AR at 25, 43.

³ During the course of this protest, our Office dismissed, for failure to state a valid basis of protest, ZelTech's unsubstantiated and generalized allegations of bias. See, e.g., Protest at 7; Comments at 5-6 (agency's use of competitive range a subterfuge to eliminate ZelTech from competition based on the vendor's small business status). Government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8.

⁴ For example, with respect to the two technical weaknesses discussed above (supra at 4), ZelTech maintains that it would have explained to the agency that it proposed two different trailer manufacturers to provide additional production capability and mitigate risk in the event of an unexpected surge in agency requirements. Protest at 9.

Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 3. In this regard, contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation (FAR) § 15.306(c); Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. American Med. Depot, B-285060 et al., July 12, 2000, 2002 CPD ¶ 7 at 6-7. The determination of whether a proposal is in the competitive range is principally a matter within the judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. A protester's mere disagreement with the agency's evaluation does not show that it lacked a reasonable basis. Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4.

As described above, the RFP provided for the evaluation of technical proposals to assess a vendor's policies, methods, and tools for procuring, anticipating sources, and identifying long lead times, and required vendors to provide narrative descriptions of numerous management, performance, and production elements in that regard. See RFP at 99-100. The solicitation also provided for the evaluation of program management proposals to assess a vendor's plans and master schedule for managing the integration of AMITS components; the solicitation also anticipated evaluating the risk of integrating and supporting AMITS deliveries. The solicitation further required vendors to describe their procedures, risk reduction efforts, prior efforts, proposed processes for managing multiple AMITS deliveries, and resource allocation. Id. at 100.

Here, the contemporaneous record shows that the agency gave ample consideration to the qualitative differences between ZelTech's and the other vendors' proposals. See AR, Tab 5, TEP Report, at 3-23; Tab 6, Source Selection Decision, at 6-22; see also QinetiQ North America, Inc., B-405163.2, et al. Jan. 25, 2012, 2012 CPD ¶ 53 at 15 (protest of agency's technical evaluations denied where record shows that agency reasonably evaluated proposals consistent with evaluation criteria, extensively documenting qualitative differences between the protester's and awardee's proposals). For example, the record shows that, consistent with the evaluation criteria above, the Army gave extensive consideration to ZelTech's technical approach to procuring equipment and components, including its sources, manufacturing methods, production capacity, and workforce. The record also shows that the agency gave extensive consideration to the protester's management of prior integration efforts, including its risk management, production capacity, and scheduling.

Notwithstanding the lengthy evaluation record here, ZelTech selectively disputes only some of the several weaknesses assessed by the SSEB against its technical proposal, and only one of the many assessed strengths in each of the other vendors' technical proposals. ZelTech does not otherwise address, or rebut, for example, the agency's finding that ZelTech's technical proposal failed to provide supporting data for specified equipment interfaces, failed to provide information on how its system handles automatic updates; and failed to adequately describe the process for manually leveling or stabilizing its proposed mobile radio antenna towers.⁵ See AR, Tab 11, Performance Evaluation Report, at 11-18. By ignoring the vast majority of the agency's technical evaluation conclusions, including all but one of the agency's assessed strengths in the other vendors' proposals, the protester fails to persuasively show that the Army's evaluations were unreasonable or inconsistent with the solicitation's stated evaluation criteria, or that the protester was competitively prejudiced.⁶

We also find no merit to ZelTech's contention that the Army disparately evaluated its and vendor B's proposals under the program management factor. Although it is true that both firms' proposals were evaluated as having a weakness under this factor for failing to sufficiently describe how the firm would manage and integrate engineering change proposals, this was the only weakness assessed in vendor B's proposal under the program management factor. The Army also noted as a strength under this factor vendor B's approach to, and description of, risk management.⁷ ZelTech's proposal, on the other hand, was found to have no evaluated strengths and five

⁵ The protester also fails to explain how it might address those weaknesses through discussions and revise its proposal accordingly, even though the protester specifically suggests how it would address two of its other assessed technical weaknesses. See supra n.4 (protester's proposed discussions regarding two technical weaknesses).

⁶ Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. See, e.g., Special Servs., B-402613.2, B-402613.3, July 21, 2010, 2010 CPD ¶ 169 at 4. For this reason, we need not address ZelTech challenge of the SSEB's assessment as a weakness that ZelTech failed to provide a specified certification.

⁷ In fact, the protester concedes "the fact that the Agency conducted a detailed evaluation of ZelTech's proposal" and that vendor B described its risk management approach "in detail, which the agency duly acknowledged[.]" Protest at 11; Supp. Comments at 6.

weaknesses under this factor, including the proposal's failure to address how it would handle engineering change proposals.⁸

We also find no merit to ZelTech's contention that the Army did not assess the realism of vendor C's low price. The record shows that the Army's price evaluation team (PET) compared vendors' total evaluated price to each other and to the government's independent cost estimate, and compared vendors' time and material rates to those provided in their IDIQ contracts, as well as compared vendors' yearly prices for unbalanced pricing. See AR, Tab 11, Performance Evaluation Report, at 65-80. The PET also consulted with the technical evaluators (after completion of the SSEB's technical evaluations) to assess whether vendors' price proposals reflected their technical approaches and understanding of the requirement. See, e.g., id. at 72, 76, 79-80. Although ZelTech generally complains that the agency failed to consider the performance risk of vendor C's "substantially cheaper radio," Comments at 15; Supp. Comments at 7-8, the record shows that the agency specifically recognized that vendor C's lower price was largely attributable to the radios offered by the vendor, and concluded that vendor's C's price and technical proposals reflected the firm's clear understanding of the requirements. AR, Tab 11, Performance Evaluation Report, at 79. Although ZelTech complains that the prices it proposed for its radios are higher, it does not show that vendor C's proposed price was unrealistically low.

In sum, we find that the Army's evaluation of vendor proposals was reasonable and consistent with the solicitation's evaluation criteria, and that the agency reasonably excluded ZelTech's lower-rated proposal from the competitive range. The protester's selective disagreement with the agency's judgment does not establish that the agency acted unreasonably. See Savannah River Alliance, LLC, B-311126 et al., Apr. 25, 2008, 2008 CPD ¶ 88 at 7 (protest of evaluation ratings based on protester's selective identification of, and disagreement with, evaluation assessments denied where detailed evaluation record shows that agency assessed ratings based on proposals' merits and fairly highlighted key discriminators in that regard); NSR Solutions, Inc., B-406337, B-406337.2, Apr. 18, 2012, 2012 CPD ¶ 154 at 2 ("It is well settled that a technically unacceptable proposal cannot be

⁸ ZelTech also contends that the Army's evaluation of its proposal as marginal under the program management factor essentially found the firm was nonresponsible, a determination which should have been referred to the Small Business Administration (SBA) for review under that agency's certificate of competency program. See FAR § 19.602-1(a). This argument is without merit. Here, the weaknesses assessed in ZelTech's proposal under the program management factor concern the protester's failure to describe various aspects of its management approach to performing the contract, and not to the firm's ability or capability to perform.

considered for award, and thus properly may be excluded from the competitive range."); Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

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General Counsel