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Decision

Matter of: Automation Precision Technology, LLC

File: B-416078

Date: June 5, 2018

Michael L. Sterling, Esq., Anthony J. Mazzeo, Esq., and Blake Christopher, Esq., Vandeventer Black LLP, for the protester.
Gary J. Campbell, Esq., G. Matthew Koehl, Esq., and Joshua L. Rodman, Esq., Womble Bond Dickinson (US) LLP, for Noble Supply and Logistics, the intervenor.
Andrew N. Christopher, Esq., and James E. Vaiden, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee should not have been rated outstanding under the technical factor is denied where agency recognized a weakness in the awardee's staffing plan for failure to identify the number of full-time equivalent personnel that would perform, but this was just one element of the technical factor and agency also identified numerous strengths in the awardee's technical proposal.

DECISION

Automation Precision Technology, LLC (APT), of Norfolk, Virginia, protests the award of a contract to Noble Supply and Logistics, of Rockland, Massachusetts, under request for proposals (RFP) No. N00189-17-R-0026, issued by the Department of the Navy, for a contractor to operate three parts and repair stores. The protester asserts that the agency unreasonably evaluated Noble's staffing plan and failed to provide APT with meaningful discussions.

We deny the protest.

BACKGROUND

The solicitation was issued for a contractor to operate three parts and repairs stores in support of the Naval Facilities Engineering Command Mid-Atlantic Public Works Department. Agency Report (AR), Exh. 1, RFP (conformed) at 67. The contractor will

be required to provide all labor, supplies, equipment, management supervision, and support necessary to maintain an adequate supply of all parts, materials, and equipment to accomplish the agency's needs. Id. The solicitation provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract on a best-value tradeoff basis considering the following factors: technical, past performance, and price. Id. at 102-106. In making the award decision, the technical factor was more important than past performance and those two factors were more important than price. Id. at 102.

The solicitation provided that in evaluating the technical factor, the agency would consider an offeror's performance approach; management approach, including staffing plan and compliance with country of origin requirements; interface ability with a specific software; transition plan; and risk mitigation techniques. Id. at 103. As relevant to this protest, with regard to management approach, the solicitation instructed offerors to demonstrate how they would successfully accomplish the solicitation requirements, and clearly describe the management controls, techniques, and procedures that would be used to ensure that performance was timely, responsive, professional, and efficient. Id. at 99. Offerors were required to include a staffing plan that demonstrated the capability to provide personnel with the necessary skill sets and certifications. Id.

Three offerors, including APT and Noble, responded to the solicitation. Contracting Officer's Statement at 4. Following the evaluation of initial proposals, discussions, and the submission and evaluation of final proposal revisions, APT and Noble were rated as follows:

Factor	Noble	APT
Technical	Outstanding	Outstanding
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Total Evaluated Price	\$28,788,339	\$37,628,210

Protest, Exh. 1, Debriefing, at 2.¹ The agency performed a best-value tradeoff and concluded that the proposals of Noble and APT were essentially equal under the non-price factors and selected Noble for award based on its lower proposed price. AR, Exh. 9, Contract Review Board Post-Negotiation Memorandum, at 16. APT protests that decision.

¹ The solicitation stated that a proposal would be rated as outstanding if it indicated an exceptional approach and understanding of the requirements, contained multiple strengths, and a low risk of unsuccessful performance. RFP at 103.

DISCUSSION

Technical Evaluation

APT protests that Noble's proposal should not have been rated outstanding under the technical evaluation factor. Protest at 9-13. APT specifically complains while Noble described the functions that various employees would perform, and the duties for the positions proposed, it failed to identify the number of full-time equivalents (FTE) that it would use to would perform the contract. Comments at 3. In this regard, APT further asserts that even though the solicitation is performance based, offerors were required to propose a technical solution and staffing plan that demonstrates the ability to accomplish the solicitation requirements. Id. at 5.

For example, the protester notes that the solicitation had specific performance requirements to: operate a store, consisting of three separate shops, Monday through Friday from 7 a.m. until 4:30 p.m., and Saturday from 7 a.m. until 12 p.m. (upon request); issue invoices at the time of an over-the-counter order or within a specific time for orders not placed at the store counter; and make daily routine and emergency deliveries for all sites. Id. at 6. According to APT, the agency could not reasonably evaluate a staffing plan under this solicitation without knowing the number of FTEs offered. Id. at 7. APT also asserts that the agency unreasonably concluded that both proposals were substantially equivalent without considering the difference in the number of FTEs each offeror proposed. Id. at 11.

The agency responds that the solicitation did not dictate a specific staffing level and did not require offerors to identify the number of anticipated FTEs. Memorandum of Law (MOL) at 10-11. Rather, notes the agency, the solicitation was written in functional, performance-oriented terms, and indicated that the technical proposals would be evaluated for feasibility, comprehensiveness, and the degree to which they demonstrate how offerors will successfully accomplish the solicitation requirements. Id. The agency also notes that Noble's failure to identify the number of FTEs it would use to perform was identified as a weakness in Noble's proposal. Id. at 12. The agency concluded, however, that Noble should be rated outstanding under the technical factor because any performance difficulties Noble might face could be overcome with normal contractor effort and government monitoring. Id.

Moreover, the agency explains that the failure to identify the number of FTEs was the only weakness in Noble's proposal, which also contained seven identified strengths. MOL at 10. These strengths included: an historical 99 percent fill rate on similar contracts that exceeded the performance work statement requirement of 95 percent; supplier agreements in place with more than **[DELETED]** vendors; current distribution of more than **[DELETED]** government approved items through catalogs and online ordering; a custom, web-based automated ordering and purchasing system; cross-training of employees in every position; a three-tiered approach to verify whether material meets country of origin contract requirements; and a demonstrated ability to meet phase-in requirements. Id. (citing AR, Exh. 6, Technical Evaluation Board Report,

at 4-5). The agency contends that its evaluation was therefore reasonable and consistent with the solicitation.

In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's determination was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. Further, adjectival ratings are merely guides for intelligent decision-making in the procurement process. Envtl. Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. Information regarding strengths and weaknesses of proposals is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between proposals. ACCESS Sys, Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7. An offeror's disagreement with agency's assignment of adjectival ratings, or other aspects of the evaluation, without more, does not render the evaluation unreasonable. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

Here, the agency expressly recognized the weakness inherent in Noble's failure to address how many FTEs Noble would use to perform the contract. AR, Exh. 6, Technical Evaluation Board Report, at 5; Exh. 9, Contract Review Board Post-Negotiation Memorandum, at 16. The agency found however, that this weakness would be mitigated by normal contractor attention and government oversight. AR, Exh. 6, Technical Evaluation Board Report, at 5. The agency also found that the staffing plan addressed the functions that various employees would perform, addressed the duties for the positions proposed, provided an organizational chart of onsite positions, and explained the relationship between the on-site employees and Noble's corporate hierarchy. AR, Exh. 10, Decl. of Technical Evaluation Board Chair, at 5. In addition, each of Noble's team members was cross-trained. AR, Exh. 6, Technical Evaluation Board Report, at 5. The agency concluded that this weakness would have little potential to cause disruption of the schedule, increased cost, or degradation of performance. Id.; AR, Exh. 10, Decl. of Technical Evaluation Board Chair, at 4.

Moreover, the failure to indicate how many FTE's would be used to perform the contract was the sole weakness under the technical factor, which also contained seven strengths. The agency rated Noble outstanding under the technical factor because in its proposal, Noble demonstrated that it had a wide reach with established supply chain vendors, warehouse management which will ensure successful inventory management, and a custom web-based system for ordering and inventory control, similar to platforms used by Lowe's and Amazon, that provides instant product substitution suggestions for items not currently available. AR, Exh. 6, Technical Evaluation Board Report, at 4-5. While APT disagrees with the evaluation, APT's disagreement does not demonstrate that the evaluation was unreasonable.

APT also complains that it was not reasonable for the agency to conclude that the proposals submitted by both APT and Noble were substantially equivalent--both were

rated outstanding--under the technical factor without considering the number of FTEs each proposed. Here, in performing the tradeoff, the agency considered the strengths and weaknesses in each proposal and concluded that overall, the technical proposals were equal. AR, Exh. 9, Contract Review Board Post-Negotiation Memorandum, at 16. The agency did not simply rely on the outstanding ratings to reach the conclusion that both proposals were equal. The agency, in this regard, specifically recognized the weakness in Noble's proposal for not identifying the number of FTEs proposed, but was not required to compare the proposed number of FTE's before concluding that the proposals were equal under the technical factor. Accordingly, we deny these protest allegations.

Discussions

In its initial protest, APT argued that the agency engaged in misleading discussions by not advising APT of any concerns regarding its staffing or test market basket pricing. Protest at 15. In its report, the agency explained that APT received a strength for its staffing, and that the agency had no specific concerns about APT's test market basket pricing. MOL at 13. In its comments, APT did not rebut the agency's response but instead argued that the agency engaged in misleading discussions because it did not advise APT of its one weakness. Comments at 12. Specifically, in evaluating APT's proposal, the agency assigned a weakness for APT's plan to use an electronic database to verify country of origin requirements rather than a hands-on inspection. AR, Exh. 6, Technical Evaluation Board Report, at 4. APT was accordingly assigned a weakness.

As a preliminary matter, APT did not respond to or rebut the agency's response regarding misleading discussions and concerns regarding APT's staffing or test market basket pricing. APT's failure to comment on the agency's response renders this argument abandoned and we will not consider it further. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

We also find untimely APT's argument concerning misleading discussions regarding the country of origin requirements. Under our bid protest regulations, to be timely where, as here, a debriefing is required and requested, a protest must be filed within ten days after the debriefing. 4 C.F.R. § 21.2(a)(2). APT's debriefing was completed on February 22, 2018. Protest, Exh. 2, Agency Response to Debriefing Questions. In the written debriefing, APT was specifically advised of its one weakness--that while its decision to use an electronic database to verify country of origin requirements would be sufficient in most cases, a hands-on inspection when material arrives would better guarantee that the country of origin requirements are met. Protest, Exhibit 1, Debriefing. Since APT did not argue that the agency failed to hold meaningful discussions regarding the country of origin requirements when it filed its initial protest, but instead, waited until April 9 when it submitted its comments on the agency report, this issue is untimely. Desbuild

Inc., B-409009, Jan. 6, 2014, 2014 CPD ¶ 23 at 5 (protester knew of basis of protest grounds from its debriefing but did not timely raise them in its initial protest). These protest issues are dismissed.

The protest is denied.

Thomas H. Armstrong
General Counsel