



Decision

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Matter of: Olympus Building Services, Inc.

File: B-416599; B-416599.2; B-416599.3

Date: October 24, 2018

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Caleb A. Pearson, Esq., Department of Agriculture, for the agency.
Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's quotation is denied where the evaluation was reasonable, conducted in accordance with the solicitation's evaluation criteria, and otherwise unobjectionable.
2. Protest challenging agency's failure to weight technical factors in accordance with the evaluation criteria is denied, where the record demonstrates that the protester was not prejudiced by the agency's error.

DECISION

Olympus Building Services, Inc., a small business located in Tempe, Arizona, challenges the issuance of a Federal Supply Schedule (FSS) order to Integrity National Corporation, under request for quotations (RFQ) No. AG-3142-S-17-0012, issued by the Department of Agriculture (USDA) for custodial services and waste removal at the USDA's headquarters complex. The protester contends that the agency miscalculated both Olympus' quotation and the quotation of the awardee under the solicitation's non-price factors.

We deny the protest.

BACKGROUND

The solicitation, issued on July 14, 2017, through the General Services Administration e-Buy system, sought a contractor to provide custodial and waste removal services at the USDA's headquarter complex. The solicitation envisioned the award of a fixed-price, FSS order with a 1-year base period and four 1-year option periods. RFQ at 1-2.

The RFQ anticipated that award would be made on a best-value tradeoff basis, considering price and the following non-price factors, in descending order of importance: technical approach, quality control plan, management plan, key personnel, staffing plan, snow plan, safety plan, and past performance. RFQ at 49-51. The solicitation stated that “[t]echnical superiority” would be the most important consideration. Id. at 53. The RFQ further provided that past performance would be subordinate to “[t]echnical [a]pproach considerations,” and that the proposed price would be subordinate to both “[t]echnical [a]pproach and [p]ast [p]erformance, when combined.” Id.

Six vendors, including Olympus and Integrity, submitted timely quotations in response to the RFQ. On December 15, the agency notified vendors that it had issued the FSS order to Integrity. On December 27, Olympus filed an agency-level protest of the award decision. On January 23, 2018, the agency notified Olympus that it would take corrective action by reevaluating quotations.

Following the corrective action, the agency evaluated the quotations of Integrity and a second vendor ahead of Olympus,¹ as follows:

	Integrity	Second Vendor	Olympus
Overall Rating	Very Good	Very Good	Good
Technical Approach	Very Good	Very Good	Good
Quality Control Plan	Excellent	Very Good	Very Good
Management Plan	Very Good	Very Good	Very Good
Key Personnel	Marginal	Very Good	Good
Staffing Plan	Very Good	Very Good	Good
Snow Plan	Good	Good	Very Good
Safety Plan	Very Good	Good	Marginal
Past Performance	Very Good	Good	Very Good
Price	\$24,199,566	\$24,371,678	\$25,672,761

¹ Integrity and the second vendor were ranked first and second, respectively, while Olympus was ranked fifth.

See Agency Report (AR), Tab 11, Award Determination Document, at 2.

On April 24, USDA notified the protester that the original award decision had been reaffirmed. Following an unsuccessful agency-level protest, Olympus filed this protest with our Office.

DISCUSSION

The protester challenges the agency's evaluation of Olympus' and Integrity's quotations under every technical factor. The protester also contends that the evaluation methodology adopted by the agency was inconsistent with the solicitation's evaluation criteria. As discussed below, we deny the protest.²

The evaluation of a quotation is a matter within the agency's discretion. Sigmatech, Inc., B-406288.2, July 20, 2012, 2012 CPD ¶ 222 at 5. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate quotations but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Torres Advanced Enter. Solutions, LLC, B-403036, Aug. 18, 2010, 2010 CPD ¶ 197 at 2. Furthermore, it is a vendor's responsibility to submit a well-written quotation for the agency to evaluate, and a vendor that fails to do so runs the risk that its quotation will be evaluated unfavorably. Amyx, Inc., B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 8.

Technical Approach Factor

The protester argues that, in evaluating Olympus' quotation under the technical approach factor, the USDA improperly considered weaknesses relating to other technical factors. In this regard, the agency evaluators cited weaknesses pertaining to Olympus' quality control plan, staffing plan, proposed key personnel, and proposed plan for handling recycled materials in summarizing the basis for their rating of the protester's quotation under the technical approach factor. See Source Selection Evaluation Panel (SSEP) Report at 29. The protester contends that, because the solicitation's quotation preparation instructions advised vendors only to "submit their approach in sufficient detail to demonstrate a clear understanding of each task to be performed in the performance work statement [PWS] tasks," the agency should have limited its review under this factor to determining the extent to which the vendor's technical approach meets the PWS requirements. Comments & Supp. Protest at 3 (quoting RFQ at 43).

We find this argument unavailing. The solicitation explicitly provided as follows with regard to the evaluation of quotations under the technical approach factor:

² While we do not address in detail every argument raised by the protester, we have reviewed each issue and do not find any basis to sustain the protest.

The Government will seek to determine if [the vendor's] plan to collect recycled materials is sound and meets all of the requirements stated in the performance work statement. . . . The Government will evaluate the [vendor's] Quality Control Plan, their Management Plan, their Key Personnel Plan, their Staffing and Snow Plan. In addition, the Government will evaluate [the vendor's] Safety Plan and Past Performance.

RFQ at 49-50.

Nothing in the RFQ's quotation preparation instructions contradicted the above evaluation criteria. In fact, the instruction section of the RFQ expressly stated that, for further details on each technical proposal section, vendors should "[s]ee the [e]valuation [s]ection for specifics on each area." *Id.* at 43 (emphasis in the original). Additionally, amendment two of the solicitation warned vendors that they should take the evaluation criteria into consideration when drafting their quotations.³ Given the language of the solicitation, we find the agency's assessment of the weaknesses in question to be consistent with the RFQ's evaluation criteria.⁴

Quality Control Plan

The protester argues that the agency improperly evaluated Olympus' quality control plan. Under the evaluation criteria for this factor, the RFQ anticipated that the agency would evaluate each vendor's quality control plan to determine if the plan is adequate in light of the PWS's quality control requirements, and if the plan contains a detailed approach for responding to emergency situations that occur outside of the contract's normal operating hours. See RFQ at 50.

³ For instance, vendors were instructed not to rely on repetition of the PWS language, and instead to "provide clear, concise details, processes, complexities, strategies, methodologies and examples that address [both] the PWS requirements and the evaluation criteria." RFQ amend. 2 at 43R.

⁴ Olympus additionally challenges the substance of some of the weaknesses assigned under this factor. We have reviewed these arguments but conclude that none has merit. For example, the protester asserts that a weakness assigned for the omission of operating hours in Olympus' staffing plan was unwarranted because "Olympus did address staffing hours in its [quotation]." Response to SSEP Report at 3. Olympus' quotation, however, evidences that while Olympus did provide the hours for each individual listed in its work schedule, it did not provide the general hours for the day and night shifts. See Olympus Quotation at 86-92; see also AR, Tab 4, Evaluator Three Scoresheet, at 5 (noting absence of such general hours in Olympus' quotation).

The protester contends that one of the evaluators assigned a weakness to Olympus' quotation based on her mistaken assumption that Olympus had proposed to outsource all of its quality control functions to a third party vendor. The protester argues that had USDA not made this error, the agency would have assigned Olympus' quotation a higher rating under this factor.

Based on our review of the evaluation record, we find the agency's evaluation under this factor to be reasonable. As an initial matter, we find no support for the protester's argument that one of the evaluators assumed Olympus would outsource all of its quality control functions. The protester does not provide any citation to, or quotation from, the evaluator's scoresheet to explain its basis for this contention, nor do we see any support for the contention within the scoresheet in question. While the referenced evaluator did refer to Olympus' plan to use a "third party inspection process,"⁵ the evaluator did not characterize Olympus' quotation as proposing to use that third party vendor to perform all quality control functions. AR, Tab 7, Evaluator Two Scoresheet, at 2.

Moreover, we note that the SSEP found a total of three weaknesses with respect to Olympus' quality control plan, and that none of these weaknesses related to the outsourcing of quality control functions. See SSEP Report at 30. Additionally, all three weaknesses were consistent with the evaluation criteria applicable to this factor.⁶ Ultimately, the agency found that, despite these weaknesses, Olympus' quality control plan demonstrated a good understanding of the requirements and presented an approach that met the performance capability standards. Id. at 29. The agency therefore assigned the plan a very good rating, the second highest rating possible. We find this assessment to be both reasonable and in line with the solicitation's evaluation criteria.

Management Plan

The protester challenges the agency's evaluation of Olympus' quotation under the management plan factor, where Olympus was assessed a weakness for providing

⁵ We note that the consensus evaluation did not include this reference. See SSEP Report at 30.

⁶ The protester suggests that a weakness assessed in its quality control plan for failing to adequately address emergency response issues went beyond the solicitation's quotation instructions. See Comments & Supp. Protest at 4. The solicitation's evaluation criteria, however, expressly advised vendors that the agency would "seek to determine the soundness of [the vendor's quality control plan] and determine if it is consistent with a detailed plan for responding to emergency situations that occur outside of the contract normal operating hours." RFQ at 50. We therefore conclude that the agency's assessment of a weakness for the failure of Olympus' quotation to adequately address emergency response issues was consistent with the solicitation's evaluation criteria.

insufficient details regarding “Waste Management being handled through subcontracting.” Id. at 31. The agency noted that, because of this lack of detail, one evaluator could not “determine if the capabilities of waste removal will be handled as required in the PWS.” Id. Olympus argues that the assignment of this weakness was unreasonable, asserting that nothing in the solicitation required vendors to provide an explanation about the removal of waste from the premises. The protester further contends that this weakness was only assessed because one of the evaluators mistakenly assumed that Olympus’ trash hauling subcontractor, Waste Management, Inc., would be doing all of the trash collection at the facility. Without these alleged errors, Olympus asserts that its management plan would have been rated higher.

Based on our review of the evaluation record, we find the agency’s evaluation of Olympus’ management plan to be reasonable. As an initial matter, we note that the solicitation’s evaluation criteria advised vendors that the agency would evaluate their management plans to assess the soundness of each vendor’s plan to meet the service schedules and requirement standards and to assess the vendor’s experience “in performing custodial and waste removal services” at, or above, the scale of the PWS requirements. See RFQ at 50. Accordingly, it was reasonable for the agency to consider Olympus’ plan for waste removal services, and to assess a weakness to Olympus’ quotation for providing insufficient detail regarding that plan.

Olympus additionally asserts that one of the evaluators mistakenly assumed that the protester’s trash hauling subcontractor, Waste Management, Inc., would perform all waste management services including trash collection. See AR, Tab 7, Evaluator Two Scoresheet, at 3. While it is not entirely clear from the applicable scoresheet whether the evaluator reached this conclusion, any such conclusion would, in any event, have amounted to a non-prejudicial error. In this regard, the essence of the weakness assigned by the evaluator stemmed, not from the plan to subcontract services to Waste Management Inc., but from the lack of detail in Olympus’ quotation regarding Waste Management, Inc.’s role in providing waste removal services. See id. This was a criticism that a second evaluator shared, and which we find to be reasonable in light of the lack of detail on waste removal services provided in Olympus’ quotation.⁷ See AR, Tab 4, Evaluator Three Scoresheet, at 4; Olympus Quotation at 15; see also Amyx, Inc., supra (it is a vendor’s responsibility to submit a well-written quotation for the agency to evaluate, and a vendor that fails to do so runs the risk that its quotation will be evaluated unfavorably). Finally, we note that the other two evaluators assigned Olympus’ management plan a rating of very good, belying the protester’s contention that it would have received a rating higher than very good but for the first evaluator’s alleged mistake.

⁷ We similarly find that the agency reasonably assigned weaknesses to Olympus’ quotation under the staffing plan and past performance factors due to the lack of detail in both quotation sections with respect to waste removal services.

Key Personnel

The protester asserts that its quotation was unreasonably downgraded based on the agency's conclusion that three of Olympus' key personnel did not meet the solicitation requirements. In this regard, the solicitation required onsite supervisors to possess a minimum of 5 years of recent experience in the past 7 years "directing facilities-type work in a supervisory capacity for a complex of the approximate complexity of the USDA Headquarters Complex." RFQ at 50. The RFQ also required that all supervisory personnel have "at least three (3) years of recent experience (within the past 5 years) in directing facilities-type operations in a supervisory capacity for a complex of the approximate complexity of the USDA Headquarters Complex to be maintained under this requirement." Id. at 20. The solicitation further required that the quality control supervisor possess a minimum of 3 years experience, within the last 5 years, "in performing quality control inspections for buildings of the approximate complexity at the USDA Headquarters Complex. . . ." Id. at 50.

According to Olympus, the agency evaluators acknowledged that the three key personnel at issue had both the requisite credentials and the "contract required 3 years of supervisory experience." Comments at 6. The protester further argues that "if one were to round each individual's time served as supervisors, all proposed supervisors would have met the 5 year requirement in any event." Id.

Based on our review of the evaluation record, we conclude that the agency reasonably assigned weaknesses based on the failure of the three key personnel at issue to meet the solicitation requirements. In this respect, the resumes provided in Olympus' quotation reflect that the three personnel did not meet the applicable key personnel experience requirements. For example, Olympus' proposed day dock manager had 4 years of relevant experience as a day dock manager, but, prior to that time, he served as a material handler, a position that clearly does not meet the RFQ's supervisory experience requirement. See Olympus Quotation at 79. We find the assessment of weaknesses on this basis to be reasonable and conclude, contrary to the protester's suggestion, that the agency was under no obligation to overlook this failure or to round upward the relevant personnel's years of experience.⁸

Snow Plan

For the snow plan factor, the solicitation anticipated that the agency would "specifically evaluate the [vendor's] snow removal plan during periods of heavy snow," and would "seek to determine if the [vendor] presents a sound plan to transport and dump snow in

⁸ Indeed, our Office has consistently explained that clearly stated technical requirements, including key personnel experience requirements, are considered material to the needs of the government, and a quotation that fails to conform to such requirements is technically unacceptable and cannot form the basis for award. See PricewaterhouseCoopers LLP, B-406708, Aug. 3, 2012, 2012 CPD ¶ 227 at 6.

accordance with local jurisdictional requirements (DC Government), for snow greater than 3 inches.” RFQ at 51.

The protester argues that it should have received an excellent rating, rather than a very good rating, under this factor because the agency’s evaluators stated that they had “no concerns” with respect to Olympus’ snow plan. Response to SSEP Report at 6 (quoting SSEP Report at 34). We disagree.

While the protester focuses on the SSEP report’s statement that the evaluators have no concerns, the remainder of the report provides clear support for the agency’s assignment of a very good rating. In this regard, the report noted a weakness in Olympus’ quotation stemming from the failure to “show evidence that the snow transport and dumping will be handled in accordance with local jurisdictional requirements as stated in the PWS.” SSEP Report at 34. The report also detailed that while the snow plan was of high quality in most respects and exceeded some performance or capability standards, the performance areas had a “few minor issues or concerns.” Id. We note that this description mirrors the solicitation’s definition of a very good rating. See RFQ at 52. Accordingly, we conclude that the agency reasonably evaluated Olympus’ quotation under this factor.

Safety Plan

The protester challenges the marginal rating assigned to its quotation under the safety plan factor in light of the very good rating Integrity received under this same factor. For the safety plan factor, the RFQ anticipated that the agency would evaluate the comprehensiveness of each vendor’s safety plan at addressing the government’s safe working environment requirements and providing necessary safety signage, an appropriate accident prevention plan, and accident reporting. RFQ at 51.

Olympus contends that the weaknesses noted for both Olympus’ and the awardee’s quotations were “essentially identical,” and therefore the disparity in the agency’s assigned ratings for both vendors was improper. Response to SSEP Report at 7. In support of this argument, the protester notes that both quotations were found to have weaknesses stemming from a lack of detail regarding their respective accident prevention plans and from failing to discuss the PWS requirement to notify and include the contracting officer/contracting officer representative (CO/COR) in safety meetings. Compare SSEP Report at 26 with id. at 35.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors. Arc Aspicio, LLC et al., B-412612 et al., Apr. 11, 2016, 2016 CPD ¶ 117 at 13. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings do not stem from differences between the vendors’ quotations. Camber Corp., B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

Here, we find that the disparity in ratings between the two vendors' safety plans is reasonably explained by the fact that Olympus' quotation contained additional weaknesses not found in Integrity's quotation. In this regard, in addition to the above weaknesses, Olympus' quotation also received the following weaknesses, not found in Integrity's quotation: (1) not showing evidence of providing required safety barriers and signage, (2) failing to state the PWS time requirement for safety meetings, (3) containing no mention of accident reporting to the CO/COR, and (4) not submitting sufficient information to determine if the safety plan meets the government's safe working environment requirements. See SSEP Report at 35. In light of these additional weaknesses, we find that the disparity in ratings under this factor to be reasonable.

The protester further contends that a weakness assessed for Olympus' failure to discuss its accident prevention plan was improper because the solicitation only required the accident prevention plan to be furnished 30 days after award. We find, however, that the solicitation's evaluation criteria adequately apprised vendors that the agency would evaluate each vendor's quotation to determine if the safety plan "contains . . . an appropriate accident prevention plan." RFQ at 51.⁹

Overall Rating

Olympus additionally challenges the agency's calculation of vendors' overall ratings. Based on our review of the record, we agree with the protester that the agency erred in this calculation but find that this mistake did not prejudice Olympus.

In this regard, the solicitation provided that the technical factors were listed in descending order of importance. RFQ at 49-51. Despite this descending order of importance, the agency's calculation of vendors' overall ratings treated each factor as being of equal importance. Specifically, the SSEP calculated each vendor's overall rating by first assigning each factor rating a numerical score, with excellent equal to five, very good equal to four, good equal to three, marginal equal to two, and unsatisfactory equal to one. See SSEP Report at 6. The agency then averaged the eight factor numerical scores--without applying any type of weighting--to arrive at an overall rating. See id. This calculation method had the effect of treating each factor as being equivalent in weight, despite the RFQ's clear instruction that the factors were listed in descending order of importance.¹⁰

⁹ Olympus also contends that its quotation did, in fact, discuss accident prevention. Based on our review of the quotation, however, we agree with the agency's finding that Olympus' quotation did not include a detailed description of the vendor's accident prevention plan. See generally Olympus Quotation at 101-103.

¹⁰ The contracting officer, who made the agency's award determination, contends that he ignored the numerical average score used by the SSEP to calculate vendors' overall ratings, and instead conducted an independent assessment to ensure that the overall ratings were consistent with the solicitation's weighted rating scheme. Suppl. Contracting Officer's Statement at 1. The contemporaneous record, however, is

(continued...)

While we agree with the protester that the agency's calculation methodology was inconsistent with the solicitation's evaluation criteria, we conclude that this error did not cause Olympus prejudice. In this respect, competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6.

Here, Olympus' quotation was rated lower than the awardee's lower-priced quotation in four of the eight non-price factors (including the two most important factors), rated equal in two of the factors, and higher rated in only two of the factors. See AR, Tab 11, Award Determination Document, at 2. In addition, Olympus was rated lower than the second-in-line vendor in four of the factors (including the most important factor), rated equal in two of the factors, and rated higher in only two of the factors, while also being higher-priced. See id.¹¹ Given these ratings, we see no reasonable possibility that an appropriate weighting of the factors would have resulted in the protester's quotation receiving a higher overall rating under the non-price factors than the quotations of the awardee or the second-in-line vendor, both of which were priced lower than Olympus' quotation. As a result, there is no basis to conclude that a proper weighting of the factors would have resulted in a substantial chance of award to Olympus.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

inconsistent with this account. Indeed, the award determination document incorrectly credits the agency's technical evaluators with following the RFQ's descending order of importance standard in their evaluation of quotations. See AR, Tab 11, Award Determination Document, at 4.

¹¹ Olympus additionally raises various challenges to the USDA's evaluation of the awardee's quotation. Because Olympus was not the next-in-line vendor, however, we conclude that it is not an interested party to challenge the evaluation of the awardee's quotation.