U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: Serka Taahhut Insaat, A.S.

File: B-416391.2; B-416391.3

Date: August 13, 2018

Douglas L. Patin, Esq., Aron C. Beezley, Esq., Lisa A. Markman, Esq., and Sarah S. Osborne, Esq., Bradley Arant Boult Cummings LLP, for the protester.
Paul D. Reinsdorf, Esq., Paul D. Reinsdorf Attorney at Law, for Aytekin-Serol Insaat Muhendislik Taahhut, A.S, the intervenor.
Nancy van Noortwijk, Esq., Department of the Army, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated firm's proposal under management approach factor is denied where the record shows that the firm's organization chart did not comply with the terms of the solicitation.

2. Protester is not an interested party to raise remaining challenges to the agency's evaluation of its proposal or the agency's evaluation of the awardee's proposal, where protester would not be in line for award if its protest were sustained.

DECISION

Serka Taahhut Insaat, A.S. (Serka), of Istanbul, Tukey, protests the award of a contract to Aytekin-Serol Insaat Muhendislik Taahhut, A.S. (Aytekin), of Adana, Turkey, under request for proposals (RFP) No. W912GB17R0045, issued by the Department of the Army, Corps of Engineers (Corps), for the design and construction of an airfield fire and crash rescue station. The protester alleges that the agency unreasonably evaluated proposals and improperly made its source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on November 9, 2017, contemplated the award of a fixed-price contract for the design and construction of a new fire and crash rescue station at Incirlik

Air Base in Adana, Turkey. Agency Report (AR), Tab 7, RFP at 188, 232.[1] Design and construction services contemplated included demolishing the existing airfield fire/crash rescue station, providing temporary facilities, and constructing a new facility. Id. at 232. Proposals were to be evaluated on a best-value tradeoff basis using price and three non-price factors, listed in descending order of importance: design and construction experience, past performance, and management approach. Id. at 180. When combined, the three non-price factors were more important than price. Id.

The Corps received proposals from seven offerors, including Serka and Aytekin. Contracting Officer's Statement of Facts at ¶ 13. The Source Selection Evaluation Board (SSEB) reviewed the proposals and made recommendations to the Source Selection Authority (SSA). As explained below, the SSA disagreed with some of the SSEB's recommendations. The results of the SSA's evaluation are as follows:

	Serka	Aytekin
Design and Construction Experience	Marginal	Good
Past Performance	Somewhat Relevant Limited Confidence	Relevant Satisfactory Confidence
Management Approach	Unacceptable	Good
Price	$9,414,000	$10,199,661

AR, Tab 9, Source Selection Decision Document (SSDD) at 848-853, 875-882, 895. Because Serka received an unacceptable rating for the management approach factor, Serka was not considered for award.[2] Id. at 900. In considering the proposals eligible for award, the SSA determined that Aytekin's represented the best value to the agency. Id. at 895-896. After receiving a written debriefing, Serka filed the instant protest.

DISCUSSION

Serka raises multiple challenges to the agency's conduct of the acquisition. The firm first asserts that the agency unreasonably evaluated its proposal under each of the non-price factors. Serka also asserts that the Corps evaluated its proposal unequally under the design and construction experience factor. Serka further asserts that the agency unreasonably evaluated Aytekin's proposal under the design and construction experience and past performance factors. Finally, Serka asserts that the agency's best-value tradeoff analysis was unreasonable.

[1] The Corps used a Bates numbering system in preparing its report. This decision uses the Bates numbers assigned for all citations to the report.

[2] The solicitation defined an unacceptable rating as "[p]roposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable." AR, Tab 5, RFP amend. 2 at 306.

Ultimately, we find that Serka's proposal was reasonably evaluated as unacceptable under the management approach factor and therefore conclude that it is not an interested party to pursue its remaining protest allegations. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. SaxmanOne, LLC, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 3.

Management Approach

Offerors were instructed to submit an organization chart showing lines of authority and communication. AR, Tab 5, RFP amend. 2 at 298. Offerors were also instructed to clearly identify the program manager, or the other on-site employee authorized to communicate with the agency, and any other personnel authorized to communicate with the agency. Id. The solicitation advised that proposals would be evaluated based on "whether [they] clearly delineate[d] lines of authority, and communication with the Government, on the organizational chart (graph) organized in a precise and logical manner." Id. at 305. Any proposal which did not meet the requirements of the solicitation would be assigned a deficiency and therefore receive an unacceptable rating under that factor. Id. at 306. Any proposal receiving an unacceptable rating would be considered unawardable overall. Id.

The Source Selection Evaluation Board recommended an acceptable rating for Serka's proposal based on the presence of three strengths and two weaknesses. AR, Tab 8, SSEB Report at 825-826. One of the weaknesses was assigned because the firm failed to include lines of communication and authority on its organization chart as required by the solicitation. Id. at 825. The SSEB noted that it did not recommend an unacceptable rating because the firm had explained its lines of communication and authority in another part of its proposal. Id. at 827. The SSA, however, disagreed with the SSEB's evaluation; instead, it assigned an unacceptable rating because the solicitation required offerors to include lines of authority and communication on their organization charts. AR, Tab 9, SSDD at 882. Because the SSA assigned the firm's proposal an unacceptable rating, she determined that the firm's proposal was unawardable overall and did not consider it for award. Id.

Serka initially alleges that the SSA inadequately documented her reasons for disagreeing with the SSEB's recommendation. Protester's Comments at 5-6. Our decisions explain that source selection officials may reasonably disagree with the ratings and recommendations of evaluators, provided that their independent judgments are reasonable, consistent with the stated evaluation scheme, and adequately documented. See, e.g., Nova Builders, B-402091 et al., Jan. 19, 2010, 2010 CPD ¶ 33 at 10. Here, the record shows that the SSA disagreed with the SSEB's recommendation because the firm's proposal did not include lines of authority and communication on its organization chart as required by the solicitation. AR, Tab 9, SSDD at 882. The SSA explained that the firm's failure in this regard constituted a failure to comply with a solicitation requirement and therefore that the proposal merited an unacceptable rating. Id. Thus, the record shows that the basis for the SSA's disagreement was the fact that the SSA was not willing to waive this solicitation requirement.

The firm also argues that the evaluation was unreasonable because the solicitation's material terms did not require offerors to identify any lines of communication and authority on the organization charts. Protester's Comments at 3. Alternatively, the firm argues that the omission was minor because the information was included in other parts of its proposal. Id. at 3-4. In response, the agency asserts that the solicitation did, in fact, require offerors to include lines of authority and communication on their organization charts. Supp. Memorandum of Law (MOL) at 2-3.

In our view, the agency reasonably evaluated the firm's proposal. Including lines of authority and communication on organization charts was a material requirement because the solicitation specifically instructed offerors to include this information and explicitly advised that the evaluation of the organization charts would be based on that information. AR, Tab 5, RFP amend. 2 at 298, 305. Further, the record shows that the firm's proposal did not comply with the solicitation requirement because its organization chart did not include any lines of communication. AR, Tab 7, Serka Technical Proposal at 769. While the chart identified the firm's project and program managers, it did not label those managers or any other employees as authorized to communicate with the agency.[3] Id.

In addition, although the firm may have included this information in another part of its proposal, the solicitation did not allow offerors to omit that information from their organization charts provided they included it elsewhere. Moreover, while the omission may seem minor to the protester, we note that offerors bear the responsibility to submit well-written proposals that comply with all of a solicitation's terms. DLT Solutions, Inc.,

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[3] The firm also alleges that its omission did not merit an unacceptable rating because the solicitation reserved that rating for proposals which contain a material failure. Protester's Comments at 4. We dismiss this argument because it fails to state a valid legal basis. The solicitation provided two sets of adjectival ratings. AR, Tab 5, RFP amend. 2 at 306. One set of ratings was reserved for evaluating levels of technical risk, and provided that an unacceptable risk was present when a proposal contained a material failure that increased the risk of unsuccessful performance. Id. The other set of ratings was used to evaluate the overall technical rating for the management approach factor, and defined unacceptable as "[p]roposal does not meet requirements of the solicitation, and thus contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable." Id. Thus, to the extent the firm argues that its proposal did not contain a material failure, we dismiss that argument because it is predicated on the incorrect set of ratings.

B-412237 et al., Jan. 11, 2016, 2016 CPD ¶ 19 at 7. Thus, it was incumbent upon the firm to review the solicitation thoroughly and submit an organization chart addressing the evaluation criteria. The agency was not required to read the firm's proposed lines of communication into its organization chart simply because it had included the information in another part of its proposal. See National Disability Rights Network, Inc., B-413528, Nov. 16, 2016, 2016 CPD ¶ 333 at 6 (agency had no obligation to supplement proposal with information not provided because an offeror has the responsibility to submit a well-written proposal). Accordingly, the agency reasonably evaluated the firm's proposal because the organization chart omitted information required by the solicitation.

Remaining Protest Allegations

Serka raises numerous allegations regarding the agency's evaluation of its proposal under the other non-price factors and the awardee's evaluation. We dismiss these remaining allegations because the firm is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party if it would not be next in line for award if its protest were sustained. Vertical Jobs, Inc., B-415891.2, B-415891.4, Apr. 19, 2018, 2018 CPD ¶ 147 at 8.

We find that the firm is not an interested party to maintain its remaining allegations because it would not be in line for award in the event we sustained any of them. As noted above, the solicitation provided that any proposal receiving an unacceptable rating was determined to be unawardable. AR, Tab 5, RFP amend. 2 at 306. As the agency reasonably assigned the firm's proposal an unacceptable rating, the firm could not receive award in the event we sustained any of its remaining protest allegations.

The protest is denied.

Thomas H. Armstrong
General Counsel