



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: HS Support

File: B-409937

Date: September 18, 2014

Dana H. Kjellgren, Esq., Kjellgren & Speed, PLC; and Paul Brinkman, Esq., Shorall McGoldrick Brinkmann, for the protester.

Roopali Desai, Esq., and Andrew S. Gordon, Esq., Coppersmith Brockelman, PLC, for Saint Jude Enterprises, LLC, an intervenor.

Sarah T. Zaffina, Esq., Department of the Interior, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

HS Support, of Flagstaff, Arizona, protests the award of a contract to Saint Jude Enterprises, LLC, of Flagstaff, Arizona, under request for quotations (RFQ) No. G14PS00154, issued by the Department of the Interior, United States Geological Survey (USGS), to provide boat operator services on the Colorado river in connection with the agency's conduct of scientific monitoring and research. HS maintains that the agency misevaluated proposals and made an unreasonable source selection.

We deny the protest.

The RFQ contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a 5-year ordering period. Firms were advised that the agency would make award to the firm submitting the quote deemed most advantageous to

the government considering price and three non-price evaluation factors, technical, management and past performance.¹

The agency received four quotations in response to the solicitation, including those of the awardee and the protester. The agency evaluators assigned the quotations of both HS and Saint Jude acceptable ratings under the technical and management evaluation factors. Agency Report (AR), exh. 8, Technical Evaluation Report, at 3. Saint Jude's quotation was assigned a neutral rating for past performance because it did not have any recent relevant past contracts, while the protester's quotation was assigned a past performance rating of acceptable based on its performance of the predecessor contract for this requirement. Id. Saint Jude proposed a price of \$2,499,775, while HS proposed a price of \$2,950,688. Id.

Based on these evaluation results, the agency made award to Saint Jude, finding that its quotation was most advantageous to the government because it was the lowest-priced, acceptably-rated quote. AR, exh. 9, Source Selection Decision Document (SSDD). The record shows that the agency rated another unsuccessful vendor's quotation highly acceptable, but concluded not to make award to that concern because of the price premium associated with its quotation (which was higher priced than the protester's quotation). Id.

After receiving a debriefing from the agency, HS filed an agency-level protest with the USGS. By letter dated June 4, the contracting officer denied that protest. AR, exh. 17, Contracting Officer's Decision. Thereafter, HS filed a protest in our Office.

HS first asserts that the agency improperly failed to conduct a price realism evaluation in connection with its award to Saint Jude. According to the protester, had the agency conducted such an evaluation, it would have concluded that Saint Jude's price, including its rates for boatmen, was unrealistically low to perform the requirements of the contract.

However, where, as here, a solicitation contemplates the award of a fixed-price contract, the contracting agency is not required to conduct a price realism evaluation absent a solicitation provision requiring such an evaluation. Lulus Ostrich Ranch, B-408993.2, Feb. 21, 2014, 2014 CPD ¶ 70 at 4. The RFQ at issue here did not provide for conducting a price realism evaluation and, as a result, the agency could not conduct such an evaluation.² We therefore deny this aspect of the protest.

¹ The RFQ did not specify the relative weights of the evaluation factors; accordingly, they are presumed to be approximately equal. GVC Companies, B-254670.5, Sept. 2, 1994, 94-2 CPD ¶ 86 at 2.

² HS notes that the source selection plan referred to price realism. However, because the source selection plan was an internal document not disclosed to, or
(continued...)

HS next asserts that the agency improperly relaxed a solicitation requirement for Saint Jude that firms designate the operational manager that will be in charge of day-to-day activities in their quotes. According to HS, Saint Jude failed to identify its operational manager and the agency therefore should have found the Saint Jude quote unacceptable under the management evaluation factor.

We find no merit to this aspect of HS's protest. The provision referred to by the protester is not in the RFQ's instructions or evaluation factors but, rather, is in the RFQ's performance work statement (PWS). The PWS describes the responsibilities of the contractor in connection with performance of the contract once it has been awarded. RFQ, Attach. 1, at 4. In contrast, the RFQ described the management plan evaluation factor as follows:

Management Plan. Prospective contractors shall submit a Management Plan that demonstrates their approach to recruiting, managing, and retaining qualified personnel in each of the necessary labor categories, as well as overall experience, approach, or philosophy to managing work of the type required. The management plan shall also address surge capacity, subcontract management, safety and accident prevention.

RFQ at 18. Simply stated, the RFQ's evaluation factor makes no reference to identifying the vender's operational manager, and does not require that the individual in question be identified at any time prior to award of the contract.

To the extent that the PWS requires the successful contractor to identify its operational manager, this does not provide a basis for finding Saint Jude's quotation unacceptable. Requirements such as this, which impose obligations on the "contractor" are performance requirements that do not have to be met prior to award of the contract; consequently, whether or not the awardee ultimately performs in a manner that satisfies this requirement is a matter of contract administration, which our Office will not review. Waterfront Techs., Inc.--Protest and Costs, B-401498.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 16; Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 3-4. We therefore deny this aspect of HS's protest.³

(...continued)

relied upon by, the competitors, it does not confer any rights on HS in terms of the bid protest process. Draeger Safety, Inc., B-285366, B-285366.2, Aug. 23, 2000, 2000 CPD ¶ 139 at 3 n.2.

³ HS also asserts that the agency engaged in unequal treatment of the offerors because the agency conducted a longer pre-closing site visit with Saint Jude than with the protester, and because the agency sent Saint Jude a clarification question
(continued...)

HS also contends that the agency applied unstated evaluation considerations in evaluating its quotation. In support of its position, HS directs our attention to the evaluation narrative of one of the agency's technical evaluators, and also to selected point scores assigned by the evaluators during their evaluation of quotations. According to the protester, these evaluation considerations were not encompassed within the RFQ's evaluation criteria and the source selection plan.

We find no merit to this aspect of HS's protest. In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

Here, while the protester is correct that the narrative materials prepared by one of the individual evaluators did make reference to considerations that were not encompassed by the RFQ's evaluation criteria, the record shows that this error was corrected by the contracting officer when the technical evaluation report was finalized. For example, the evaluator criticized the HS proposal for failing to include information concerning the firm's drug and alcohol policy. AR, exh. 8, Technical Evaluation Report, at 67. These remarks were provided as a narrative support for the evaluator's assignment of a minimally acceptable rating to the HS proposal under one aspect of the management plan evaluation factor. Id. at 66.

After reviewing the underlying technical evaluation materials, however, the contracting officer assigned the HS proposal a rating of acceptable (rather than minimally acceptable), and stated as follows:

(...continued)

regarding its price proposal. As for the site visit, the record shows that HS's representatives left before Saint Jude's representatives (and the representatives of another concern) left. Contracting Officer's Statement, at 10. In any event, HS has not explained how Saint Jude's extended presence at the site visit was somehow prejudicial to the firm. As for the contracting officer's question to Saint Jude, the record shows that there was a minor inconsistency between Saint Jude's technical proposal and its price proposal that was resolved through the contracting officer's query, but Saint Jude was not permitted to revise its proposal. Contracting Officer's Statement, at 4. Again, we do not, understand, and HS has not explained, how this interchange was prejudicial to it during the competition. See Landoll Corp., B-291381 et al., Dec. 23, 2001, 2002 CPD ¶ 40 at 7-8.

No emphasis was given by USGS in the solicitation to drugs and alcohol, or any other specific area regarding safety and accident prevention, as may be required by NPS/USGS [National Parks Service/United States Geological Survey] regulations. None of the four proposals received included all the possible areas of safety and accident prevention. Only brief overviews were given and expected in the proposals. The Contracting Officer advised the Board that they should not single out this one area for finding the Contractor's safety and accident plan minimally acceptable or unacceptable.

AR, exh. 8, Technical Evaluation Report, at 4. Thus, although there was an initial finding that was not consistent with the evaluation criteria, the record shows that that finding was corrected by the contracting officer.

As for the question of point scores, HS essentially contends that the agency assigned improper point scores to its proposal and therefore improperly ranked its quotation second behind the Saint Jude quotation. HS's focus on the point scores, however, is misplaced. To the extent that agencies use point scores or adjectival ratings, such scoring schemes are only guides to intelligent decision making. The Bowden Group, B-409332.3, Aug. 6, 2014, 2014 CPD ¶ 236 at 6. The pertinent question is whether or not the underlying record supports the agency's selection decision.

Here, the agency's source selection decision shows that the USGS did rank the quotations, but only in connection with its consideration of both the price and non-price considerations. AR, exh. 9, SSDD, at 2. The quotations of HS and Saint Jude were assigned identical overall ratings of acceptable, and the HS proposal was ranked second only because of its higher price. Id. The record also shows that another vendor's quotation was ranked third overall, notwithstanding that its quotation was assigned an overall rating of highly acceptable, because of its higher price. Id. In the final analysis, the record shows that, to the extent the agency made a comparative assessment of the quotations, the comparison was between the two quotations rated acceptable, and the quotation rated highly acceptable. The SSDD provides as follows:

"In a phone conference [among several agency personnel] a decision was made to award to the acceptable low offeror, St Jude Enterprises. Although [Offeror A] was found to have a more highly acceptable technical proposal, all agreed that it did not warrant the higher cost to the government."

AR, exh. 9, SSDD, at 2. It is therefore clear that, ultimately, the point scores assigned to the quotations were not afforded meaningful consideration in the agency's source selection decision.

HS also challenges the agency's selection decision, maintaining that the agency made award to Saint Jude on a low-cost technically acceptable basis rather than on a best value basis. As the SSDD makes clear, however, the agency evaluated the quotations of HS and Saint Jude as acceptable--essentially finding them technically equivalent--and made award to the firm submitting the lower price among the acceptably-rated quotes. As explained by the contracting officer in her statement:

HS Support assumes that Saint Jude's proposal was rated higher than it. Both proposals were evaluated pursuant to the evaluation criteria and both were rated acceptable. There was nothing in HS Support's proposal that warranted a 15% higher price; thus, USGS made the award to Saint Jude.

Contracting Officer's Statement at 9-10. In light of the foregoing considerations, we deny this aspect of HS's protest.

Finally, the protester challenges the agency's assignment of an acceptable rating to its past performance. The record shows that, in evaluating HS's past performance, the agency relied on a contractor performance assessment report (CPAR) that reviewed HS's performance of the predecessor contract. AR, exh. 8, Technical Evaluation Report, at 57-59. That report assigned HS three very good ratings and three satisfactory ratings. Id. HS takes issue with the agency's assignment of an acceptable rating to its past performance based principally on the narrative information included in the report. However, HS's protest amounts to no more than disagreement with the adjectival rating assigned to its past performance; HS does not allege that the agency improperly failed to consider the information in the CPAR, or that other past performance information should have been, but was not, considered. We therefore deny this aspect of the protest.

The protest is denied.

Susan A. Poling
General Counsel