441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Amec Programs, Inc.--Costs

File: B-414675.8

Date: July 19, 2018

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DIGEST

Request for reimbursement of protest costs is denied where protest allegations regarding evaluation of the protester's proposal were not clearly meritorious and protester was not next in line for award.

DECISION

Amec Programs, Inc., of Alpharetta, Georgia, requests that we recommend that it be reimbursed the costs of filing and pursuing its protest that challenged the Department of the Army, Corps of Engineers' award of a contract to Jacobs Field Services of North America, Inc., pursuant to request for proposals (RFP) No. W912P4-15-R-0001 for environmental remediation services.

We deny the request.

BACKGROUND

In December 2015, the Department of the Army, Corps of Engineers, issued RFP No. W912P4-15-R-0001, seeking proposals to perform various environmental remediation services at the Shallow Land Disposal Area (SLDA), in Parks Township, Armstrong County, Pennsylvania. Agency Report (AR), exh. 4, RFP at 16.[1] The

[1] The AR cited herein refers to the agency report provided by the agency in response to B-414675.1 and B-414675.4.

solicitation contemplated the single award of an indefinite-delivery, indefinite-quantity (IDIQ) task order contract, for a 5-year base period and a 5-year option period, under which the agency would award fixed-price and/or cost-reimbursement task orders. Id. The solicitation provided that the source selection decision would be based on a best-value tradeoff, and established the following evaluation factors: technical expertise; past performance; organizational approach/management plan; small business participation; and cost/price.[2] RFP at 160.

On or before the March 8, 2016 closing date, proposals were submitted by four offerors, including Amec, Jacobs, and Pennsylvania Remediation Company LLC (PaRC).[3] Thereafter, the proposals were evaluated; the agency established a competitive range consisting of all four offerors; and discussions were conducted with each offeror. On August 4, 2016, final proposal revisions were submitted by the offerors. Thereafter, the agency's source selection evaluation board (SSEB) evaluated the proposals as follows:

	Amec	Jacobs	PaRC
Technical Expertise	Acceptable	Good	Good
Past Performance	Satisfactory	Satisfactory	Satisfactory
Org. Approach/Mgmt. Plan	Good	Good	Good
Small Business Particpation	Good	Acceptable	Good
Total Evaluated Cost/Price	$32,424,750	$9,048,610	$27,846,580

AR, exh. 25, Final SSEB Report at 3.

In evaluating Amec's proposal as Acceptable under the technical expertise evaluation factor, the SSEB identified certain strengths, but also identified multiple weaknesses. For example, the SSEB stated:

> [Amec] does not address the uncertainties of utilizing [redacted] indicated in [its proposal]. There is a potential risk of making the wrong decision relative to the [redacted], i.e., the [redacted] does not include enough information to allow an informed decision to be made by [Amec].
>
> . . . [Amec] does not fully explain in the revised proposal, why [redacted] was deleted from [its proposal].

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[2] The solicitation provided that the first two factors (technical expertise and past performance) were the most important and were of equal weight. The remaining factors (organizational approach/management plan, small business participation, and cost/price) are listed in descending order of importance. RFP at 160.

[3] The proposal submitted by the fourth offeror is not relevant to this matter, and is not further discussed.

> [Amec's] response to this weakness resulted in the identification of a new weakness. The revised text in [its proposal] incorrectly states one part of the definition of fissile exempt material as "[i]f the material has **<u>less than</u>** [emphasis added in original] 2000g solid non-fissile material per gram of fissile material, "fissile exempt" criteria apply . . . and no [redacted] or [redacted] are required." The referenced requirement for fissile exempt material . . . states: "There is **<u>at least</u>** [emphasis in original] 2,000 grams of solid nonfissile material for every gram of fissile material." In addition, in order to be considered fissile exempt . . . the material must <u>also</u> [underlining in original] meet the requirements . . . which state[]: "There is no more than 180 grams of fissile material distributed within 360 kg [kilograms] of contiguous nonfissile material." [Amec's] response omits the second, significant part of the fissile exempt definition. . . ; both parts of the definition must be met in order for fissile material to be considered exempt . . . .

AR, exh. 25, Final SSEB Report, at 6.

Thereafter, the agency's source selection advisory council (SSAC) reviewed the complete evaluation record and performed a comparative analysis of the proposals, leading to the elimination of Amec's (as well as the fourth offeror's) proposal from further consideration. Specifically, the SSAC documented its analysis, stating:

> After eliminating [the fourth offeror], the SSAC reviewed the non-price factors for each [of the] remaining Offerors. [AMEC] was rated "Acceptable" for the Technical Expertise (Factor 1) while [Jacobs] and [PaRC] were rated "Good" for this factor. All three received a "Satisfactory Confidence" rating for Past Performance (Factor 2). . . . Section M [of the RFP] stated that Factors 1 and 2 were more important [than] Factors 3, 4, and 5. The SSAC determined that [Amec] had a lower rating for the most important non-price factors than [Jacobs] and [PaRC] and also proposed the highest total evaluated price. Therefore, [Amec] was not considered the best value for the Government and was eliminated from further analysis. As a result, the remaining comparative analysis and evaluation is focused on [Jacobs] and [PaRC].

AR, exh. 28, Final SSAC Report, at 39.

Upon receipt and review of the SSAC's report and analysis, the agency's source selection authority (SSA) agreed with the SSEB's evaluation and the SSAC's comparative analysis, stating:

> I determined that [Amec] had a lower rating for the most important non-price factors than [Jacobs] and [PaRC] and also proposed the highest total evaluated price. Therefore, [Amec] was not considered the best value for the Government and was eliminated from further analysis. As a result, the

remaining comparative analysis and evaluation is focused on [Jacobs] and [PaRC].

AR, exh. 29, Source Selection Decision Document, at 37.

On April 25, 2017, Jacobs' proposal was selected for award. Amec and PaRC subsequently filed protests challenging that selection decision.[4] Among other things, Amec challenged the agency's evaluation of Amec's proposal under the technical expertise evaluation factor, complaining that the agency erroneously concluded that "Amec's technical proposal represented merely an 'adequate approach and understanding of the requirements'"-- asserting that this was unreasonable because of the "numerous strengths" in Amec's proposal. Protest, May 9, 2017, at 18.

Amec further asserted that the weaknesses identified in the agency's evaluation were caused by "typographical errors that occurred when Amec submitted a revised proposal"; that Amec's "removal of [redacted] from [a portion of its proposal]" was a "minor oversight"; and that, accordingly, the agency's assessment of a weakness was "unjustified and unreasonable." Protest, May 9, 2017, at 22. Further, with regard to Amec's misstatement regarding the definition of exempt fissile material, Amec complained that elsewhere in its proposal it "used the correct wording," and that this was "again simply a typographical error." Id. at 23. Finally, with regard to Amec's acknowledged omission of the "second part of the definition of fissile exempt material," Amec offered no explanation other than the conclusory assertion that "Amec is aware that it must meet both parts of the fissile exempt material definition." Id.

Amec also challenged various aspects of the agency's evaluation of Jacobs' proposal, including various assertions regarding the agency's cost/price realism assessment of Jacobs' substantially lower cost/price.

On June 7, 2017, the agency submitted its reports responding to Amec's and PaRC's protests. With regard to the evaluation of Amec's proposal under the technical expertise evaluation factor, the agency responded that it stood by its rating of Amec's proposal as merely acceptable under that factor. The agency further noted that, although the agency recognized various strengths in Amec's proposal, it did not consider those strengths to be significant. The agency further noted that the weaknesses identified in Amec's proposal reflected poor draftsmanship; Amec was given ample opportunity to address its weaknesses during discussions; it was Amec's responsibility to submit a well-written proposal; and the evaluated weaknesses in Amec's proposal reflected, among other things, inconsistency within Amec's proposal. Finally, the agency pointed out that Amec's erroneous definition of fissile-exempt

[4] On May 9, 2015, Amec and PaRC each filed initial protests (docketed as B-414675.1 and B-414675.2, respectively). On May 15 and May 19 respectively, following debriefings, Amec and PaRC each filed its first supplemental protest (docketed as B-414675.4 and B-414675.5, respectively).

material--using “less than 2000g [of solid non-fissile material per gram of fissile material]” rather than “at least 2000g”--“completely changes the meaning of the definition and Amec’s safety basis.” AR, Memorandum of Law, at 16. The agency added that, because the definition was drawn from applicable regulations, “the only way for the wording to be incorrect is for Amec to have changed it.” Id. Accordingly, the agency concluded that the inconsistency in Amec’s proposal “represented more than a simple typographical error and it cast doubt on Amec’s technical expertise.” Id.

After fully addressing Amec’s assertions regarding the agency’s allegedly flawed technical evaluation of Amec’s proposal, the agency noted that the proposal had been eliminated from the competition during the evaluation and comparative analysis process and that the final best-value tradeoff decision had been made between Jacobs’ and PaRC’s proposals.

Following receipt and review of the agency report, Amec and PaRC each filed second supplemental protests.[5] Among other things, both protesters identified additional assertions that called into question the agency’s cost/price realism evaluation of Jacob’s substantially lower proposed cost/price.

By letter to our Office dated June 23, 2017, the agency stated that it would take corrective action by reevaluating all of the offerors’ proposals. Letter from Department of the Army to GAO, June 23, 2017, at 1. On June 26, we dismissed the protests based on the agency’s pending corrective action.

On July 11, Amec submitted this request for our recommendation that the agency reimburse Amec for the costs it incurred in filing and pursuing its protest.

DISCUSSION

Amec asserts that its various protest allegations were clearly meritorious and that the agency unduly delayed its corrective action; accordingly, Amec asserts that reimbursement of its protest costs is appropriate. We disagree.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs where, based on the record, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. 4 C.F.R. § 21.8(e); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 6. In this regard, we will recommend reimbursement only where the underlying protest is clearly meritorious, i.e., not a close question. InfraMap Corp.--Costs, B-405167.3, Mar. 26, 2012, 2012 CPD ¶ 123 at 3. Further, in order for a protest to be

[5] Amec filed its second supplemental protest on June 19; that protest was docketed as B-414675.6.

clearly meritorious, the protester must qualify as an interested party for purposes of raising an allegedly meritorious allegation, see, e.g., Evans Security Solutions, Inc., B-311035, Mar. 19, 2008, 2008 CPD ¶ 58 at 2, and a protester is not an interested party where the record shows that even if the allegedly meritorious allegation were sustained, an intervening offeror would be next in line for award. Id.

Here, as discussed above, the agency fully responded to Amec's complaints regarding its evaluation under the technical expertise evaluation factor. Our review of the record in that matter leads us to conclude that Amec's protest allegations in that regard are not clearly meritorious. For example, while Amec asserts that the agency's evaluation of its proposal under the most important evaluation factor, technical expertise, should have been rated as "at least Good" [rather than Acceptable]," the record establishes that the agency reasonably assigned various weaknesses to Amec's proposal, concluding that the proposal reflected poor draftsmanship and internal inconsistency, and provided a reasonable basis for the agency to doubt Amec's technical expertise. Based on our review of the record, we reject Amec's assertion that any of Amec's challenges to the agency's technical evaluation were clearly meritorious.

Finally, the record shows that, based on Amec's lower rating under the technical expertise evaluation factor, and its higher evaluated cost/price, PaRC--not Amec--was next in line for award.[6] Accordingly, even if we were to conclude that the agency's evaluation of Jacobs's proposed cost/price was improper, Amec does not qualify as an interested party to raise that issue. On this record, none of Amec's protest allegations can be considered clearly meritorious.

The request is denied.

Thomas H. Armstrong
General Counsel

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[6] Nothing in Amec's various protest submissions meaningfully challenges the evaluation of PaRC's evaluated cost/price.