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Decision

Matter of: Alliance Technical Services, Inc.

File: B-410307; B-410307.3

Date: December 1, 2014

Michael J. Gardner, Esq., Troutman Sanders LLP, for the protester.
Holly A. Roth, Esq., David E. Frulla, Esq., and Elizabeth C. Johnson, Esq., Kelley Drye & Warren LLP, for Delta Solutions & Strategies, LLC, the intervenor.
Erika L. Whelan Retta, Esq., Department of the Air Force, 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

Protest that contracting agency improperly evaluated awardee's proposal as technically acceptable is denied where the record shows the evaluation was reasonable and consistent with the solicitation's terms.

DECISION

Alliance Technical Services, Inc. (ATS), of Norfolk, Virginia, protests the award of a contract to Delta Solutions & Strategies, LLC, of Colorado Springs, Colorado, by the Department of the Air Force under request for proposals (RFP) No. FA4613-13-R-1001 for various data support services. ATS primarily argues that the agency improperly found Delta's proposal to be technically acceptable.

We deny the protest.

BACKGROUND

The RFP, issued on May 6, 2013, contemplated the award of a fixed-price contract for technical order library and maintenance data support services at F.E. Warren Air Force Base (AFB), Malmstrom AFB, Minot AFB, and Vandenberg AFB, to the firm whose offer will be most advantageous to the government, considering price, past performance and technical acceptability. RFP at 69-70. Technical acceptability was to be evaluated on a pass/fail basis. Past performance was to be evaluated for recency, relevance, and performance, and to be assigned a performance

confidence rating that integrated these three factors.¹ Id. at 71-73. Past performance was significantly more important than price. Id. at 70.

The evaluation scheme provided that proposals were to be first evaluated for technical acceptability. Technically acceptable proposals were to then be ranked by price, and past performance was to be evaluated beginning with the proposal with the lowest total evaluated price (TEP). Award was to be made to the first firm whose offer received a substantial confidence past performance confidence rating. Id. If this was not the lowest-priced technically acceptable proposal, the evaluation was to continue from the lowest TEP upward, until an offeror with a past performance confidence rating of substantial confidence was identified. The source selection authority (SSA) was then to conduct a best value determination between that offeror and those offerors with a lower TEP. Id.

Eight proposals were received, including those from ATS and Delta. Agency Report (AR), exh. 16, Competitive Range Determination, at 1. After an initial evaluation, the Air Force established a competitive range and entered into discussions with each offeror. Id. The agency then received final proposal revisions and conducted a final evaluation of proposals. All eight proposals were found to be technically acceptable and were ranked according to TEP. AR, exh. 21, Source Selection Decision (SSD), at 3-4. Delta's proposal was the third lowest-priced, at \$5,214,504, and ATS' proposal was the highest-priced, at \$5,884,486.56. Id. at 4.

Delta's proposal was evaluated as the lowest-priced offer with a past performance confidence rating of substantial confidence. Id. Consistent with the terms of the RFP, the SSA conducted an integrated best value assessment amongst Delta and the two lower-priced offerors with inferior past performance confidence ratings. In the end, Delta was selected by the SSA as the best value offeror. AR, exh. 21, SSD, at 21-22. ATS' past performance was not evaluated, and its proposal was not considered in the agency's best-value tradeoff decision. Id. ATS filed the instant protest after receiving its debriefing.

DISCUSSION

ATS' primary argument is that Delta's proposal was improperly found technically acceptable for three reasons. First, ATS argues that Delta failed to provide a qualified site program manager at each operating location, in violation of the terms of the RFP. Next, ATS argues that the awardee did not propose to provide a qualified database manager at each operating location, also in violation of the terms of the RFP. Third, ATS argues that Delta proposed the use of Integrated

¹ Proposals could receive a performance confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). Id. at 73.

Maintenance Data Systems (IMDS) computer operator personnel to perform database manager tasks in violation of the Service Contract Act. We address these arguments below and find each to be without merit.²

Site Program Manager

ATS argues that Delta's proposal should have been found to be technically unacceptable because it did not propose a qualified site program manager at each operating location, which ATS asserts violated the terms of the solicitation. ATS points to two sections of the performance work statement (PWS) for the proposition that a separate site program manager was required at each location specified in the solicitation. First, ATS points to PWS § 1.4.1.1, which states, "[t]he contractor shall provide an individual(s) at each installation who is the senior member responsible for contract performance." RFP at 267. Second, PWS § 1.4.4.3 states, "[t]he contractor shall ensure at a minimum the Site Program Manager, Lead [Technical Order Distribution Officer (TODO)] and alternate TODO hold a SECRET security clearance at each site to meet work center requirements." *Id.* at 268. The protester concludes that, "[t]he three positions cited at 1.4.4.3 are listed as separate positions and therefore can only be reasonably interpreted to require staffing by three separate employees at each location." Protest at 9.

The Air Force responds that Delta met the requirement stated in PWS § 1.4.1.1 by proposing [DELETED] at each location as senior members responsible for contract performance. Contracting Officer's Statement at 9-10. The agency also asserts that this is a performance-based acquisition, and the RFP did not require specific personnel or a specific number of full-time equivalent (FTE) personnel. *Id.* at 10. The agency states that PWS § 1.4.4.3 references skill sets, not specific positions, and that Delta met the RFP's requirements with its proposed staffing plan. *Id.*

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. Our review of the record leads us to conclude that the agency's reading of the solicitation is reasonable.

² ATS also challenged Delta's past performance confidence rating. The Air Force addressed these allegations in its report, but ATS failed to rebut or otherwise substantively address the agency's arguments in its comments. See Legal Memorandum at 15-18, Contracting Officer's Statement at 15-17; see generally Protester's Comments. We conclude that ATS abandoned this protest ground and it will not be considered further. IntegriGuard, LLC d/b/a HMS Federal--Protest and Recon., B-407691.3, B-407691.4, Sep. 30, 2013, 2013 CPD ¶ 241 at 4.

In line with the agency's understanding of the RFP, our review shows that the PWS states performance-based requirements. The RFP does not set forth key personnel, or otherwise required positions, but instead states eight specific requirements, with each requirement entailing various tasks to be performed. RFP at 260-66. Offerors were instructed to submit staffing plans that address required positions, a strategy for retaining personnel, and hiring procedures to meet the minimum qualification needs of the PWS. Id. at 246. In our view, the language of the RFP does not support the protester's position that offerors were required to propose a site program manager at each of the installations covered by the PWS.

With respect to the RFP language cited by the protester in support of its position, PWS § 1.4.1.1 only requires that the contractor designate at each installation at least one senior member responsible for contract performance. It does not detail any requirement for site program managers at each installation. Further, while we believe the agency reasonably concluded that Delta's proposal of [DELETED] at each location would satisfy the requirements of PWS § 1.4.1.1, designation of these senior members was to be made within 10 days after contract award. Thus, compliance with this section is a matter of contract administration, and not for review by our Office. See Bid Protest Regulations, 4 C.F.R. § 21.5(a).

While PWS § 1.4.4.3 refers to "Site Program Manager, Lead TODO and alternate TODO," we have no basis to question the agency's understanding that the phrase is reasonably read to describe responsibilities, not personnel required by the PWS. In our view, if the RFP were to require certain personnel, it would do so more expressly. For instance, the relevant portion of the proposal submission instructions simply states, "[s]ubmit a staffing plan that details the skills and experience of personnel to ensure that minimum requirements of the [PWS] are met." RFP at 64. There is no mention in this section (or anywhere else) of required personnel.

There is also no mention of a site program manager outside of PWS § 1.4.4.3. The only other reference to a contractor-hired program manager in the RFP is with respect to Federal Acquisition Regulation (FAR) § 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989), which identifies "program manager" as one of the service employee classes expected to be employed under the contract. RFP at 93. However, we do not read this provision as requiring a program manager at each site specified in the PWS.³

³ In fact, various questions were answered by the agency relevant to the staffing plan requirement, such as questions regarding key personnel requirements, resume submission requirements, and whether offerors could bid labor categories not listed in the incorporated collective bargaining agreement or the federal equivalent chart associated with FAR § 52.222-42. Id. at 246, 248, 253-54. Our review of the agency's responses to these questions clearly supports the agency's position that
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The record shows that Delta proposed [DELETED] FTE personnel at three installations and [DELETED] at the fourth installation. AR, exh. 6, Delta Solutions Technical Proposal, at 7. The firm proposed [DELETED] TODO and [DELETED] TO Distribution Assistant (TODA) at each of the four installations. Id. Delta also proposed [DELETED], but did not propose full-time program managers at each. Id. Of these FTE personnel, one was to be designated as the [DELETED] at each installation. AR, exh. 6, Delta Technical Proposal, at 7. Even if we were to conclude that Delta's [DELETED] did not meet the requirement set forth in PWS § 1.4.4.3, we have no basis to find unreasonable the agency's position that the [DELETED] could serve the responsibilities of a site program manager to meet the requirements of this section.⁴

Database Manager

ATS next argues that the RFP required Delta to propose a database manager, and that the firm's failure to do so rendered its proposal technically unacceptable. Protest at 9-11. The basis for the protester's argument is two-fold: (1) PWS § 1.2.1, which details IMDS operations requirements, incorporates by reference Air Force Computer Systems Manual (AFCSM) 21-556, which itself apparently details the duties of a database manager, and (2) RFP Appendix 4.2, which sets forth applicable publications and forms, also references AFCSM 21-556. Protest at 9. The agency counters that a database manager was not required per the terms of the RFP, and Delta proposed personnel with the skills and experience necessary to perform IMDS responsibilities outlined in PWS § 1.2.1. Memorandum of Law 12-13. We have no basis to find the agency's evaluation unreasonable.

As discussed above, the RFP set forth performance-based requirements and did not require any specific labor categories. The database manager is not mentioned at all in the RFP. Further, ATS has given us no basis to conclude that the referenced Air Force Manual required such a position, and even if it did (ATS has provided no such evidence) we think that the clear terms of the solicitation, which does not require such a position, would override any requirement found in a referenced regulation.⁵ To the extent that ATS argues that the database manager

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proposed staffing was to be done based on meeting the minimum requirements set forth in the PWS, and not based on agency-directed staffing.

⁴ The second sentence of PWS § 1.4.4.3 states the purpose of this requirement as, "an employee must be available during duty hours, after duty hours, or in emergency situations, who can access SECRET documents." RFP at 268.

⁵ Further undercutting ATS's argument is that PWS § 1.2.1.1 only requires the contractor to be familiar with AFCSM 21-series manuals. It does not incorporate any specific requirements of these manuals or specifically mention AFCSM 21-556.

should have been a required position, it was required to raise such a matter before the time for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1). Finally, ATS has given us no basis to find that the agency unreasonably evaluated Delta's proposal, specifically the IMDS Computer Operators offered to meet this PWS requirement.

IMDS Computer Operator

ATS argues that Delta proposed use of IMDS computer operator personnel to perform database manager tasks in violation of the SCA. We understand this challenge to be that: (1) the database functions in PWS § 1.2.1 were not covered by labor categories in the collective bargaining agreement (CBA) applicable here; (2) Delta did not offer a database manager but, instead, placed the database functions in one of the labor categories listed in the CBA; and (3) in doing so, Delta violated the SCA, rendering its proposal technically unacceptable. Protest at 12-13.

We need not further address this argument as we agree with the agency that the RFP did not require it to evaluate the propriety of proposed labor categories; to the extent that ATS' assertions relate to Delta's intentions during contract performance, such concerns involve a matter of contract administration which our Office does not review. 4 C.F.R. § 21.5(a). To the extent that ATS' assertion is that Delta will use labor categories that will result in a violation of the SCA, these are matters under the purview of the Department of Labor. Phoenix Management, Inc., B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 9 n.10.

The protest is denied.⁶

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General Counsel

⁶ We have considered ATS' supplemental protest grounds and find each to be without merit. For example, ATS argues that the agency improperly "spoon fed" Delta during discussions and conducted unequal discussions by informing the awardee about its deficiencies during discussions but only informing ATS that its price was higher than the government estimate. We note that there is nothing improper about "spoon feeding" an offeror during discussions, so long as there is no disparate or unequal spoon feeding. See FAR § 15.306(d)-(e) (detailing the scope, including limitations, on discussions). Moreover, since ATS' proposal was found technically acceptable after the initial evaluation, there was nothing to discuss with ATS with respect to this aspect of the firm's proposal.