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Decision

Matter of: Heartland Energy Partners, LLC

File: B-415741; B-415741.2

Date: March 1, 2018

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Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of quotations is denied where the record shows that the agency's evaluation was consistent with the solicitation and applicable statutes and regulations.
 2. Protest challenging the agency's source selection decision is denied where the record shows that the decision was consistent with the solicitation and applicable statutes and regulations.
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DECISION

Heartland Energy Partners, LLC, d/b/a Heartland Consulting, of McLean, Virginia, protests the award of a task order to NetImpact Strategies, Inc., of Chantilly, Virginia, under request for quotations (RFQ) No. HT0011-17-R-0026, issued by the Department of Defense, Defense Health Agency for support services for the agency's Manpower & Organization (M&O) division. The protester contends that the agency unreasonably evaluated quotations and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFQ was issued on August 2, 2017, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding contracts under the General Services Administration, Federal Supply Schedule (FSS), Professional Services Schedule. Agency Report (AR), Tab 11, Contracting Officer's Statement (COS), at 339.¹ The RFQ contemplated award of a fixed-price task order, for a 1-year base period and four 1-year options, for services to support the M&O division's responsibilities in the areas of manpower assessments and studies, manpower management, and manpower programming, as required under the Department of Defense Planning, Programming, Budgeting, and Execution System. RFQ, at 20, 29.

Award was to be made on a best-value tradeoff basis considering technical, past performance, and price factors. Id. at 79-81. The technical factor was deemed more important than past performance, and, the non-price factors, when combined, were significantly more important than price. The RFQ advised that a best-value tradeoff process would be utilized if the agency elected to award to other than the lowest-priced quotation, or the highest-rated quotation. Id. at 79.

The technical factor was divided into three subfactors: experience, key personnel, and staffing approach. RFQ at 79-80. For the experience and staffing approach subfactors, the agency was to assign an adjectival rating of good, acceptable, or unacceptable. Id. at 80-81. The key personnel subfactor was to be rated on an acceptable/unacceptable basis. RFQ at 80. Under the past performance factor, vendors would receive a confidence rating of acceptable, unacceptable, or a neutral rating. Id. at 81.

The agency received four quotations in response to the solicitation. AR, Tab 11, COS, at 339. Three were found to be technically acceptable overall. AR, Tab 8, Source Selection Decision Document (SSDD), at 319. The technical evaluation board (TEB) had assigned the quotations of both Heartland and NetImpact acceptable ratings for the technical factor and subfactor, and an acceptable rating for the past performance factor. Id. at 318. Relevant here, the TEB did not identify any strengths or weaknesses in either quotation. AR, Tab 6, Consensus Evaluation Report on NetImpact, 196; AR, Tab 7, Consensus Evaluation Report on Heartland, at 253.

The contracting officer, acting as the source selection authority (SSA), reviewed the TEB's analysis and conducted a comparative assessment of quotations against the RFQ's evaluation criteria. AR, Tab 8, SSDD, at 318-320. The SSA concluded that NetImpact's quotation, with the lowest-price of \$9,332,145.63, represented the best value to the government. In making award, the SSA noted that there were no discernable differences between quotations that justified paying the price premium associated with Heartland's quotation, which quoted a price of \$9,968,417.44, or the

¹ The agency stamped each page of its report, including the RFQ, with a Bates number. Citations to documents contained in the AR are to the Bates number.

other technically acceptable vendor, which quoted a price higher than both other vendors. Id. at 319. The agency awarded the task order to NetImpact on November 20 and sent notice of award to the unsuccessful vendors that same day. AR, Tab 11, COS, at 340. The agency provided Heartland a brief explanation for the basis of award on November 21. AR, Tab 9, Heartland Brief Explanation Slides, at 321. This protest followed.

DISCUSSION

Heartland's protest challenges the agency's evaluation of quotations and award decision. First, Heartland argues that the evaluation of its quotation under the experience subfactor was unreasonable because the agency failed to assign it various strengths. Protest at 9-17; Comments and Supp. Protest at 2-7. Heartland also contends that the agency failed to reasonably evaluate NetImpact's quotation under the key personnel subfactor. Comments and Supp. Protest at 10-11. Finally, according to Heartland, the unreasonable evaluation of quotations resulted in the agency making an unreasonable source selection decision, wherein the agency failed to look beyond the assigned adjectival ratings and consider Heartland's quotation in a best-value tradeoff. Protest at 8-9, 17-18; Comments and Supp. Protest at 7-9. We have considered all of Heartland's arguments and, while we do not address all of them below, we find that none provide a basis on which to sustain the protest.²

Evaluation of Heartland's Quotation

Heartland protests the agency's evaluation of its technical quotation under the experience subfactor. The protester argues that its quotation exceeded the RFQ's

² In its initial protest, Heartland challenged the agency's failure to assign its quotation strengths under each of the 12 paragraphs of the Performance Work Statement (PWS) to be evaluated for the experience subfactor, and its failure to assign Heartland's quotation strengths under the staffing approach subfactor. Protest at 15-16. In its memorandum of law (MOL), the agency responded to each of these allegations. AR, MOL, at 6-12. Heartland's comments only specifically addressed the responses with respect to three PWS paragraphs. Comments and Supp. Protest at 2-7. Heartland also expressly stated that it would not provide further argument in support of its challenges under the staffing subfactor. Id. at 1 n.1. Where an agency provides a detailed response to a protester's assertions and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. InteriGuard, LLC d/b/a/ HMS Fed.--Protest and Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5. Thus, we view these aspects of Heartland's protest as abandoned and we will not address them.

requirements in several respects, warranting the assignment of strengths.³ Comments and Supp. Protest at 2-7. Heartland asserts that had the agency conducted a reasonable evaluation, and assigned its quotation strengths for exceeding the RFQ requirements, its quotation would have been rated good for the subfactor.⁴ Id. at 2.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a blanket purchase agreement, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. HP Enter. Servs., LLC, B-411205; B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 5; Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Electrosoft Servs., B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ at 5.

Under the experience subfactor, the RFQ advised that it would evaluate vendors' experience "as demonstrated by contracts and by [k]ey [p]ersonnel employment performing tasks similar to the requirements" contained in the PWS. RFQ at 80. Additionally, the agency would evaluate the vendors' experience providing technical and program management oversight to support manpower planning and programming. Id. The record reflects that the TEB compared Heartland's quotation against each of the requirements of the PWS to be evaluated under the experience subfactor. AR, Tab 7, Consensus Report on Heartland, at 259-277. The TEB concluded that Heartland's quotation met requirements and indicated an acceptable approach. Id. at 277. The TEB further noted that Heartland's quotation contained no strengths or weaknesses

³ The RFQ defined a "strength" as "[a]n aspect of a quote that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during task order performance." RFQ at 81.

⁴ The RFQ defined a "good" rating as the "[q]uote meets requirements and indicates a thorough approach and understanding of requirements. Quote contains strengths, which outweigh any weaknesses. Has little potential to disrupt schedule, increase cost or degrade performance. Normal contractor effort and Government monitoring will likely overcome any difficulties." RFQ at 80. An "acceptable" rating was defined as "[q]uote meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Can potentially disrupt schedule, increase cost or degrade performance. Special contractor emphasis and close Government monitoring will likely overcome difficulties." Id.

under this subfactor. Id. Accordingly, the agency assigned the firm's quotation an acceptable rating here. Id.

Heartland argues that the agency unreasonably failed to assign its quotation strengths for its experience performing manpower studies, maintaining agency manpower documents, and for its experience providing manpower data quality management. Comments and Supp. Protest at 2-7. In this regard, Heartland argues that, while the agency was required to evaluate this subfactor based on its experience performing tasks similar to those specified in these PWS paragraphs, the agency reviewed only whether Heartland was capable of performing the PWS tasks. Id. at 2. In effect, Heartland argues, this resulted in the agency evaluating this subfactor on an acceptable/unacceptable basis, rather than evaluating its quotation to determine whether it warranted a rating of "good." Id. Heartland asserts that had the agency properly evaluated its quotation, it would have received strengths for the PWS tasks delineated above, which would have resulted in Heartland receiving a rating of "good" for the experience subfactor. Id.

Paragraph 5.2.2 of the PWS, perform manpower studies, required vendors to demonstrate experience performing studies that identify and validate agency manpower requirements. RFQ at 38. The record shows that, in evaluating Heartland's quotation, the TEB stated that Heartland "demonstrated [its] ability to perform Manpower Studies while working for the Defense Health Agency Manpower and Organization Division as performed by Heartland Team . . ." and Heartland's "proposed [p]rogram [m]anager and [s]enior [m]anpower [a]nalysts demonstrated an ability to perform the manpower studies as seen in key personnel resumes . . ." AR, Tab 7, Consensus Report on Heartland, at 261. The agency then concluded that Heartland met the experience and key personnel requirements for conducting tasks similar to PWS paragraph 5.2.2. Id.

Paragraph 5.4.1 of the PWS, maintenance of the agency manpower document, required vendors to perform multiple tasks related to the production of a Joint Table Distribution (JTD) document and maintenance of agency manpower data in the Fourth Estate Manpower Tracking System (FMTS). RFQ at 39. In evaluating Heartland's quotation, the TEB concluded that Heartland's experience met the requirements. AR, Tab 7, Consensus Report on Heartland, at 267. To support this conclusion, the TEB cited the following from Heartland's quotation: "[Heartland] currently updates, manages, and maintains all position information for over [deleted] [agency] positions, [deleted]." Id. at 267-268.

The TEB also found Heartland's experience acceptable under PWS paragraph 5.4.4, manpower data quality management. For PWS 5.4.4, vendors were required to demonstrate experience ensuring that the JTD matches the agency's corporate structure-approved control numbers, and that changes to the JTD only would be made in accordance with a consistent, high reliability quality control process. RFQ at 40. In finding that Heartland's quotation met the RFQ's requirements, the TEB noted that Heartland has experience using quality control tools to ensure the accuracy of data

entered into the FTMS database, and that Heartland is providing this experience in the current manpower contract. AR, Tab 7, Consensus Report on Heartland, at 271-272.

Based on our review of the record, we find that Heartland's allegations amount to disagreement with the agency's evaluation, which, by itself, is insufficient to establish that the agency's evaluation was unreasonable. See FreeAlliance.com, LLC, B-414531, June 19, 2017, 2017 CPD ¶ 191 at 5. The contemporaneous record shows that the agency considered Heartland's direct experience in performing manpower studies, maintaining agency manpower documents, and providing manpower data quality management, not just its "capability" to do so. Further, in order to warrant a strength, the agency had to conclude that the vendor's experience exceeded the RFQ's requirements in a way that was advantageous to the agency. RFQ at 81. As a result, even if Heartland's experience exceeded the RFQ's requirements, the agency was not required to award Heartland strengths absent the conclusion that this experience would be advantageous to the agency. See also Janus Global Operations, LLC, B-414569.8, Nov. 21, 2017, 2017 CPD ¶ 367 at 4 (unless otherwise required by the solicitation, an agency need not award a strength to a proposal feature that exceeds or goes beyond the solicitation requirements in some way, unless it also concludes that it would be advantageous to the government). While Heartland disagrees with the agency's judgements not to find that its experience warranted strengths for these PWS tasks, the protester's disagreement, without more, fails to show that the evaluation was unreasonable or otherwise inconsistent with the RFQ, and provides no basis to sustain Heartland's protest. See FreeAlliance, supra; MSN Services, LLC, B-414900 et al., Oct. 4, 2017, 2017 CPD ¶ 310 at 5.

Evaluation of NetImpact's Quotation

Heartland also alleges that the agency unreasonably failed to assign NetImpact's quotation an unacceptable rating for the key personnel subfactor. Comments and Supp. Protest at 10-11. Under this subfactor, the agency was to evaluate whether the key personnel had the requisite qualifications, as required by the PWS. As noted above, the key personnel subfactor was rated on an acceptable/unacceptable basis. RFQ at 80. If one of the vendor's proposed key personnel failed to meet one or more of the minimum qualifications, the quotation would receive an unacceptable rating under this subfactor. Id.

Heartland asserts that the agency should have found NetImpact's quotation unacceptable because its key personnel lacked the minimum qualifications required by the solicitation. Comments and Supp. Protest at 10-11. To support this argument, Heartland cites the following excerpt from the SSDD's discussion of NetImpact's quotation:

I see the TEB notes there were a few cases where some of the [k]ey [p]ersonnel did not have the qualification for certain PWS tasks, which other [k]ey [p]ersonnel did.

AR, Tab 8, SSDD, at 300.

Heartland argues that this statement evidences the fact that NetImpact's proposed key personnel failed to satisfy the RFQ's minimum requirements for the key personnel subfactor. Comments and Supp. Protest at 10-11.

Heartland misconstrues the above quoted statement from the SSA and misreads the requirements of the solicitation. The excerpt cited above, and relied upon by Heartland in advancing this argument, was derived from the SSA's conclusions regarding NetImpact's response to the staffing approach subfactor. AR, Tab 8, SSDD, at 300. The agency was to evaluate the staffing approach subfactor by assessing the vendor's understanding of personnel qualifications, the vendor's ability to hire and retain professional employees, the suitability of the vendor's management structure to effectively manage tasks, and the effectiveness of the respondent's proposed mix and balance of education, experience, and certifications of proposed team members. RFQ at 80. The staffing approach subfactor, did not, however, contain a requirement that each of the vendor's key personnel be individually able to satisfy each requirement of the PWS. Rather, the staffing approach subfactor was utilized to evaluate vendors' overarching approach for allocating and managing employees in performing the full range of work contemplated in the PWS. RFQ at 74. As result, our review of the record indicates that the language cited above was merely the agency documenting its conclusion that NetImpact had proposed an adequate approach to ensuring a qualified employee performed each PWS requirement, even though NetImpact's proposed key personnel could not individually satisfy all the PWS's requirements. Accordingly, we find that Heartland's assertion that NetImpact should have received an unacceptable rating under the key personnel subfactor to be without merit.⁵

Source Selection Decision

Finally, Heartland challenges the agency's source selection decision, alleging that the decision was unreasonable insofar as it relied on the allegedly flawed evaluations above, which in turn failed to trigger a best-value tradeoff. Comments at 8-9. Heartland also asserts that the agency made award based merely on adjectival ratings, without assessing the underlying merits of the quotations. Protest at 8-9; Comments at 7-8.

Where, as here, a procurement provides for issuance of a task order on a best-value tradeoff basis, it is the function of the SSA to perform a price/technical tradeoff, that is, to determine whether one quotation's technical superiority is worth its higher price. See MILVETS Sys. Tech., Inc., B-409051.7, B-409051.9, Jan. 29, 2016, 2016 CPD ¶ 53

⁵ Heartland also alleged that the agency failed to adequately document "its decision to issue an award despite [NetImpact's] unqualified key personnel." Comments and Supp. Protest at 11-12. As we find no merit to Heartland's allegation that NetImpact's key personnel failed to satisfy the RFQ's minimum requirements, it follows that this allegation is also without merit.

at 10 ; TeleCommunication Systems, Inc., B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 11-12. An agency has broad discretion in making a tradeoff between price and non-price factors, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's evaluation criteria. Portage, Inc., B-410702, B-410702.4, Jan. 26, 2015, 2015 CPD ¶ 66 at 19. Where selection officials reasonably regard proposals as being essentially technically equal, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 7. In the final analysis, ratings, be they numerical, color, or adjectival, are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. See OPTIMUS Corp., supra, at 4-5. The germane consideration is whether the record shows that the agency fully considered the actual qualitative differences in vendors' quotations. See e.g., Bernard Cap Co., Inc., B-297168, Nov. 8, 2005, 2005 CPD ¶ 204 at 6.

As detailed above, the record does not support Heartland's challenges to the agency's evaluation of quotations. Accordingly, we find no merit to Heartland's objections to the agency's selection decision, insofar as they are based upon those alleged errors. Further, on this record, we find nothing unreasonable in the selection official's decision to select, as between the two technically equal proposals, NetImpact's lower-priced quotation. See Synergetics, Inc., supra.

The record also demonstrates, contrary to Heartland's assertions, that the SSA performed a qualitative analysis of quotations in making an award determination. AR, Tab 8, SSDD, at 319. The record shows that the SSA, after reviewing the comprehensive evaluations performed by the TEB discussed above, compared the underlying technical merit of the quotations in making an award decision. Id. In this regard, the SSA noted that each vendor demonstrated its experience providing manpower support services and that each vendor proposed key personnel that satisfied the RFQ's minimum requirements. Id. The SSA then stated that there were no "discernable differences" between the quotations and that each vendor could perform the requirements of the solicitation. Id. As a result, our review of the record provides us with no basis to question the agency's conclusion that NetImpact's lowest-priced quotation represented the best value to the agency.

The protest is denied.

Thomas H. Armstrong
General Counsel