



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: Rocky Mountain Excavating, Inc.

File: B-412879

Date: June 22, 2016

Ryan J. Klein, Esq., and Durward E. Timmons, Esq., Sherman & Howard L.L.C., for the protester.

David G. Fagan, Esq., Department of Veterans Affairs, for the agency.

Young S. Lee, Esq., Peter D. Verchinski, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of protester's technical proposal and best-value decision is denied where record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Rocky Mountain Excavating, Inc., a service-disabled veteran-owned small business (SDVOSB) of Castle Rock, Colorado, protests the award of six contracts,¹ under request for proposals (RFP) No. VA259-15-R-0018, issued by the Department of Veterans Affairs (VA) for repair and construction services. Rocky Mountain contends that the VA's evaluation of its proposal and the agency's award decision were unreasonable.

We deny the protest.

¹ Awards were made to the following SDVOSBs: Betance Enterprises, Inc., of Centennial, Colorado; MSC Design Build LLC, of Ogden, Utah; RHI LLC, of West Haven, Utah; Zieson Construction Co. LLC, of Topeka, Kansas; Hawk Contracting Group, of Montrose, Colorado; and GCH Construction Co., of Colorado Springs, Colorado.

BACKGROUND

On February 27, 2015, the agency issued the RFP as a total SDVOSB set-aside, seeking proposals for maintenance, repair, and construction services at six different VA stations. RFP at 1, 7. The solicitation was conducted pursuant to the negotiated procedures of Federal Acquisition Regulation (FAR) part 15 and contemplated the award of up to six, fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) multiple award task order contracts, with each contract having a 12-month base period and four 12-month option periods. RFP at 1, 6-9.

The RFP provided that awards would be made on a best-value basis, considering price and the following three non-price factors: (1) medical experience (construction), (2) general experience, and (3) past performance.² Id. at 17-18. Pursuant to the solicitation, all non-price factors, when combined, were significantly more important than price and were listed in descending order of importance. Id. at 17.

As relevant to this protest, the medical experience (construction) factor contained the following two equally-weighted subfactors: (1) medical facilities construction experience and (2) infection control plan. Id. at 17-18. With regard to the infection control plan subfactor, the solicitation instructed offerors to document and demonstrate that the firm had experience with infection control risk assessments, corresponding mitigation measures, and experience with interim life safety measures. Id. at 19. In addition, the RFP required offerors to submit: (1) a copy of their infection risk management policy; (2) copies of specific infection control risk assessments and resulting infection control risk management plans for at least one other project of similar size and scope in a hospital environment; (3) copies of 10 days of daily reports showing that infection risk management items were inspected periodically, that non-compliance incidents were documented, and that measures were taken to mitigate any non-compliances; and (4) copies of 10 days of interim life safety measure assessments showing that these items were inspected periodically, that non-compliance items were documented, and what measures were taken to mitigate any non-compliance items. Id. The solicitation provided that for the infection control plan subfactor, offerors would be evaluated based on their “level of understanding of Infectious Control and the company’s infection risk management practices.” Id.

² Proposals could be assigned a rating of excellent, good, satisfactory, marginal, or unsatisfactory under the solicitation’s non-price technical factors. RFP at 19. With regard to past performance, offers could be assigned a rating of excellent, good, satisfactory, neutral, marginal, or unsatisfactory. Id. at 22-23.

The agency received 24 proposals by the solicitation's February 15, 2016, closing date.³ Contracting Officer (CO) Statement at 3; Agency Report (AR), Tab 4 Supp., Technical Evaluation Board (TEB) Report, at 2. The agency's TEB evaluated the proposals, identifying strengths and weaknesses, and assigned ratings based on the solicitation's adjectival rating scheme. AR, Tab 4 Supp., TEB Report, at 10-50. Rocky Mountain's and the awardees' proposals were evaluated as follows:

Offeror	Medical Experience (Construction)	General Experience	Past Performance	Evaluated Price
RHI, LLC	Good	Satisfactory	Good	\$1,341,346
MSC Design Build LLC	Good	Satisfactory	Good	\$1,322,099
Rocky Mountain Excavating, Inc.	Satisfactory	Satisfactory	Good	\$1,290,620
Zieson Construction Co. LLC	Satisfactory	Satisfactory	Good	\$1,212,139
Hawk Contracting Group	Satisfactory	Satisfactory	Good	\$1,173,602
Betance Enterprises, Inc.	Good	Good	Good	\$1,163,370
GCH Construction Co.	Good	Satisfactory	Good	\$1,161,800

AR, Tab 4, Source Selection Decision (SSD), at 54; Tab 4 Supp., TEB Report, at 11-14, 21-23, 31-33, 40-46, 48-50.

As relevant here, the TEB reviewed Rocky Mountain's proposal submission related to the infection control plan subfactor and rated the proposal marginal under the subfactor. AR, Tab 4 Supp., TEB Report, at 43. This marginal rating, together with a good rating assigned under the medical facilities construction experience subfactor, resulted in Rocky Mountain's satisfactory medical experience (construction) factor rating. Id. at 42-43.

³ The solicitation's original April 9, 2015, closing date was extended to February 15, 2016, by RFP amendment 8. RFP at 1; RFP amend. 8, at 1. Subsequently, offerors were given until February 16 to submit a revised price proposal if their prices were no longer valid. RFP amend. 9, at 1.

The source selection authority (SSA) adopted the ratings the TEB assigned to the proposals and ultimately determined that the proposals submitted by RHI, MSC Design Build, Zieson Construction, Hawk Contracting Group, Betance Enterprises, and GCH Construction represented the best value to the government, price and other factors considered. AR, Tab 4, SSD, at 9-55. In reaching this conclusion, the SSA recognized that Rocky Mountain's proposal was evaluated as having a lower price than the proposals submitted by MSC Design Build Contractors and RHI, but concluded that the two higher-priced proposals offered a better value to the VA because of their higher technical ratings under the medical experience (construction) evaluation factor.⁴ Id. at 53. Specifically, the SSA concluded that since the contract would likely require a large amount of hospital work where infection control would be very important, and because the infection control plans of MSC Design Build and RHI were more highly rated than the one proposed by Rocky Mountain, the "minor savings in price" offered by Rocky Mountain's proposal was not worth the higher technical ratings and strengths displayed by RHI and MSC in infection control and interim life safety measures. Id. at 53.

On February 29, the VA awarded contracts to Betance Enterprises, MSC Design Build, RHI, Hawk Contracting Group, Zieson Construction, and GCH Construction. CO Statement at 3. The protester received a written debriefing from the VA on March 14. Id. Thereafter, Rocky Mountain filed its protest with our Office on March 18.

DISCUSSION

Rocky Mountain contends that the VA improperly evaluated its proposal under the infection control plan subfactor and also challenges the agency's best-value decision. Specifically, the protester asserts that the VA failed to consider all the information Rocky Mountain submitted with its proposal. The protester alleges that the agency's best-value decision is flawed because it is based on the allegedly unreasonable evaluation. In response, the agency explains that it properly assigned a marginal rating to Rocky Mountain's proposal under the infection control plan subfactor because the proposal did not include sufficient detail to merit a

⁴ The SSA recognized that Zieson Construction and Hawk Contracting Group received the same overall adjectival ratings as Rocky Mountain under the RFP's non-price evaluation factors, but concluded that the proposals submitted by Zeison and Hawk represented better values than the one submitted by Rocky Mountain because of their lower evaluated prices. AR, Tab 4, SSD, at 53. Betance Enterprises and GCH Construction submitted proposals that were lower in price and more highly rated than the offer submitted by Rocky Mountain under the solicitation's medical experience (construction) factor. Id. at 9, 52.

higher rating. After reviewing the record, we find no basis upon which to sustain Rocky Mountain's protest.

In reviewing protests of an agency's evaluation of an offeror's technical proposal, our Office does not reevaluate proposals; rather, we review the record to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See Alutiiq Tech. Servs. LLC, B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4; Silverback7, Inc., B-408053.2, B-408053.3, Aug. 26, 2013, 2013 CPD ¶ 216 at 3. An offeror's disagreement with the agency's evaluation, without more, does not establish the evaluation was unreasonable. See Alutiiq Tech. Servs. LLC, supra. Offerors are responsible for submitting a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. See Hallmark Capital Grp., LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9.

Here we find reasonable the agency's evaluation of Rocky Mountain's proposal. As discussed above, with regard to the infection control plan subfactor, the solicitation required proposals to demonstrate that the offeror had experience with infection control risk assessments, corresponding mitigation measures, and experience with interim life safety measures. RFP at 19. The RFP also required the submission of an infection risk management policy, as well as copies of various related reports and assessments. Id. In its proposal, Rocky Mountain stated that it had experience with infection control risk assessments and interim life safety measures on prior VA construction projects. AR, Tab 7, Rocky Mountain Proposal, at 14. The protester also provided a letter from a VA representative at the Raymond G. Murphy VA Medical Center in Albuquerque, New Mexico, stating that Rocky Mountain had performed work, which "required experience with Infection Control Risk Assessments, Interim Life Safety Measures and Infection Control Measures while working in an active bariatric wing." Id. In addition to the letter, Rocky Mountain's proposal also contained several sentences, generally outlining the company's infection risk management policy. Id. at 15. The protester also submitted copies of daily reports and assessments. AR, Tab 10A, Rocky Mountain Risk Assessment Plan, at 1-7; Tab 10B, Rocky Mountain Daily Sheets, at 1-27; Tab 10C, Rocky Mountain Weekly Safety Inspection List, at 1-16.

In its evaluation of Rocky Mountain's proposal under the infection control plan subfactor, the TEB credited the protester for including an infection control plan, daily reports, and other relevant assessments with its proposal. AR, Tab 4 Supp., TEB Report, at 43. However, the TEB determined that the documentation provided "did not demonstrate that [Rocky Mountain] had experience implementing infection control and corresponding mitigating measures or has experience with Interim Life Safety Measures." Id. Based on these concerns, the TEB assigned a marginal

rating to Rocky Mountain under the infection control plan subfactor.⁵ Id. at 42-43. As noted above, the record reflects that the protester received an overall satisfactory rating under the medical experience (construction) factor based on the good and marginal ratings it respectively received under the medical facilities construction experience and infection control plan subfactors. The SSA adopted the findings and ratings assigned by the TEB. AR, Tab 4, SSD, at 42-44.

Based on our review of the record, we find nothing unreasonable with the agency's decision to assign a marginal rating to Rocky Mountain's proposal under the solicitation's infection control plan subfactor. Although the protester argues that the agency should have given greater weight to the information in the letter that Rocky Mountain submitted regarding the work it performed at the Raymond G. Murphy VA Medical center, and contends that the letter demonstrates that it should have received a higher rating, we disagree. Here, the RFP stated that for the infection control plan subfactor, offerors would be evaluated based on their "level of understanding of Infectious Control and the company's infection risk management practices." RFP at 19. As explained by the VA and as demonstrated by the record, the marginal rating assigned to Rocky Mountain was not based on the absence of documentation in the protester's proposal, but rather because the documentation included with Rocky Mountain's proposal did not provide enough detail to demonstrate that the protester had more than a shallow understanding of the solicitation's requirements.⁶

⁵ The RFP established that a marginal rating would be assigned to a proposal demonstrating a shallow understanding of the requirements and which provided an approach that only marginally met performance or capability standards necessary for minimal but acceptable performance. RFP at 19.

⁶ The record reflects that the infection control sections of proposals submitted by at least two awardees (that received good ratings under the infection control plan subfactor) contained detailed infectious risk management policies and comprehensive plans describing under what circumstances they would obtain infection control permits, the various infection control methods implemented by the offerors, along with substantial details regarding the infection control procedures followed by those companies. See AR, Tab 4, SSD, at 11-12, 40-41; Tab 8, Betance Enterprises, Inc. Proposal, at 19-38; Tab 9, MSC Design Build Contractors Proposal, at 9-52. Indeed, whereas Rocky Mountain submitted a several sentence, high-level infection risk management policy, AR, Tab 7, Rocky Mountain Proposal, at 15, Betance, for example, submitted a detailed, a 9-page infectious risk management policy, which the TEB evaluated as "excellent" and recognized as a proposal strength. AR, Tab 4 Supp., TEB Report, at 12; Tab 8, Betance Proposal, at 20-29.

We agree with the agency's assessment. Our review of Rocky Mountain's proposal confirms that it contained little to no detail with regard to how it would implement infection control, corresponding mitigation measures, or its experience with interim life safety measures. See AR, Tab 7, Rocky Mountain Proposal, at 14-15; Tab 4, SSD, at 43. Rather than explaining or detailing its infection control plan or its infection risk management policy, Rocky Mountain's proposal instead contained only vague or general statements indicating that it would review and follow various procedures before beginning work. Id. Accordingly, we find no basis to question the agency's evaluation of Rocky Mountain's technical proposal, and the protester's allegations to the contrary, without more, reflect only its disagreement with the agency's evaluation. See Unisys Corp., B-406326 et al., Apr. 18, 2012, 2012 CPD ¶ 153 at 8.

Finally, the protester contends that the agency's best-value decision was flawed based on its assertion that ratings assigned to it under the infection control plan subfactor, and higher-level medical experience (construction) factor were improperly assessed. Based on our conclusions above, we find no merit to this argument. Additionally, the record demonstrates that the SSD provided a well-reasoned basis for a tradeoff that identified discriminators between the proposals, which justified the agency's decision to pay higher prices for the proposals offered by MSC Design Build Contractors and RHI.⁷

The protest is denied.

Susan A. Poling
General Counsel

⁷ As previously discussed, the solicitation provided that all non-price factors, when combined, were "significantly more important" than price. RFP at 17.