U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548
Comptroller General
of the United States

Decision

Matter of: Focused Management, Inc.

File: B-415136; B-415136.2

Date: November 20, 2017

Tenley A. Carp, Esq., Sara M. Lord, Esq., and Samuel M. Shapiro, Esq., Arnall Golden Gregory LLP, for the protester.
Marci A. Lawson, Esq., and David C. Morzenti, Esq., National Geospatial-Intelligence Agency, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's proposal is denied where the record shows the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

2. Protest of the exclusion of protester's proposal from the competitive range is denied where the agency reasonably determined, consistent with the solicitation's evaluation criteria, that the protester's proposal was not among the most highly rated.

DECISION

Focused Management, Inc. (FMI), a service-disabled veteran-owned small business located in Alexandria, Virginia, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. HM0476-17-R-0007, issued by the National Geospatial-Intelligence Agency (NGA), for general support services under Functional Area 1 of its MOJAVE program. The protester argues that the agency improperly evaluated its proposal as unacceptable under the personnel security clearance and technical capability evaluation subfactors, and engaged in disparate treatment among the offerors. The protester also argues that the agency unreasonably excluded FMI's proposal from the competitive range.

We deny the protest.

BACKGROUND

On November 1, 2016, NGA issued the RFP, referred to as "MOJAVE Functional Area 1" as a partial small business set-aside under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5.[1] The RFP anticipates the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts, with a $600 million ceiling over a five-year ordering period. RFP at 2, 8. The RFP seeks general support services to assist the NGA in accomplishing the agency's mission. These services are currently provided under NGA's enterprise support to management and resources for technical services (ESMARTS) contract. RFP, Statement of Work (SOW), at 3. The ESMARTS contract is being replaced by three contracts under the MOJAVE program, including as relevant here, MOJAVE Functional Area 1: General Support Services.[2] Id.

The solicitation provided for the evaluation of proposals in two parts--oral presentations and written proposals. During part one, the agency evaluated each offeror's proposal in response to a MOJAVE performance-based task order, which was presented orally to the agency by each offeror using Power Point slides and a staffing matrix. Id. at 98. Based on the presentation, the agency rated each offeror's part one proposal as either "viable" or "not viable." Id. Whether an offeror received a rating of "viable" or "not viable" under part one, that offeror could choose to submit a written proposal under part two of the solicitation. Id. at 99.

During part two of the evaluation, the agency's evaluation of written proposals was based on an assessment of an offeror's ability to fulfill the requirements of the entire base contract statement of work. Specifically, the RFP provided for award on a best-value tradeoff basis, considering four evaluation factors, in descending order of importance: (1) management/technical, (2) past performance, (3) security, and (4) price. The non-price factors, when combined, were significantly more important than price. Id. at 100. The management/technical factor included the evaluation of four subfactors: management oversight and staffing capability; technical capability; transition risk management approach; and small business participation. Id. The security factor also included the evaluation of four subfactors: facility security clearance level and foreign ownership, control, or influence (FOCI); personnel security clearance/ sensitive compartmentalized information (SCI) access; sensitive compartmentalized information facility; and security plan. The security factor was to be evaluated on a pass/fail basis; the solicitation provided that "[a]n Offeror's initial proposal may 'fail' any of these subfactors and may still remain in contention for award." Id. at 106.

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[1] In accordance with the solicitation, proposals received by the agency were divided into two competitive pools--a restricted pool set aside for small business concerns, and an unrestricted pool for other than small businesses. RFP at 77. The evaluation and competitive range determination at issue here concern offerors within the small business pool. Agency Report (AR), Tab 14b, Competitive Range Determination, at 1.

[2] The other two contracts include: MOJAVE Functional Area 2: Security Services; and MOJAVE Functional Area 3: Information Technology Services. RFP, SOW at 3.

NGA received written proposals from thirteen offerors, including FMI. Joint Memorandum of Law and Contracting Officer Statement of Facts (MOL/COS) at 7; AR, Tab 14b, Competitive Range Determination, at 1. NGA evaluated the thirteen proposals as follows:

Offeror	Technical/ Management	Past Performance	Security	Price ($M)	
				Total	Reasonable
A	Outstanding	Substantial	Pass	$22	Yes
B	Outstanding	Substantial	Pass	$23.5	Yes
C	Good	Substantial	Pass	$23.6	Yes
D	Good	Satisfactory	Fail	$30	Yes
E	Good	Substantial	Fail	$24.9	Yes
F	Good	Substantial	Pass	$21.2	Yes
G	Good	Substantial	Fail	$20.2	Yes
H	Unacceptable	Satisfactory	Fail	$18.9	Yes
I	Acceptable	Satisfactory	Fail	$24.2	Yes
J	Acceptable	Satisfactory	Pass	$16.8	Incomplete
K	Acceptable	Satisfactory	Fail	$22.6	Yes
L	Unacceptable	Satisfactory	Pass	$18.2	Yes
FMI	Unacceptable	Neutral	Fail	$23.4	Yes

Id. at 2. The offerors below the line (J, K, L, and FMI) were excluded from the competitive range.

NGA assessed a major weakness to FMI's proposal under the technical capability subfactor based on FMI's failure to adequately demonstrate that its proposed team holds the technical expertise to fulfill the SOW's requirements across all labor categories. NGA also assessed a deficiency to FMI's proposal under this subfactor relating to FMI's failure to define technical processes for evaluating a government need for performance-based requirements and a contractor-defined solution based on that need. AR, Tab 8, FMI TET Consensus Report, at 9. Based on the major weakness and deficiency, the agency therefore found FMI's proposal unacceptable under the technical capability subfactor. Id.

With regard to the security factor, the agency concluded that FMI's proposal met the requirements for two of the subfactors, and assessed a pass rating to FMI for those two subfactors. Id. The agency, however, found that FMI's proposal did not meet the requirements for the other two subfactors--3.2, Personnel Security Clearance; and 3.3, Facility Security Clearance--and therefore assessed fail ratings to FMI's proposal for these two subfactors.

The contracting officer established a competitive range for purposes of efficiency, and limited it to those offerors with the most highly rated proposals. AR, Tab 14b, Competitive Range Determination, at 1. NGA recommended that nine offerors be included within the competitive range, and that four offerors be excluded from the competitive range. The top two offerors--which NGA explained "represent the upper bound of the competitive range"--were evaluated as outstanding in management/ technical capability, assessed with substantial confidence in past performance, and found to have complete and reasonable total evaluated prices. Id. at 2.

As for the next five offerors included within the competitive range the agency explained that "each received many strengths for their Management/Technical capability," resulting in an overall rating of "Good." Id. In addition, the agency stated that all but one received a substantial past performance confidence assessment (with the fifth receiving a satisfactory rating), and that all had complete and reasonable evaluated prices. Id. at 2-3.

With regard to the eighth offeror included in the competitive range, the agency explained that, although the offeror received an unacceptable rating under the management/technical factor, this rating was due to a deficiency assessed in the offeror's small business participation plan (because the payment time-period was not included), but that the agency viewed this deficiency as "correctable without a substantial re-write of the proposal." Id. In addition, the agency explained that the offeror received "Good" ratings for the remainder of the management/technical subfactors, such that, without the deficiency, the offeror's overall management/technical proposal "was good." Id.

As for the final offeror included in the competitive range, the agency stated that this offeror's proposal "represented the lower bound of the competitive range" since its management/technical approach was evaluated as acceptable, "including associated sub-factors being rated as Acceptable or higher, with multiple minor and major strengths." Id. at 3.

With regard to FMI's proposal, the agency recommended that it be excluded from the competitive range, noting that "[it] included a Major Weakness and Deficiency within [the] Subfactor 1.2, Technical Capability." Id. at 5. Specifically, the agency explained that "FMI received a deficiency for [its] inability to demonstrate [it] can succeed in a performance-based environment (Standard 1.2.2)," and that the agency has determined that "even if afforded the opportunity to enter into discussions and modify the management/technical and possibly price proposals, it is unlikely that [FMI] could improve its technical capability proposal . . . to be considered among the most highly rated proposals." Id.

On July 28, 2017, FMI was notified that its proposal was excluded from the competitive range. Following a debriefing, FMI filed a timely protest with our Office.

DISCUSSION

FMI challenges the agency's evaluation of its proposal as unacceptable under the technical capability and personnel security clearance subfactors. The protester also alleges that the agency unreasonably excluded FMI's proposal from the competitive range. For the reasons discussed below, we find no basis to sustain the protest.

In reviewing an agency's evaluation of proposals and subsequent competitive range determination, we will not reevaluate the proposals, but will examine the record to ensure that the evaluation was reasonable and in accordance with the solicitation's evaluation criteria and applicable statutes and regulations. Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 3. Under FAR § 15.306(c)(1), the "contracting officer shall establish a competitive range comprised of all of the most highly rated proposals," based on "the ratings of each proposal against all evaluation criteria," unless the range is further reduced for purposes of efficiency. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. Strategic Resources, Inc., B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4.

Evaluation of FMI's Proposal

FMI contends that the agency unreasonably found its proposal unacceptable under the technical capability subfactor. According to the protester, its proposal did not merit either the deficiency or major weakness assessed to its proposal under this subfactor. Specifically, FMI argues that the agency's findings of deficiency and major weakness were unreasonable in light of the "viable" rating that FMI received for the management/technical component of its oral presentation under the Part One evaluation.

As noted above, the RFP provided for the evaluation of proposals in two parts--oral presentations and written proposals. The oral presentations were limited to a single task order requirement under the RFP, and based on an offeror's presentation, the agency would provide the offeror with the agency's recommendation to proceed or not proceed to Part Two (viable, non-viable, respectively).[3] RFP at 76-77. The solicitation referred to this viability rating as an "advisory evaluation." Id. at 76. In this regard, the solicitation explained that a rating of "viable" was not required for the submission of a written proposal under Part Two of the solicitation. Id. at 76-77.

In contrast, Part Two involved the agency's evaluation of written proposals, and was based on an assessment of an offeror's ability to fulfill the requirements of the entire base contract statement of work. Id. at 100-08. As relevant here, the agency rated FMI's proposal unacceptable under the technical capability subfactor, based on the assessment of a deficiency and major weakness. Specifically, the agency assessed a

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[3] Specifically, the RFP defined "viable" to mean that, "based on the Offeror's oral presentation, the Government has a reasonable expectation that the Offeror will successfully perform the required effort." Id. at 99.

deficiency to FMI's proposal under standard 1.2.2 (ability to succeed in a performance-based environment) based on the agency's conclusion that FMI proposed to "implement a quality control (QC) program," in "lieu of a technical process to deliver contractor defined solutions." AR, Tab 8, Mgmt./Tech. Consensus Report, at 10. The agency concluded that "[FMI's] approach did not provide a technical process or supporting details such that the Government is led to believe they do not understand how to evaluate a Government need for a performance-based requirement and Contractor-defined solution[s]." Id. The agency also assessed a major weakness to FMI's proposal under Standard 1.2.1, technical expertise, finding that "[FMI's] proposal did not adequately demonstrate [that] its team holds the technical expertise to fulfill the stated requirements in the base SOW" and to "provide support across all labor categories." Id. at 9.

Based on our review of the record, we find that the agency's evaluation of FMI's proposal was consistent with the criteria set forth in the RFP. Although FMI contends that it was unreasonable for the agency to assess a deficiency and major weakness to its written proposal, in light of the agency's assessment of a "viable" rating to its oral presentation, as noted above, the agency's evaluation of oral presentations and written proposals were based on separate proposal submissions, different evaluation criteria in the solicitation (part one versus part two), and different requirements (single task order versus entire base contract statement of work). RFP at 99-108. Importantly, as noted above, the viability rating, referenced by the protester, reflected only the agency's "advisory" recommendation regarding whether an offeror should proceed with the submission of a written proposal under Part Two of the solicitation. Id. at 99. The agency's evaluation of written proposals under Part Two of the solicitation, on the other hand, reflected the agency's detailed evaluation of the strengths and weaknesses of an offeror's entire proposed approach in response to all requirements set forth in the RFP. Id. at 100-08. In light of the differences between the agency's evaluations of the oral presentations and written proposals, we see no basis to conclude that the agency's assessment of the deficiency and major weakness assessed to FMI's written proposal under Part Two of the solicitation was unreasonable on the basis that the agency rated FMI's oral presentation "viable."[4] This protest ground is denied.

FMI next argues that the agency's evaluation under the technical capability subfactor reflects unequal treatment because the approaches proposed by two other offerors also

[4] FMI also argues for the first time in its comments on the agency report that the agency's evaluation of the deficiency and major weakness was unreasonable because FMI's proposal was "sufficiently responsive" to the solicitation's requirements. Comments at 16. FMI knew at the time of its debriefing, dated August 11, 2017, however, that NGA rated its proposal unacceptable under the technical capability subfactor based on the assessment of a major weakness (for Standard 1.2.1) and deficiency (for Standard 1.2.2). AR, Tab 12b, Debriefing, at 25-26. Accordingly, because the information relied upon by FMI for this argument was known by the protester at the time it filed its initial protest, this argument is untimely and will not be considered further. 4 C.F.R. § 21.2(a)(2) (requiring that protest issues be presented within 10 days after the basis of protest is known or should have been known).

involved their quality control plans, but those offerors were not similarly assessed deficiencies. In support of this argument, FMI points to the deficiency it received under Standard 1.2.2--ability to succeed in performance-based environment. NGA found that, "[i]n lieu of a technical process to deliver contractor defined solutions," FMI proposed that, "to ensure task performance success and customer satisfaction, [it] will implement a quality control (QC) program." AR, Tab 8, Mgmt./Tech. Consensus Report, at 10.

Our review of the record indicates that differences between the contents of FMI's proposal and the proposals of the other two offerors support the evaluation results. For example, with respect to Standard 1.2.2--ability to succeed in performance-based environment--the record reveals differing approaches to responding to the stated evaluation criteria. While FMI's proposal--as discussed--focused primarily on describing its quality control program, which the evaluators concluded "does not equate to a technical process to analyze requirements in order to provide Contractor-Defined Solutions," AR, Tab 8, Mgmt./Tech. Consensus Report, at 10, the other two offerors included other information in their proposals to demonstrate that they had the required technical processes in place to evaluate a government need for a performance-based requirement and contractor-defined solution. See, e.g., AR, Tab 18a, Offeror H Tech. Eval., at 11; Tab 17a, Offeror H Proposal (proposal includes performance-based business practices, including a four-phase framework), at 24-25, and AR, Tab 18e, Offeror I Tech. Eval., at 13; Tab 17e, Offeror I Proposal, at 27 (proposal includes explanation of proposed technical process for responding to performance-based requirements). In other words, the other two offerors included quality control as part of their larger solutions for meeting the requirement. In comparison, the agency found that FMI's primary process consisted of a quality control program. We conclude that the differences between FMI's proposal and the proposals of the other two offerors amply demonstrate why FMI's proposal was assessed a deficiency. As such, we find no merit to the protester's assertion that NGA evaluated the proposals unequally.

Exclusion from the Competitive Range

FMI also challenges the agency's decision to exclude the protester's proposal from the competitive range, arguing that FMI should have been permitted to enter into discussions to resolve the agency's concerns with FMI's proposal. For the reasons discussed below, we find that NGA's competitive range determination was reasonable.

The record reflects that the agency evaluated the proposals against the RFP's evaluation criteria, assessed strengths and weaknesses in each proposal, and assigned adjectival ratings under the technical and past performance factors based on these strengths and weaknesses. The agency also assessed compliance with the security factor and assigned pass/fail ratings accordingly. FMI has not shown these ratings to be unreasonable.[5] All nine of the proposals included in the competitive range were

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[5] FMI also argues that NGA erred in assessing its proposal with fail ratings for two of the security subfactors: 3.2, personnel security clearance; and 3.3, facility security clearance. In response to the protest, the agency acknowledges that FMI should not
(continued...)

rated higher than FMI's proposal under both the technical/management factor and past performance factor. Only one of the offerors included in the competitive range had an overall unacceptable rating under the technical/management factor. That unacceptable rating, however, was due to a deficiency assessed for that offeror's small business plan, under the small business participation subfactor (which was the least important subfactor), and which the agency assessed as easily correctible without a substantial re-write of the proposal. In contrast, FMI was rated overall unacceptable based on the assessment of both a deficiency and a major weakness under the technical capability subfactor. The agency concluded that, "even if afforded the opportunity to enter into discussions and modify the management/technical and possibly price proposals, it is unlikely that [FMI] could improve its technical capability proposal . . . to be considered among the most highly rated proposals." AR, Tab 14b, Competitive Range Determination, at 5.

As mentioned previously, an agency is authorized to exclude proposals that are not among the "most highly rated" from the competitive range. FAR § 15.306(c)(1). Based on the record here, we see nothing unreasonable regarding the agency's determination that FMI's proposal was not among the most highly-rated. As a consequence, we find that the exclusion of the proposal from the competitive range was reasonable.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)
have received a fail rating for the facility clearance subfactor because FMI, in fact, properly provided its facility clearance information to the agency via classified email as required by the RFP. COS/MOL at 29. The agency defends its assessment of the fail rating under the other security subfactor, personnel security clearance, however, based on the agency's inability to verify that "all of the key personnel proposed possess[ed] a TOP SECRET clearance and/or are eligible with a favorable adjudication for Access to [sensitive compartmented information]." Id. at 35. While the protester argues that the agency was required to conduct clarifications with FMI because it could have "easily cured the defect," Comments at 5, we need not resolve this matter because it is clear from the record that the fail rating under the personnel security subfactor was not the primary reason that the protester's proposal was excluded from the competitive range. Rather, as discussed herein, the record reflects that the agency based its determination that FMI's proposal was not among the most highly rated primarily on its evaluation of FMI's proposal as unacceptable under the technical capability subfactor, which as discussed herein, we conclude was reasonable. AR, Tab 14b, Competitive Range Determination, at 5.