



Decision

Matter of: Horizon Strategies

File: B-415415

Date: December 21, 2017

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GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's determination that the protester's proposal was unacceptable is denied where the agency reasonably determined that the protester's proposal did not satisfy the solicitation's requirements.

DECISION

Horizon Strategies, a service-disabled veteran-owned small business of Winston Salem, North Carolina, protests the award of a contract to University of Virginia (UVA) under request for proposals (RFP) No. SP4703-17-R-0003, issued by the Defense Logistics Agency (DLA), to provide strategic thinking course instruction. The protester contends that the agency miscalculated its proposal and unreasonably concluded that it failed to satisfy the RFP requirements.

We deny the protest.¹

BACKGROUND

The RFP, issued on an unrestricted basis on April 20, 2017, contemplated award of multiple fixed-price contracts to seven different vendors for course instruction to support the Defense Contract Audit Agency's (DCAA) Director's Development Program in Leadership, for a 1-year base period and two 1-year options, using Federal Acquisition

¹ Because a protective order was not issued in connection with this protest, our discussion is necessarily general.

Regulation (FAR) subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items. Agency Report (AR), Tab 3, RFP at 1. Offerors were required to provide the lead time needed to schedule each of the courses, and indicate if the proposed course would be available for scheduling in the August or September 2017 timeframe. Id. This protest relates only to the contract award for the strategic thinking course.²

The RFP required that each course accommodate between 25 and 40 students, consisting of a target audience of senior executives, and provide a “3 to 5 day pre-existing open enrollment course of instruction per the institution’s course catalog” designed to address the respective course competencies. RFP at 4, 7-11, 14. Offerors were required to propose a base price to provide the course for 25 students, and a per student price for any additional student up to the 40 student maximum. Id. at 5. The RFP stated that performance would take place onsite at the vendor’s educational institution, and required that the pricing for each course include course instruction costs (faculty, classroom facilities, books, instructional materials, program management services, website access/breakout rooms, as applicable, and certificates of completion), lodging costs, and meal costs. Id. at 17, 19.

As relevant to the protest, regarding institutional accreditation, the RFP stated:

The Vendor shall demonstrate successful execution in maintaining accreditation by a Regional and/or National institutional accrediting body with the cognizance over the institution of higher learning. The accrediting body must be one of the regional/national accrediting agencies recognized by the U.S. Department of Education as reliable authorities concerning the quality of education or training offered by the institution. The Vendor shall submit accreditation verification documents as part of the proposal submission. The Vendor shall submit, as part of the proposal submission, the institution’s U.S. educational ranking, executive education leadership program ranking, and research ranking.

RFP at 12. Related to this requirement, prior to the issuance of the final RFP, the agency issued a draft RFP on March 16, and provided responses regarding two questions submitted by prospective offerors to clarify the accreditation requirements, as follows:

24. Q: . . . Is DCAA looking specifically for academic and/or higher education institutions to provide these courses or are you open to leadership and organizational development companies submitting their capabilities?

² The seven courses are as follows: (1) vision; (2) partnering; (3) strategic thinking; (4) external awareness; (5) political savvy; (6) global perspective; and (7) entrepreneurship. RFP at 7.

A: DCAA is specifically looking for academic and/or higher education institutions who are accredited per the requirements of the Draft/Final RFP. Organizational development companies will not be considered for award.

25. Q: . . . We are a 501(c)(3) non-profit educational foundation, not a university, and therefore do not have Department of Education accreditation. Would the government consider a proposal from us, or are only accredited colleges and universities eligible for this RFP?

A: DCAA is specifically looking for academic and/or higher education institutions who are accredited per the requirements of the Draft/Final RFP. Organizational development companies will not be considered for award.

AR, Tab 31, Draft RFP with Questions and Answers, at 65-66. In addition, following issuance of the final RFP, the following question and answer were provided to offerors on May 4:

2. Q: In Section 1: Request for Proposal it requires that the courses must be part of the Vendor's current course offerings and must be an existing open enrollment course of instruction. I also want to know if there is benefit in utilizing my firm for subcontract work to the University that I have approached. Is there any added value to [disadvantaged business enterprise] Submissions? My firm does not meet the criteria individually to respond to the RFP, as my office suites do not have lodging and meal service. However, the School of Business/[Master of Business Administration]/[Master of Human Resource Management] programs have these amenities. Please let me know regarding my questions listed above to the extent possible. In the event the University I approached does not choose to bid, I am affiliated with another local University that has a Bachelor's level School of Business with an Entrepreneurial track that I could also approach.

A: In accordance with the RFP, contract awards will be made directly to the institution that has been determined to be the best value for a particular course. It is up to the institution submitting the proposal to determine what subcontracting opportunities they wish to pursue.

AR, Tab 4, Final RFP Questions and Answers, at 1; see also Combined Contracting Officer Statement and Memorandum of Law (COS/MOL) at 11.

The RFP advised that award would be made to the responsible offeror whose proposal was determined to be the best value to the government using a trade-off source selection process. RFP at 29. When combined, non-price factors were to be

significantly more important than price. Id. Proposals would be evaluated on the basis of the following four non-price factors, listed in descending order of importance: (1) minimum requirements; (2) accreditation/continuing education credits; (3) course content; and (4) past performance. Id. at 29-30. The minimum requirements factor would be rated as either acceptable or unacceptable, and included the following subfactors: (a) pre-existing course; (b) on-site facilities; and (c) personnel requirements. Id. at 29, 31. The accreditation/continuing education credits factor would be assigned adjectival ratings, and included two subfactors: (a) accreditation and (b) continuing education unit (CEU)/continuing professional education (CPE)/continuous learning points (CLP) credits.³ Id. at 29, 32-33.

DLA timely received proposals from the protester and UVA for the strategic thinking course by the May 22 RFP closing date. COS/MOL at 11. Following the evaluation of initial proposals, the agency conducted discussions, during which the contracting officer issued two evaluation notices to Horizon that provided it the opportunity to clarify various aspects of its proposal and revise its pricing. Id. at 14-18. In its final evaluation of both offerors' proposals, the agency assigned the following ratings:

Evaluation Factor	UVA	Horizon
Minimum Requirements	ACCEPTABLE	UNACCEPTABLE
Pre-existing Course	Acceptable	Unacceptable
Onsite Facilities	Acceptable	Acceptable
Personnel Requirements	Acceptable	Acceptable
Accreditation/Continuing Education Credits	OUTSTANDING	UNACCEPTABLE
Accreditation	Outstanding	Unacceptable
CEU/CPE/CLP Credits	Outstanding	Unacceptable
Course Content⁴	OUTSTANDING	OUTSTANDING
Past Performance	Substantial Confidence	Unknown (Neutral) Confidence
Overall Technical Rating	ACCEPTABLE	UNACCEPTABLE

Tab 23, Source Selection Decision, at 5-8, 11; Tab 24, Final Consensus Evaluation of Horizon, at 3. The agency concluded that Horizon offered courses that were not open

³ The RFP provided the following adjectival ratings to be assigned for the accreditation/continuing education credits and course content factors: outstanding, good, acceptable, marginal, and unacceptable. RFP at 32-33. In addition, the RFP provided the following overall confidence assessment ratings for the past performance factor: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown (neutral) confidence. Id. at 35-36.

⁴ Subfactor ratings for the course content and past performance factors are not included since they have not been challenged by the protester and are not otherwise relevant to the protest allegations.

enrollment courses and that Horizon is not an accredited educational institution, both of which were contrary to the terms of the solicitation. AR, Tab 23, Source Selection Decision, at 10. The final price, including the base and option years, proposed by UVA was \$494,349, and Horizon's final proposed price was \$371,183. Tab 22, Price Negotiation Memorandum, at 11.

On September 22, Horizon was advised that UVA had been selected for award of the contract for the strategic thinking course, and this protest followed.

DISCUSSION

Horizon argues that the agency's evaluation of its proposal as unacceptable under the minimum requirements factor was erroneous, and specifically challenges the agency's conclusion that the strategic thinking course it offered was not an open-enrollment pre-existing course. Protest at 1. Horizon further argues that the agency's evaluation of its proposal as unacceptable under the accreditation/continuing education credits factor was also in error, because its proposed subcontractor is a fully accredited university. Id. at 1-2. While we do not address every issue raised by Horizon, we have considered all of the protester's arguments and allegations and find that none provide a basis to sustain the protest.⁵

Pre-existing Course

Horizon disputes the agency's conclusion that its course was not pre-existing, stating that the course "had been designed, and was offered for open enrollment, prior to the submission of the offering to the DCAA." Protest at 1. The agency responds that Horizon's offered course was neither pre-existing nor open-enrollment, and its proposal failed to demonstrate that it satisfied the minimum requirements of the RFP. COS/MOL at 23-25.

The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating them. VSE Corp., B-414057.2, Jan. 30, 2017, 2017 CPD ¶ 44 at 8. In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement statutes and regulations. Id. A protester's disagreement with

⁵ Horizon's protest also questioned whether UVA satisfied the requirement that the offered course be a pre-existing course, and challenges the decision to award the contract to UVA given its substantially higher price. Protest at 1-2. The agency rebutted these allegations in its agency report, which the protester then failed to address. Comments at 1-2. Consequently, we consider these arguments abandoned, and we will not consider them further. See Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

the agency's judgments is not sufficient to render the evaluation unreasonable. NCS/EML JV, LLC, B-412277 et al., Jan. 14, 2016, 2016 CPD ¶ 21 at 8. An offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection of its proposal if it fails to do so. Biomass Energy Serv., B-412898, July 1, 2016, 2016 CPD ¶ 165 at 4.

Here, the RFP stated that to be considered for award of a contract, each offer was required to satisfy minimum requirements, including the requirement that the proposed course "must be part of the Vendor's current course offerings" and "[m]ust be an existing open enrollment course of instruction." RFP at 1; see also id. at 30 ("The [Vendor] must provide a pre-existing open-enrollment live course of between 3-5 days (24-40 hours) with a classroom capacity of up to 40 students."). In its proposal, Horizon stated that its strategic planning course is an ongoing, open-enrollment seminar offered by its proposed university subcontractor in cooperation with Horizon, that the seminar would be offered August 7-10 and thereafter be scheduled on a semi-annual basis, and could also be offered on a tailored basis to organizations such as DCAA with a minimum of 21 days scheduling notice. AR, Tab 5, Horizon Proposal, at 6. Based on this information, the evaluators rated Horizon as unacceptable in their initial assessment, specifically stating that there was no indication that the course was a pre-existing open enrollment course "that has been piloted, validated, and implemented," and further noting that Horizon has only been in existence since January 2017. AR, Tab 10, Initial Consensus Evaluation of Horizon, at 7.

The record here shows that on June 20, the agency opened discussions with offerors, and advised Horizon of the deficiencies resulting in its rating of unacceptable under the pre-existing course subfactor. AR, Tab 12, Horizon Evaluation Notice dated June 20, 2017. In response, Horizon again stated that its course is an existing, open enrollment seminar that would next be offered August 7-10, and "is the fourth iteration of a seminar that has been a component" of an executive leadership program offered by the university proposed as its subcontractor. AR, Tab 13, Horizon Response to First Round of Discussions, at 2. Horizon also stated that the course had recently been presented off-site in June as part of a week-long seminar to a mission of the United Nations (UN) as a pilot to validate the curriculum, that the course had been well received, and that Horizon had been asked to again offer the course and additional courses for UN mission elements. Id. Horizon further stated that the current course "is a module of the [executive leadership] program which is in its fourth derivation" but that the "current design of the seminar, however, is the result of the collaboration" between Horizon and its university subcontractor. Id. at 3.

On August 18, in response a request for additional details regarding previous offerings of the strategic planning course, as well as any scheduled future offerings, Horizon stated as follows:

The Strategic Planning course was initiated in the spring of 2017 as a result of the partnership created between [the proposed university subcontractor] and Horizon Strategies. Though many elements of the

seminar were included in previous [executive leadership program] courses, the curriculum is unique. The course was piloted in a seminar presented to the [UN mission in June].

The seminar will be offered twice a year as open enrollment. The currently scheduled dates are: 4-7 December 2017 and 23-26 April 2018.

AR, Tab 19, Horizon Response to Second Round of Discussions, at 2. Additionally, Horizon advised that the course scheduled to occur August 7-10 “was postponed. It was an open-enrollment offering, and the minimum number of participants was not achieved.” Id. The evaluators again concluded that Horizon did not meet the RFP requirements, and assigned a rating of unacceptable in their final review. AR, Tab 24, Final Consensus Evaluation of Horizon, at 7-8.

On this record, we find reasonable the agency’s evaluation of Horizon’s proposal as unacceptable under the pre-existing course subfactor. As indicated by Horizon in its proposal and during discussions, its proposed strategic thinking course is the result of collaboration between Horizon and its university subcontractor that contains “elements of the seminar” previously taught as part of the university’s executive leadership program. However, the record also shows that the only time the course was offered was not the result of an open enrollment implemented through Horizon’s proposed university subcontractor. Instead, the prior offering was off-site and was specifically scheduled to be provided to a mission of the UN as part of a week-long seminar. Further, the only time the course was offered during open enrollment by the university (August 7-10), the course was postponed after the minimum enrollment was not achieved. Under these circumstances, we agree with the agency that the offered course did not satisfy the RFP’s requirement that it be a pre-existing open enrollment course of instruction.

Accreditation/Continuing Education Credits

Horizon also argues that the agency’s rating of its proposal as unacceptable under the accreditation/continuing education credits factor is unreasonable and is an inaccurate assessment of its proposal. Protest at 1-2. Horizon argues that its proposed subcontractor is “a fully accredited university, and nationally ranked.” Id. at 2. In its comments, Horizon further argues that the fact that accreditation requirements will be satisfied by a subcontractor “for the purposes of this proposal is seemingly immaterial. For this to not be allowable would seem to be a significant prejudice against small business.” Comments at 2.

The agency responds that this protest allegation should be dismissed as an untimely challenge to the terms of the solicitation because the RFP contained a clear requirement that the offeror be an accredited educational institution. COS/MOL at 22-23; see also Request for Dismissal, Oct. 6, 2017, at 1-2. The agency further argues that it properly evaluated the Horizon proposal in accordance with the terms of

the RFP, and rated Horizon unacceptable because it is not an accredited educational institution capable of awarding continuing education credits. Id. at 26-27.

Here, regarding the accreditation/continuing education credits factor, the RFP stated as follows:

Subfactor A: Accreditation

The Vendor's written proposal must clearly identify their accreditation, whether it is a regional or national accreditation recognized by the U.S. Secretary of Education.

Subfactor B: CEU/CPE/CLP Credits

The Vendor shall identify whether Continuing Education Unit (CEU), Continuing Professional Education (CPE) credits or Continuous Learning Points (CLP) are being offered for completion of the course.

RFP at 26-27, 31. As noted, when responding to questions submitted by prospective offerors following the issuance of the draft RFP, the agency explicitly advised that it was seeking offers from accredited academic and/or higher education institutions and that organizational development companies would not be considered for award. AR, Tab 31, Draft RFP with Questions and Answers, at 65-66. In addition, following issuance of the final RFP, the agency responded to a question from a prospective offeror which contemplated subcontracting with a university to satisfy the RFP requirement, and the agency again stated that award would be made to an educational institution. AR, Tab 4, Final RFP Questions and Answers, at 1.

During discussions, the agency requested that Horizon provide information regarding its accreditation and educational and research rankings. In response, Horizon stated that it "is not an educational institution," but rather, "a training and consulting company that provides instructors for the seminar in a unique partnership" with its proposed university subcontractor. AR, Tab 19, Horizon Response to Second Round of Discussions, at 3. On this record, we agree with the agency that the RFP made clear that award would be made to an accredited educational institution, and that the evaluators reasonably concluded that Horizon did not meet its requirements.⁶ As previously stated, an offeror

⁶ To the extent that Horizon's arguments could be construed as a challenge to the RFP requirements, they are untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests, and specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Because Horizon did not challenge the RFP requirement that the offeror be an accredited educational institution capable of issuing continuing education credits, and instead submitted its proposal by the closing date, the protest is untimely.

is responsible for demonstrating affirmatively the merits of its proposal and risks rejection of its proposal if it fails to do so. Biomass Energy Serv., supra.

The protest is denied.

Thomas H. Armstrong
General Counsel