



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Innovative Pathways, LLC

File: B-416100.2

Date: June 13, 2018

William T. Welch, Esq., and Peter A. Fish, Esq., McMahon, Welch and Learned, PLLC, for the protester.

Dennis A. Adelson, Esq., Peter J. Dickson, Esq., Alison E. Spurlock, Esq., and Vijaya S. Surampudi, Esq., Department of Labor, for the agency.

April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of protester's proposal is denied where the evaluation was reasonable and consistent with the assessment of a deficiency for failure to meet a material solicitation requirement.

DECISION

Innovative Pathways, LLC, of Alexandria, Virginia,¹ protests the award of a contract to Heritage Services Corporation, of Rockledge, Florida, under request for proposals (RFP) No. 1630J3-17-R-00007, by the Department of Labor for the operation of a Job Corps Center. The protester primarily challenges the agency's evaluation of its proposal and assessment of a deficiency under the phase-in/phase-out plan subfactor.

We deny the protest.

BACKGROUND

The RFP, issued on August 14, 2017, as a small business set-aside, sought a contractor to operate a Job Corps Center in Jacksonville, Florida. The contractor would be responsible for providing academic and career training and related support services

¹ Innovative Pathways is a small business joint venture consisting of [redacted]. Agency Report (AR), Tab 11, Innovative Final Staff Resources Proposal, at 2.

for students at the center, as well as outreach, admissions, and post-center transition services in Florida and the United States Virgin Islands. The RFP contemplated the award of a single cost-plus-incentive-fee contract for a base period of performance from January 1, 2018, to January 31, 2020, and three 1-year option periods. AR, Tab 1, RFP, at 4-8.

Award would be made on a best-value basis considering five evaluation factors, listed in descending order of importance: technical approach, relevant experience, staff resources, past performance, and cost. The first three factors had multiple subfactors, each of which was considered relatively equal in importance. RFP at 91-92.

Of relevance here, the staff resources factor included a phase-in/phase-out plan subfactor that required offerors to provide transition plans that “shall include the period of time required for each action, staff requirements, and major steps to be accomplished during these periods.”² RFP at 84. The RFP also provided that “the proposed approach to phase-in/phase-out will be evaluated in accordance with the degree to which the phase-in/phase-out plans demonstrate the offeror’s knowledge [of] the scope of the tasks to be accomplished[,] and the adequacy of the corporate resources proposed to complete the tasks to be accomplished.” Id. at 94. Finally, the RFP warned: “If an offeror fails to address any of these topics in their submitted proposal, the proposal will be viewed as nonresponsive and/or deficient in this area.” Id.

On or before October 6, 2017,³ the agency received fourteen proposals. Three were immediately rejected as unacceptable and, after its evaluation of initial proposals, the agency eliminated six more and established a competitive range of the remaining five offerors. AR, Apr. 16, 2018, at 2-3. The agency conducted discussions with the five offerors by sending discussion letters on February 13, 2018, and requested and received final proposal revisions (FPRs) by February 16. AR, Tab 15, Competitive Range Notice and Discussion Letter, at 1.

Of relevance here, the Technical Evaluation Panel (TEP) initially assessed four deficiencies to Innovative’s proposal, including one under the phase-in/phase-out plan subfactor. The TEP stated that Innovative “did not provide a Phase-Out plan” and that this constituted “a material omission which increases the risk of not properly transitioning the contract in a structured manner and leads to disruptions to the delivery of services to students.” AR, Tab 13, Final Technical Evaluation Report, at 6.

² The RFP also required: “Costs associated with the phase-in and phase-out plans shall be submitted as part of the [cost] proposal.” RFP at 84. The protester indisputably states that it had already included proposed costs for its phase-out plan in its cost proposal, so we need not address that aspect of this subfactor. Protest, Mar. 16, 2018, at 7.

³ While proposals were initially due by September 13, amendments extended the deadline to October 6. AR, Tab 2, Amendment 1, at 1; AR, Tab 4, Amendment 3, at 1.

The agency raised these deficiencies during discussions, and Innovative responded by submitting an FPR that included the following relevant section:

3.F.7. Transition-Out Plan and Support

Should [Innovative] be an unsuccessful offeror on re-compete of the contract, we will do our part, without reservation, to support a frictionless hand over of contract responsibilities to the incoming contractor. We will provide the [contracting officer] with a detailed transition-out plan immediately after we are notified that award will go to a different contractor. Our transition-out plan will be structured to ensure [redacted], including but not limited to:

[redacted].

In executing transition-out, [Innovative] will provide prompt support to both the Government and the incoming contractor and will create no obstacles to the incoming contractor's transition-in.

Innovative Final Staff Resources Proposal at 51.

The TEP found that Innovative's response resolved three of the deficiencies but, with respect to the phase-in/phase-out plan subfactor, "provided insufficient information to ensure an effective phase-out process is in place." Final Technical Evaluation Report at 5. The TEP concluded that a deficiency remained under this subfactor because Innovative "lacks details in its Phase-Out plan." Id. at 6.

After the TEP completed its evaluation of FPRs, the source selection authority (SSA), who was also the contracting officer, independently reviewed Innovative's initial proposal and FPR and discussed them with the TEP chair. Declaration of SSA, May 29, 2018, at 1; Declaration of TEP Chair, May 29, 2018, at 1.⁴ They agreed that Innovative's FPR "did not meet the RFP's requirements, did not constitute a Phase-Out plan, and was no better than not having proposed a plan at all." Declaration of SSA at 1. In her award decision, the SSA concluded:

The Offeror did not provide a Phase-Out plan. It is unclear what activities/steps will take place in the case of a Phase-Out. This [is] a material omission which increases the risk of not properly transitioning the contract in a structured manner and leads to disruptions to the delivery of services to students.

⁴ In its development of the protest, GAO held a conference call with the parties regarding several apparent discrepancies in the record. Following the conference call, GAO received supplemental responses from the agency and the protester. See Supp. AR, May 29, 2018; Declaration of SSA; Declaration of TEP Chair; Supp. Comments, May 30, 2018.

AR, Tab 16, Award Memorandum, at 33.⁵

Because of the remaining deficiency for the phase-in/phase-out plan subfactor, the SSA assigned an overall “unacceptable” rating under the staff resources factor to Innovative and concluded that Innovative was “not eligible for an award.” Award Memorandum at 45. The agency selected Heritage Services Corporation for award and notified Innovative on February 28. Innovative requested and received a debriefing, which concluded on March 6. This protest followed.

DISCUSSION

Innovative challenges the agency’s evaluation of its FPR and assessment of a deficiency under the phase-in/phase-out plan subfactor.⁶ Innovative contends that its phase-out plan “met the requirements of the RFP,” Protest at 7, and further argues that it intended to propose a “phased effort” that “constitutes a distinct and identifiable plan that can be evaluated for effectiveness.” Comments, Apr. 26, 2018, at 3-4.

⁵ The agency admits that this language in the Award Memorandum “was an echo of the TEP’s evaluation on Innovative’s *initial* proposal.” Supp. AR at 4 (emphasis original); see also Final Technical Evaluation Report at 6. The SSA clarified that this was her own conclusion, as she found that the phase-out plan in Innovative’s FPR “was deficient because it lacked detail and because it amounted to no plan at all.” Declaration of SSA at 1.

⁶ Innovative also challenges the agency’s assessment of a deficiency to its FPR under the relevant experience factor, state and local relationships subfactor, that was not assessed to the protester’s initial proposal and not raised in discussions. Protest at 7. In its evaluation of initial proposals, the agency assessed only a “weakness” under this subfactor to Innovative’s proposal; therefore, the agency contends that it was “not obligated” to raise it during discussions. AR at 8. However, in its evaluation of FPRs, the agency later reevaluated the same, unchanged section of Innovative’s proposal to be a deficiency under this subfactor. In this respect, we note that, in order for discussions to be meaningful, agencies must, at a minimum, point out to competing firms deficiencies, significant weaknesses, and adverse past performance information to which the firm has not previously had an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.306(d)(3). Where an agency identifies new deficiencies during a reevaluation of that proposal in an acquisition where discussions have previously occurred, it is required to discuss those new deficiencies with the offeror. See DevTech Sys. Inc., B-284860.2, Dec. 20, 2000, 2001 CPD ¶ 11; Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27. However, because we find that the agency reasonably assessed a deficiency to Innovative under the phase-in/phase-out plan subfactor, and because that deficiency rendered Innovative ineligible for award, we do not reach the merits of Innovative’s additional challenge here. In essence, Innovative cannot show that it was prejudiced by this error. Avaya Gov’t Solutions, Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 6.

The agency responds that Innovative's FPR "do[es] not satisfy a requirement to [provide] a detailed plan," AR at 5, and "was so bareboned as to constitute no real plan at all," Supp. AR at 4. The RFP required offerors to submit a phase-out plan that "shall include the period of time required for each action, staff requirements, and major steps to be accomplished during these periods." RFP at 84. In reaching its conclusion, the agency relies primarily on the plain language of Innovative's FPR, which states: "We will provide the [contracting officer] with a detailed transition-out plan immediately after we are notified that award will go to a different contractor." Innovative Final Staff Resources Proposal at 51 (emphasis added).

A deficiency is a material failure to meet a government requirement or a combination of significant weaknesses that increases the risk of unsuccessful contract performance to an unacceptable level. FAR § 15.001. Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to material terms is unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is unacceptable. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 54.

Further, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. An offeror is responsible for affirmatively demonstrating the merits of its proposal and, as here, risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. In reviewing protests challenging the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3.

Here, we find no basis to question the reasonableness of the agency's conclusion that the plain language of Innovative's proposal--stating that it "will provide" a phase-out plan, Innovative Final Staff Resources Proposal at 51--is the equivalent of not providing a plan. Although Innovative claims that it intended to propose a plan outlined by several phases, the agency found that Innovative's FPR still failed to address the detailed requirements of the RFP. Under these circumstances, the agency could reasonably conclude that Innovative failed to provide a phase-out plan and, thus, failed to meet a

material requirement of the RFP that resulted in proposal unacceptability.

The protest is denied.

Thomas H. Armstrong
General Counsel