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Decision

Matter of: Addvetco, Inc.

File: B-412702; B-412702.2

Date: May 3, 2016

Steven P. Engel, Esq., and Brandon T. Uram, Esq., Blumling & Gusky, LLP, for the protester.

Stephen J. Pieklik, Esq., and Raymond P. Parker, Esq., Williams Coulson, for Mare Solutions, Inc., an intervenor.

Ricarto Brazela, Esq., Department of Veterans Affairs, for the agency.

Laura Eyester, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's technical evaluation is not supported by the record is denied where the record shows that agency reasonably evaluated protester's and awardee's proposals.
 2. Protest challenging agency's best-value award decision is denied where the record shows that the source selection authority analyzed the qualitative differences between the proposals, and reasonably concluded that the higher-rated, higher-priced proposal was the best value to the government.
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DECISION

Addvetco, Inc., of Bethel Park, Pennsylvania, a small business, protests the Department of Veterans Affairs' (VA) award of a contract to Mare Solutions, Inc., of Pittsburgh, Pennsylvania, also a small business, under request for proposals (RFP) No. VA101-15-R-0135, for floor replacement at the VA Medical Center (VAMC) in Pittsburgh, Pennsylvania. Addvetco challenges the agency's evaluation of proposals and the resulting best-value tradeoff decision.

We deny the protest.

BACKGROUND

On July 17, 2015, the VA issued the RFP, under Federal Acquisition Regulation (FAR) Part 15, as a service-disabled veteran-owned small business set-aside for floor replacement, including the removal of old and installation of new flooring, for the VAMC in Pittsburgh. RFP at 1. The RFP provided for the award of one fixed-price contract, with the work to be completed within 475 calendar days after receiving the notice to proceed. RFP at 1, 17. Award was to be made on a best-value basis considering three evaluation factors: (1) technical capability, including subfactors of equal weight for relevant project experience, construction approach, management support staff, and safety; (2) past performance; and (3) price. RFP at 9, 15. Technical and past performance were of equal importance, and when combined, were significantly more important than price. RFP at 15. The RFP further provided “that the Government may make award without discussions, clarifications or any contact concerning the proposals received,” and therefore the “proposal should be submitted initially on the most favorable terms. Do not assume that Offerors will be contacted or afforded an opportunity to clarify, discuss, or revise their proposals.” RFP at 7.

The VA received proposals from five offerors, including Addvetco and Mare Solutions. Agency Report (AR), Tab 10, Source Selection Decision Document (SSDD), at 4. The agency prepared several source selection evaluation documents, including the technical evaluation board (TEB) report and the SSDD, both of which set forth the final evaluation results in detail, including the strengths and weaknesses for each offeror. AR, Tab 10, SSDD, at 1-25; Tab 11, TEB Report, at 1-17. The evaluation of the awardee’s and protester’s proposals is summarized below:

Evaluation Factor/Subfactor		Mare Solutions	Addvetco
Factor 1: Technical Capability		Good	Acceptable
	Subfactor 1.1: Relevant Project Experience	Good	Good
	Subfactor 1.2: Construction Approach	Good	Acceptable
	Subfactor 1.3: Management Support Staff	Good	Acceptable
	Subfactor 1.4: Safety	Acceptable	Good
Factor 2: Past Performance		Substantial Confidence	Substantial Confidence
Factor 3: Proposed Price		\$2,084,000	\$1,485,000

AR, Tab 10, SSDD, at 4, 24-25.¹

The source selection authority (SSA), who was also the contracting officer, conducted a tradeoff decision and concluded that:

ADDVetco lacked the confirmed leadership to accomplish this time sensitive project. Also it had several weaknesses to include an inaccurate description of swing space and excessive number of activity days, demonstrating a lack of understanding of the statement of work in the swing space. ADDVetco[']s proposal price was \$1,485,000; \$986,331 below the IGCE [independent government cost estimate]. Mare Solutions was rated good/Substantial Confidence. Mare Solutions['] proposal provided [an] understanding of the complexity of phasing projects, a staff experienced at healthcare facilities and an understanding of the importance of Infection Control Risk Assessment at Healthcare facilities. Mare [Solutions'] proposal price was \$2,085,000; \$387,331 below the IGCE. Although \$599,000 above the lowest priced acceptable proposal it is my opinion that Mare Solutions provides the Best Value to the Government and the least risk.

AR, Tab 10, SSDD, at 24-25. On January 22, the VA awarded the contract to Mare Solutions in the amount of \$2,084,000. AR, Tab 13, Awardee Acceptance Letter; Tab 8, Unsuccessful Offeror Letter. Upon learning of the resulting award to Mare Solutions, Addvetco filed this protest with our Office.

DISCUSSION

Addvetco argues that the weaknesses attributed to Addvetco's technical capability proposal were not supported by the record, Protest at 2-9, and that the technical proposals of Addvetco and Mare Solutions were subject to a disparate evaluation. Protester's Comments at 5-14. In addition, Addvetco asserts that the VA's best-value tradeoff decision was improper because the differences in the offerors' proposals did not justify the price premium associated with Mare Solutions' higher-priced proposal. Protest at 2; Protester's Comments at 3-5, 14-15. The VA

¹ A rating of good meant the "[p]roposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh minor weaknesses." AR, Tab 10, SSDD, at 2. A rating of acceptable meant the "[p]roposal meets the requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance." Id. at 2-3.

maintains that the source selection decision was reasonable and consistent with the solicitation. Although our decision does not specifically address all of Addvetco's arguments, we have fully considered each of them and find that none provide a basis to sustain the protest. We discuss several of the protester's most significant arguments below.

Technical Capability

Addvetco primarily challenges the evaluation of proposals under the technical capability factor. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. A protester's disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. Further, an evaluation of proposals and assignment of adjectival ratings should not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the proposals consistent with the evaluation scheme. Epsilon Sys. Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 6. Where the evaluation record and source selection decision reasonably consider the underlying basis for the ratings, a protester's disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the agency's judgments. Id. The relevant inquiry is whether the agency's evaluation of the relative merits of each proposal was reasonable and here, we conclude it was.

Addvetco asserts that it should have received a better than an acceptable rating under two of the technical subfactors: construction approach (subfactor 1.2) and management support staff (subfactor 1.3), which it believes would have resulted in it receiving a higher overall technical score. Protest at 3-9; Protester's Comments at 7-11. Further, Addvetco argues that Mare Solutions should have received a lower rating under three of the four subfactors: relevant project experience (subfactor 1.1), construction approach (subfactor 1.2), and management support staff (subfactor 1.3), which would have resulted in Mare Solutions receiving a lower overall technical score. Protester's Comments at 5-11.²

² In its protest, Addvetco also challenged the agency's assignment of a weakness to its proposal under subfactor 1.1, relevant project experience, because it did not provide detail on project phasing. Protest at 3-5. The agency explained that the failure to provide detail on experience with project phasing warranted a weakness because phasing is integral to this type of work. AR at 9-10. The protester did not dispute the agency's evaluation in its comments, but instead argued that Mare

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With respect to subfactor 1.1, relevant project experience, the RFP provided that offers must “demonstrate relevant experience with three (3) project experience summaries that provide recent and relevant experience as it relates to the size, scope and magnitude of this requirement [and at] least one of the projects must be related to healthcare facilities.” RFP at 11. The VA was to evaluate this information to determine the extent of recent and relevant project experience. Id. at 15.

Addvetco, which was assigned a good rating under this subfactor, asserts that Mare Solutions should not have received the same good rating because it had two weaknesses as compared to Addvetco’s one weakness. Protester’s Comments at 6-7. This argument lacks merit. In this regard, the VA found that Addvetco had one weakness concerning its lack of detail in describing its prior experience performing work in phases, and strengths for prior experience with flooring work, work in occupied clinic space, and prior projects that were similar in size and scope. AR, Tab 10, SSDD, at 8. While the VA found that Mare Solutions had two weaknesses--lack of detail in describing prior experience in performing work in phases and failure to demonstrate prior experience with flooring work--the VA found that Mare Solutions had several strengths, including the fact that all three of its previous projects were larger than the estimated cost of this project. Id. In addition,

(...continued)

Solutions’ proposal should have been rated lower in this area. Protester’s Comments at 5-6 (“Addvetco does not challenge the rating it received by the VA [of good under subfactor 1.1].”).

Addvetco also challenged the agency’s assignment of a weakness under subfactor 1.2, construction approach with respect to the number of days it proposed to complete a small corridor and the swing space (temporary alternate space). Protest at 5, 8-9. In its report, the agency explained that the small corridor is a public access and egress area and therefore could not be closed for the length of time Addvetco proposed, and that the lengthy timeline proposed for the swing space demonstrated that Addvetco did not understand the requirement. Id. at 10, 16-17. Addvetco failed to respond to the agency’s arguments in its comments.

Finally, Addvetco also challenged its assigned weakness under subfactor 1.4, safety, for its failure to include a discussion of certain safety certifications. Protest at 8. The agency explained that the certifications were needed to confirm that personnel were in fact certified. AR at 14. In response Addvetco notes that it does not challenge its rating under subfactor 1.4, safety. Protester’s Comments at 11.

Because the protester failed to rebut or otherwise substantively address the agency’s responses in its comments, we view all of these initial protest arguments as abandoned. Advanced Techs. & Labs. Int’l, Inc., B-411658 et al., Sept. 21, 2015, 2015 CPD ¶ 301 at 4-5 n.4.

as noted in the SSDD, the agency found that Mare Solutions' "experience included VA projects and projects including Legionella testing [which] was an added strength given the challenges that this particular VAMC has faced with legionella" issues in the past. Id. at 7. As a result, the agency assigned Mare Solutions' proposal a good under the relevant project experience because its strengths outweighed its minor weaknesses. AR, Tab 10, SSDD, at 5; see Epsilon Sys. Solutions, Inc. supra. The protester has not shown this conclusion to be unreasonable.

With respect to subfactor 1.2, construction approach, offerors were to provide "a detailed schedule indicating specific tasks with dates for each step of the process." RFP at 11. Further, the RFP stated that the "Standard work hours for the VAMC are Monday – Friday, 7:00a[m] to 3:30p[m]. Coordinate after hour work requests with the [resident engineer]." RFP, Attachment, General Requirements, 01 00 00, at 15. However, the project schedule identified two subphases (4f and 6d) relating to small corridor area work for "off shift work," or work outside of the hours of Monday - Friday, 7:00 am - 3:30 pm. Id., Attachment, Project Schedule, Section 01 32 16.15 at 9. The solicitation provided for evaluation of the offeror's construction approach

to determine whether [it] clearly and concisely demonstrates an understanding of the work to be performed and if the Offeror's approach to construction activities and work elements are achievable, allows for construction flexibility and is consistent with the proposed schedule[.]

RFP at 15.

Addvetco proposed the use of off shift work for more than just the two subphases identified in the RFP. AR, Tab 6, Volume 1 at 11. The agency rated this as a weakness, noting that:

[the proposal] schedule shows double shifts starting at phase 3 – [solicitation] identif[ies] the work day as 7a[m]-3:30p[m] (given the impact this project has on patient care and patient appointment scheduling, the project schedule spec clearly identifies the contract requirement for specific project phasing and specific sequencing; the contractor's suggested changes to the schedule equate to a lack of understanding of the requirements and therefore is considered a weakness)

AR, Tab 10, SSDD, at 9. Addvetco disputes the weakness, contending that the solicitation did not preclude the use of off shift work in other phases since the solicitation references overtime in several instances. Protest at 3; see RFP at 11.

The evaluation in this regard was unobjectionable. As noted above, the RFP states that the work day was limited to the 7 a.m. - 3:30 p.m. time period. RFP, Attachment, General Requirements, 01 00 00, at 15. The VA reports the hours of 7 a.m. to 3:30 p.m. are the best hours to ensure there is minimal interference with hospital operations and do not require additional personnel be used to oversee the work. AR at 8-9. In addition, the RFP identified only two subphases for small corridor area work for off shift work, or work outside the regular hours. RFP, Attachment, Project Schedule, Section 01 32 16.15, at 9. The agency explains in this regard that these two subphases for small corridor area work permit off shift work because “they are time sensitive and will have a substantial negative impact on VA hospital operations if they are not completed properly.” AR at 8. Thus, the solicitation limited off shift work to the two areas for which a quicker completion of the work was necessary, while otherwise limiting the hours of construction so as to avoid an adverse impact on patient care and patient appointment scheduling. We find to be reasonable the agency’s assignment of a weakness based on Addvetco’s proposal of more extensive off shift work, with the result that it was reasonable for the agency to assign Addvetco only an acceptable rating under the construction approach subfactor.

With respect to subfactor 1.3, management support staff, the RFP stated that offerors must submit “a resume demonstrating the relevant experience of key project personnel qualifications and knowledge,” and “[c]learly describe the prime responsible firm . . . [or] individuals” for a project executive, project manager, and superintendent. RFP at 11. The solicitation provided for evaluation of the resumes of these individuals

to determine the extent of their qualifications, knowledge, and experience as it relates to this project . . . [and] evaluate the Offeror’s Organizational Chart . . . to assess the structure and capabilities for successful delivery and proper coordination.

RFP at 15.

The VA assigned a weakness to Addvetco’s proposal on the basis that its proposal of three project managers and two superintendents left unclear who the actual manager and superintendent would be for the project. AR, Tab 10, SSDD, at 9. Addvetco responds that the RFP did not preclude having more than one project manager or superintendent. In addition, the protester explains that it needed to list more than one manager because one of them could be working on other projects by the time the contract is awarded, more than one manager and superintendent was needed for the shift work, and Addvetco’s unique management structure sometimes required two people to split management duties. Protester’s Comments at 10.

An offeror bears the burden of submitting an adequately written proposal that contains all of the information required under a solicitation. Battelle Memorial Inst.,

B-299533, May 14, 2007, 2007 CPD ¶ 94 at 3. Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 7-8. Here, the agency concluded that providing a list of several potential project managers and superintendents without identifying who would be the actual manager and superintendent for the project was a weakness because the “project is very complex with the number of phases and the amount of coordination that is required to maintain schedule,” and “it is important to know who will be assigned to leadership positions on a time sensitive project with this complexity.” AR, Tab 10, SSDD, at 9, 11, 23; Tab 11, TEB Report, at 6-8. We find that, given Addvetco’s failure to clarify in its proposal its management approach, the agency reasonably concluded that the resulting confusion surrounding the proposed project managers and superintendents warranted assigning a weakness. AR, Tab 6, Addvetco Proposal Vol. I, at 26-38.

In sum, the record shows that the agency’s evaluation of proposals under the technical capability factor was reasonable and consistent with the stated evaluation criteria. See Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, supra.

Discussions/Clarifications

Addvetco also asserts that the agency failed to conduct discussions or clarifications with Addvetco so as to eliminate any uncertainties regarding its proposed approach. Protester’s Comments at 10; Protest at 2. The RFP, however, advised that the VA “may make award without discussions, clarifications or any contact concerning the proposals received,” RFP at 7, and agencies are not required to conduct discussions where, as here, the solicitation advises of the agency’s intent to award without discussions. Wolverine Services LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 6. Further, nothing in the record indicates that the agency engaged in discussions with any of the offerors. AR at 8; AR, Tab 10, SSDD; Tab 11, TEB Report. In addition, it is well settled that “[a]n agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors.” Wolverine Services LLC, supra. Thus, the agency was under no obligation here to afford Addvetco an opportunity to remedy the shortcomings in its proposal.

Best Value

Finally, Addvetco contends that the differences in the offerors’ non-price proposals did not justify the price premium associated with Mare Solutions’ proposal. Protest at 2; Protester’s Comments at 13-15. The VA maintains that Addvetco’s and Mare Solutions’ proposals were not technically equal, and that it reasonably concluded that the awardee’s proposal provided the best value to the government. AR at 6; Supplemental AR at 3, 8.

The RFP provided that the technical and past performance factors were of equal importance, and that these non-price evaluation factors, when combined, were significantly more important than price. RFP at 15. Where, as here, a solicitation contemplates award on a best-value basis and provides that the non-price considerations are more important than price, agencies have discretion to make award to a concern that has submitted a higher-priced, technically superior offer; the agency's decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Marine Hydraulics Int'l, Inc., B-403386.3, May 5, 2011, 2011 CPD ¶ 98 at 4. Further, while source selection decisions must be documented, and must include the rationale for any business judgments and tradeoffs made or relied upon by the source selection authority, there is no need for extensive documentation of every consideration factored into a tradeoff decision. Navistar Defense, LLC; AM General, LLC, B-407975.2 et al., Dec. 19, 2013, 2014 CPD ¶ 287 at 12. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Id.; Worldwide Information Network Sys., Inc., B-408548, Nov. 1, 2013, 2013 CPD ¶ 254 at 6.

Here, the SSA found that although Addvetco's proposal had no deficiencies, it had several weaknesses that demonstrated a lack of understanding of the statement of work, including an inaccurate approach to swing space, a lengthy schedule for corridor work, impermissible after hours work, lack of clarity on the superintendent and project manager, and no site safety and health officer. AR, Tab 10, SSDD, at 23. Further, Mare Solutions' proposal likewise had no deficiencies, however, the VA found that Mare Solutions' relevant prior projects were with the VA and larger than the current requirement, its proposal indicated an understanding of the complexity of phasing projects and the importance of infection control risk assessment at healthcare facilities, and its proposal included a staff experienced at healthcare facilities. AR, Tab 10, SSDD, at 23-24. The SSA concluded that, as found by the TEB,

Mare Solutions provided the best technical proposal combined with the strongest past performance results. They were the *only general contractor* that demonstrated complete understanding of the complexity of the phasing/scheduling of this work and provided a schedule that met the contract requirements [and their] past performance ratings were higher/more numerous than the other contractors.

AR, Tab 10, SSDD, at 22. As a result, the SSA found that Mare Solutions' proposal provided the best value and least risk, thus warranting payment of the price

premium associated with the proposal. Id. at 25.³ On this record, we see no basis to conclude that the SSA failed to analyze the qualitative differences between the proposals, failed to adequately document the record, or unreasonably concluded that the higher-rated, higher-priced proposal was the best value to the government.⁴

The protest is denied.

Susan A. Poling
General Counsel

³ Addvetco argues that the agency was required to assign a monetary value to, or quantify, Mare Solutions' technical superiority. Protester's Comments at 3. However, FAR § 15.308 specifically states that: "Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision."

⁴ Addvetco also argues that the award to Mare Solutions "was arbitrary and capricious and likely was a retaliatory action stemming from previously submitted claims on prior unrelated projects." Protest at 2. The agency reports, however, that the program office has not worked with the protester on previous contracts and the contracting officer had no knowledge of what may have transpired in the past. AR at 7; Contracting Officer's Statement at 3. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Sygnetics, Inc., B-405138 et al., Aug. 22, 2011, 2011 CPD ¶ 163 at 6. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Global Integrated Sec. (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375 at 14. Here, Addvetco has not provided any credible evidence of bias, nor does the record otherwise show that the agency's award decision was motivated by bias or bad faith.