



Decision

Matter of: AMG Company, Inc.

File: B-415067.2

Date: January 29, 2018

Frank V. Reilly, Esq., Frank V. Reilly Attorney at Law, for the protester.
Brian A. Quint, Esq., Department of the Interior, for the agency.
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participated in the preparation of the decision.

DIGEST

Protest that the agency's evaluation of proposals after taking corrective action was unreasonable is denied where the record shows the evaluation was reasonable and in accordance with the stated evaluation criteria.

DECISION

AMG Company, Inc., of Santa Clemente, California, protests the award of a contract to Southwest Business Development by the Department of the Interior, Bureau of Indian Affairs (BIA) under request for quotations (RFQ) No. A17PS00812 for meal services. AMG challenges the agency's corrective action and the evaluation of proposals.

We deny the protest.

BACKGROUND

The RFQ, issued on June 19, 2017, as an Indian Small Business Economic Enterprise set-aside, sought quotations from small business Indian economic enterprises for the provision of meal services at the Sherman Indian High School, located in Riverside, California, which is operated by the BIA's Bureau of Indian Education.¹ Agency Report

¹ The RFQ included Department of the Interior Acquisition Regulation Supplement (DIAR) provision 1452.280-1, Notice of Indian Small Business Economic Enterprise Set-aside (JUL 2013), which provides, "[u]nder the Buy Indian Act, 25 U.S.C. [section] 47, offers are solicited only from Indian economic enterprises (Subpart 1480.8) that are also
(continued...)"

(AR), Tab 3, RFQ, at 1, 8. The RFQ contemplated the award of one contract including a base year and four option years to provide students three meals per day and snacks, seven days per week during the academic school year. Id. at 8. Quotations were to be evaluated on a best-value tradeoff basis considering technical, past performance and price. Id. at 54-55.

The RFQ did not weight either of the non-price factors, and provided that technical and past performance, when combined, were equal to price. Id. at 55. Price was to be evaluated based on total price and the government reserved the right to evaluate option prices for balance. Id. The technical proposal was to include a vendor's plan for compliance with U.S. Department of Agriculture (USDA) Breakfast and Lunch Reimbursement Program (BLRP) requirements and sample six-week menus for breakfast, lunch, afternoon supplements, dinner and special meals. Id. at 54. Emphasis was to be placed on the vendor's procedure to ensure that the school would be in compliance to qualify for meal reimbursement under the BLRP. Id.

Three quotations were received by the due date. Contracting Officer Statement (COS) at 2. After an evaluation of proposals, the agency decided to award a contract to Southwest, which AMG protested to our Office on August 10, 2017. Id. On September 6, 2017, the agency advised our Office of its intent to take corrective action. Specifically, the agency notified our Office that it intended to reevaluate quotations and make a new source selection decision. As a result of the agency's corrective action, we dismissed that protest as academic. See AMG Company, Inc., B-415067.1, Sept. 18, 2017 (unpublished decision).

As part of the corrective action, the agency conducted a reevaluation of quotations. In conducting the reevaluation, the agency revised its evaluation methodology from a point-based system, to an adjectival rating system. COS at 9-12. The relevant results of the reevaluation were as follows:

	AMG	Southwest
Technical	Unsatisfactory	Very Good
Past Performance	Neutral	Acceptable
Price	\$5,418,703	\$5,587,805

AR, Tab 9, Source Selection Memorandum, at 3. The record shows that the unsatisfactory rating assigned to AMG under the technical factor was based on the assignment of various significant weaknesses and deficiencies by the evaluators. AR, Tab 6, Technical Proposal Reevaluations, at 1-6. However, the source selection

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small business concerns. Any acquisition resulting from this solicitation will be from such a concern."

authority (SSA) appears to have based her consideration of AMG's technical proposal on a specific aspect of AMG's proposal. In this regard she noted:

AMG's technical proposal provided a statement of "intent" to "follow all necessary . . ." – this indicates a lack of cognizance and application of skill to meet the stringent USDA nutrition and caloric criteria to qualify for USDA reimbursement for the breakfast and lunch meals.

Based on AMG's technical proposal, the services they stated to be provided, the Unsatisfactory rating coupled with no actual past performance, and their total quote price of \$5,418,703 (at 2% above the [independent government cost estimate]), AMG is of risk concern to the Government – they may not be able to adequately comply with USDA requirements.

AR, Tab 9, Source Selection Memorandum, at 8. The SSA ultimately determined that Southwest's proposal "represents the best mix of technical capability, past performance and price." Id. After award of the contract to Southwest, this protest followed.

DISCUSSION

AMG argues that the agency failed to take appropriate corrective action because it did not simply correct the alleged errors the protester identified in the prior protest, and after doing so, improve AMG's evaluation results. Protest at 4; Comments at 3. The protester also challenges the assignment of an unsatisfactory rating to its proposal under the technical factor, after having previously been found acceptable, arguing that "[s]tating an intent to follow the solicitation does not render an offeror ineligible for award." Id. at 3. Both allegations are without merit.²

As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Hughes Network Sys., LLC, B-409666.3, B-409666.4, Aug. 11, 2014, 2014 CPD ¶ 237 at 3. The fact that a reevaluation varies, or does not vary, from an original evaluation does not constitute evidence that the reevaluation was unreasonable. It is implicit that a reevaluation could result in different findings and conclusions. See IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4. The overriding concern is not whether the final ratings are consistent with earlier ratings, but whether they reasonably reflect the relative merits of proposals. See Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 11 (denying protest that agency reevaluation and technical ratings were unreasonable because agency did not explain why evaluations differed between the initial evaluation and reevaluation undertaken during corrective action).

² In its protest, AMG initially argued that Southwest was not eligible for award under the Buy Indian Act. Protest at 3. However, in its comments, the protester withdrew this allegation. Comments at 4. As such, we will not consider the issue further.

AMG first argues that the agency failed to take appropriate corrective action because it did not simply correct the alleged errors the protester identified in the prior protest, and after doing so, improve AMG's evaluation results. Protest at 4; Comments at 3. For instance, the protester challenges the reasonableness of the agency's corrective action "because the Protester has still not been awarded the correct score of 40 points." Protest at 4-5. However, the issue here is not the variances between the initial evaluation and the subsequent reevaluation, but instead whether the reevaluation was reasonable. We conclude that it was.

First, nothing in the RFQ constrained the agency to any particular evaluation methodology, so the protester's argument that the agency's decision to not award it "the correct score of 40 points," and instead reevaluate proposals based on an adjectival rating system is unavailing. Id. Further, the protester has not shown that the agency's decision to conduct a reevaluation instead of correcting the alleged errors from the prior protest was unreasonable. In this regard, the protester did not challenge the agency's decision to take corrective action at the time the agency took corrective action, and, having reviewed the record, provides no substantive argument challenging the reasonableness of the agency's decision to reevaluate proposals. Therefore, on this record, we are provided no basis to question the agency's decision to take corrective action by reevaluating proposals in response to AMG's prior protest, or to evaluate proposals using adjectival ratings, as opposed to point-based ratings.

The protester has also not shown that the reevaluation was unreasonable. In this regard, the entire argument proffered by the protester is that its consensus rating of unsatisfactory was not supported because none of the evaluators found AMG's technical proposal to be unsatisfactory. Comments at 2. However, the protester's argument lacks merit as the record shows that the evaluators did find AMG's proposal to be unsatisfactory under the technical factor, which was consistent with the SSA's later assignment of an unsatisfactory rating. Compare AR, Tab 6, Technical Proposal Reevaluations, at 2 (assigning AMG's proposal two significant weaknesses and a deficiency under the technical factor, supporting an overall rating of unsatisfactory); Tab 8, Evaluation Summary, at 5 (finding proposal to be unsatisfactory under the technical factor) with AR, Tab 9, Source Selection Memorandum, at 8 (concluding AMG's technical proposal unsatisfactory). As the record shows that AMG's proposal was rated as unsatisfactory under the technical factor, which was relied on by the SSA in also assigning an unsatisfactory rating to the firm's proposal under the technical factor, we conclude that AMG's allegation is without merit.

Finally, while the protester makes no additional effort to challenge the substance of the agency's reevaluation of the firm's proposal, our review of the record shows that the evaluation was reasonable. In this regard, the RFP specifically notified vendors that "emphasis was to be placed on the vendor's procedure to ensure that the school would be in compliance to qualify for meal reimbursement under the BLRP." RFQ at 54. A review of AMG's proposal shows that the entirety of its proposal on this aspect of the RFQ was as follows:

We follow all necessary procedures to ensure that SHIS is in compliance to qualify for meal reimbursements. We will meet all requirements of the NSLP and systems as regulated by the national government in order to meet reimbursement requirements. We will customize the menus to meet the SIHS COR, Managers, and Students' desires. AMG assures that our proposal meets the Specifications of Services in the Statement of Work.

AR, Tab 4, AMG Proposal, at 20. The following significant weakness was assigned for this aspect of AMG's proposal: "Significant Weakness - Contractor made statement that they would follow necessary procedures. Contractor didn't explain what procedures would be followed to provide understanding of the USDA program." AR, Tab 8, Evaluation Summary at 5. In turn, this significant weakness supports the SSA's determination, discussed above. AR, Tab 9, Source Selection Memorandum, at 8.

Since the RFQ specifically notified vendors that emphasis would be placed on proposed procedures to ensure that the school would be in compliance with relevant meal reimbursement standards, and, consistent with the agency's evaluation, our review of AMG's proposal shows only one statement of general compliance, we are provided no basis to question the agency's evaluation. See Level 3 Communications LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 6-7 (blanket statements of compliance generally insufficient to demonstrate technical acceptability).

The protest is denied.³

Thomas H. Armstrong
General Counsel

³ AMG also requests reimbursement of its costs arguing that the agency unduly delayed taking corrective action because AMG "has still not been awarded the correct score of 40 points and because the agency has once again made award to the very same higher priced, lower ranked and ineligible bidder." Protest at 4-5. While framed as an allegation of undue delay in taking corrective action, AMG's allegation is really a challenge to the merits of the decision to take corrective action and the substance of the reevaluation conducted by the agency pursuant to corrective action. As we have concluded that AMG's substantive protest allegations are without merit, we conclude that the protester's argument that our Office should recommend reimbursement of its costs is likewise without merit.