



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: Metson Marine Services, Inc.

File: B-413392

Date: October 19, 2016

Corianne W. Lau, Esq., Terry E. Thomason, Esq., and Jessica Y.K. Wong, Esq., Alston Hunt Floyd & Ing, for the protester.

Nicholas A. Konoske, Esq., Konoske Akiyama & Brust, LLP, for the intervenor. Andre Ahuna, Esq., and Richard Carlile, Esq., Department of the Navy, for the agency.

Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of awardee's staffing plan is denied where the record demonstrates the agency's evaluation was consistent with the solicitation.

2. Protest challenging the evaluation of protester's proposal is dismissed where protester would not be in line for award even if its protest were sustained.

DECISION

Metson Marine Services, Inc., of Ventura, California, protests the award of a contract to Adept Process Services, of National City, California, by the Department of the Navy under request for proposals (RFP) No. N00604-16-R-3010 for port operations services at Joint Base Pearl Harbor-Hickam, Hawaii. Metson challenges the agency's evaluation of the awardee's proposal under the technical, price, and past performance factors, as well as the evaluation of Metson's own proposal under the past performance factor.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RFP, issued on May 2, 2016, advised offerors that the contract would be awarded based on the lowest-priced, technically acceptable (LPTA) offer in accordance with Federal Acquisition Regulation (FAR) § 15.101-2(b)(1). RFP at 93.

The solicitation sought proposals to provide various port operations services at Joint Base Pearl Harbor-Hickam to include dockmaster services, equipment maintenance, oil spill response, and other services. Id. at 27. Proposals were to be evaluated under three evaluation factors: technical acceptability, past performance, and price. Id. at 93-95. Both technical acceptability and past performance were to be evaluated as either acceptable or unacceptable. Id. at 95. The solicitation established that a proposal's failure to meet all of the requirements under any factor would make the proposal unacceptable and preclude award. Id. at 93.

The technical acceptability factor included two subfactors, technical approach and performance plans. Id. at 93-94. Within the second of these subfactors, offerors were to demonstrate their understanding of seven identified performance requirements. Included among these items, and at issue in this protest, was the requirement to propose a "clear and feasible" staffing and management plan to perform each task described in the performance work statement (PWS). Id. at 94, 105. The PWS described 13 categories of tasks and estimated that 52 full-time equivalents (FTEs) would be needed. Id. at 27-39.

With regard to past performance, offerors were required to identify a maximum of three prior contracts considered to be the most recent and relevant. Id. at 85-86. Past performance was to be evaluated for "recentness and relevancy," defined in the solicitation to mean performance within the previous five years of contract work that was similar in nature to that being solicited. Id. at 94. As relevant here, the RFP stated that where an offeror had no record of past performance, a rating of neutral would be assigned, and that a neutral rating would be considered acceptable. Id.

With respect to price, the RFP included both fixed-price and cost-reimbursable contract line item numbers (CLINs) for port operations services. Id. at 94. Price was to be analyzed for completeness and reasonableness. Id. at 94. The completeness review was to reflect whether the proposal included all required information, while the reasonableness review would analyze whether submitted prices were "fair under current market conditions, and reasonable to both the offeror and the [g]overnment." Id. The RFP noted that the cost-reimbursable CLINs would be evaluated based on government-provided plug numbers. Id. at 94-95.

The Navy received three offers, which were rated as follows:

	Adept	Metson	Offeror 3
Technical Acceptability	Acceptable	Acceptable	Acceptable
Past Performance	Acceptable	Unacceptable	Acceptable
Total Price	\$34,083,294	\$37,322,501	\$39,000,706

Agency Report (AR), Ex. 1, Contracting Officer's Statement of Facts, at 2.

Metson was informed on June 30, 2016, that its proposal was not selected for award, and was provided a written debriefing that detailed the weaknesses and deficiencies found in its proposal. Protest at 4. This protest followed.

DISCUSSION

Metson protests that the agency improperly evaluated the awardee's proposal. First, the protester challenges the Navy's technical evaluation, alleging that Adept's staffing plan was insufficient to demonstrate a feasible approach. Id. at 15-16. The protester also challenges the overall acceptable rating of Adept's past performance, based on the protester's belief that Adept has not previously performed similar work. Id. at 16-17. With regard to price, Metson avers that the agency failed to perform a price realism analysis, and that Adept's price could not reasonably be found realistic. Id. at 17-18. Finally, Metson challenges the agency's evaluation of the protester's own past performance, arguing that significant weaknesses and deficiencies identified by the evaluation board were unfairly assessed. Id. at 17-21.

In matters of technical evaluation, we will not substitute our judgment for that of the agency; rather, we will consider the agency's conclusions to ensure they are consistent with the solicitation, applicable statutes and regulations, adequately documented, and reasonably based. National Gov't Servs., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 4. A protester's disagreement with the agency's evaluation judgments, by itself, does not render those judgments unreasonable. Hygeia Solutions Partners, LLC; STG, Inc., B-411459 et al., July 30, 2015, 2015 CPD ¶ 244 at 6. An agency is afforded discretion in technical evaluations, as the agency is responsible for defining its needs and for identifying the best method for accomplishing them in performance. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 7.

With regard to Adept's proposal, Metson protests that the Navy's faulty evaluation of Adept's staffing plan undermines an overall rating of acceptable. Protest at 15-16. The protester argues that the awardee's planned approach to staffing is insufficient to perform the required work, and also questions Adept's ability to hire qualified personnel. Id. at 16. More specifically, Metson contends that the work called for in the RFP requires a minimum of 60 FTEs to accomplish, and that Adept's proposed use of only 53 FTEs therefore could not reasonably be found acceptable.¹ Comments at 15-18, citing Protester's Response to Request for Dismissal, at 6-8.

The Navy asserts, in response, that its evaluation was reasonable and consistent with the terms of the RFP; and that, further, Metson's protest is essentially based on

¹ We considered Metson's other arguments regarding Adept's ability to perform the contract and conclude that none of them present a basis to sustain the protest.

disagreement about the agency's actual needs.² Agency Report (AR) at 3-7. On this record, and as discussed below, we agree on both counts.

In its pleadings, Metson makes clear that much of its argument concerning whether the evaluation was consistent with the RFP is informed by the protester's experience as the incumbent contractor or other claimed "intimate knowledge of contract requirements." Protest at 16. While Metson's interpretation of the requirements may be based on its experience and corporate knowledge, we see nothing in the record to require any minimum number of staff in order to perform the contract. Metson appears to calculate the "requirement" for 60 FTEs based on its interpretation of what the work will require, rather than an actual requirement of the RFP. For example, Metson argues that one aspect of the PWS "will require a minimum of twelve qualified personnel," and "not six as suggested in the RFP." Protester's Response to Request for Dismissal, at 7. This assertion refers to a requirement for crew to operate one work boat and one barrier boat, which Metson claims to be twelve qualified persons; however, this is not a stand-alone requirement of the RFP. The requirements that Metson insists should have been imposed in evaluating proposals are not consistent with the terms of the RFP, since the services in question are only required on an as-needed basis. RFP at 94. In this regard, as discussed below, there is no prohibition in the RFP to crewing as-needed boats with personnel who may also perform other functions when not responding to emergency calls. Accordingly, Metson's complaint that the agency's evaluation did not reflect the asserted staffing requirements is dismissed for failure to state a valid protest basis.³

² Initially, the Navy argued that the consideration of staffing adequacy is a matter of responsibility, and therefore not subject to our review under 4 C.F.R. § 21.5. Request for Dismissal at 2-3. However, agencies may use traditional responsibility factors, such as an offeror's workforce capability, as technical evaluation factors where comparative evaluations of those considerations are performed. See DA Defense Logistics HQ, B-411153.3, Dec. 2, 2015, 2015 CPD ¶ 358 at 8. As the staffing plans here were an express component of the evaluation scheme described in the RFP, we concluded that the agency's consideration of the staffing plans was not a matter of responsibility, and declined to dismiss the protest on that basis. We also considered other arguments regarding Adept's ability to perform the contract (including an allegation of inadequate capitalization, inability to hire qualified personnel, and general questions of quality control) and found that, as pled by Metson, none met our Regulations' standard for providing a sufficiently detailed legal argument. See 4 C.F.R. § 21.1(c)(4).

³To the extent Metson is challenging the RFP's estimates or an ambiguity in the solicitation, this independent ground of protest is untimely, as protests of solicitation terms must be received prior to the closing time established for the receipt of proposals. 4 C.F.R. § 21.2(a)(1).

To the extent Metson is challenging the agency's evaluation, we find that the record shows that the Navy considered Adept's performance plan and evaluated it in accordance with the RFP. In this regard, the source selection evaluation board (SSEB) report reflects the Navy's awareness of the level of staffing that Adept was proposing, and that the SSEB found Adept's proposal "adequately described a detailed staffing approach to perform each task area in the performance work statement [PWS]"; that its staffing and management plan "adequately addressed CDRL 1 [contract data requirements list 1] requirements"; and that it met the minimum requirements of the solicitation. AR, Tab 16, SSEB Report at 17. With regard to staffing, the SSEB specifically credited Adept with a strength in its staffing plan because most personnel were assigned "collateral duties," resulting in "greater flexibility in contract execution." Id. While Metson clearly disagrees in this regard, the protester's disagreement, by itself, does not demonstrate that the agency's judgment is unreasonable. Hygeia Solutions Partners, LLC, supra. Here, Adept's approach proposed staffing efficiencies, which were not prohibited by the RFP, that the Navy reasonably evaluated. Accordingly, this aspect of the protest is denied.

Metson also protests that the Navy's evaluation of Adept's past performance and price were flawed. We dismiss both of these grounds of protest as legally insufficient. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

With regard to past performance, Metson alleges that Adept cannot show that it has previously performed similar, relevant contracts and that its proposal therefore could not reasonably be rated acceptable under this factor. Protest at 16-17. The RFP, however, provided that in this circumstance--where an offeror had no record of past performance--a rating of neutral would be assigned, and that this rating would be considered acceptable. RFP at 84. Accordingly, even were we to agree with the protester's assertion that Adept had no relevant past performance, the rating would not change. We therefore dismiss this aspect of the protest.

With regard to the price evaluation, Metson contends that the Navy did not conduct a required price realism analysis. Protest at 17-18. The protester adds that, if conducted, such analysis would result in finding the awardee's price unreasonably low. Id. at 18. The Navy responds, correctly, that the RFP did not require--and therefore did not permit--a cost or price realism analysis. AR at 8.

Generally, for fixed-price contracts, while an agency may conduct a price realism analysis for the limited purpose of assessing whether an offeror's low price reflects

a lack of technical understanding or risk (see FAR § 15.404-1(d)(3)), it may do so only when offerors have been advised that the agency will conduct such an analysis. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Absent a solicitation provision so advising offerors, agencies are neither required nor permitted to conduct a price realism analysis in awarding a fixed-price contract. Id.

Here, while the RFP did contain FAR provision 52.215-1(f)(9), which describes when a cost realism analysis may be conducted, there was no requirement that the Navy conduct a price realism analysis for this procurement. RFP at 90, 94. Rather, the RFP called only for proposed prices to be analyzed for completeness and reasonableness. Id. Because the RFP did not require the analysis that Metson claims the agency failed to perform, we have no basis to review the argument, and therefore dismiss this ground of protest.

Metson's final argument concerns the agency's evaluation of its own past performance as unacceptable. The Navy's evaluation in this regard was based on numerous significant weaknesses and deficiencies identified in Metson's proposal. AR, Tab 16, SSEB Consensus Report, at 14-15. The protester argues that each of these findings was unfairly assessed. Protest at 7-21.

We need not consider this aspect of the protest because the award was to be based on the lowest-priced, technically acceptable proposal, and, as stated above, we found that the agency's evaluation of the awardee's proposal as acceptable was reasonable. In this circumstance, Metson's higher-priced proposal would not be in line for award no matter how its technical proposal was evaluated. In short, Metson lacks the direct economic interest required to maintain this basis of protest. Advanced Concept Enters., Inc., B-410069.3, B 4100693.4, Jan. 22, 2015, 2015 CPD ¶ 53 at 2 (protester is not an interested party where it would not be in line for contract award were its protest to be sustained). Id.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel