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Decision

Matter of: Adams and Associates, Inc.

File: B-417120.2

Date: June 25, 2019

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Alex P. Hontos, Esq., and Daniel Falknor, Esq., Dorsey & Whitney LLP, for Management & Training Corporation, the intervenor.
Virginia Ackerman, Esq., Dennis A. Adelson, Esq., and Jose Otero, Esq., Department of Labor, for the agency.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the 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

Adams and Associates, Inc., of Reno, Nevada, protests the award of a contract to Management & Training Corporation (MTC), of Centerville, Utah, under request for proposals (RFP) No. 1630J5-17-R-00003, which was issued by the Department of Labor (DOL), for the operation of the Atterbury Job Corps Center in Edinburgh, Indiana, and the Independence Career Development Center in Indianapolis, Indiana. Adams alleges that the agency unreasonably assessed a deficiency for Adams' phase-out plan, and unreasonably evaluated offerors' past performance.

We deny the protest.

BACKGROUND

The RFP, which was issued on September 19, 2017, and subsequently amended five times, sought proposals for the operation of the Atterbury Job Corps and Independence Career Development Centers. The two centers provide academic, career technical, career success skills, career development, and related support services for

approximately 410 residential students and 100 non-residential students. RFP, amend. No. 0003, at 3. In addition to providing the above services, the contractor will also provide Job Corps program outreach and admission services, as well as post-career transition services, in the state of Indiana. Id. The RFP contemplated the award of a contract with fixed-price and cost-reimbursable not-to-exceed contract line items, and a 2-year base period of performance, and three, 1-year option periods. Id. at 3, 5-11.

Award was to be made on a best-value tradeoff basis, considering the following factors listed in descending order of importance: (1) technical; (2) staff resources; (3) relevant experience; (4) past performance; and (5) business management proposal (cost). RFP, amend. No. 0004, at 17. All of the non-cost factors, when combined, were significantly more important than cost. Id. With respect to factors 1, 2, and 3, the RFP identified specific subfactors. RFP, amend. No. 0003, at 103. Relevant to the issues in this protest, factor 2, staff resources, included subfactor 2F, phase-in/phase-out plans.

Under the staff resources factor, the RFP required that offerors “thoroughly demonstrate how the offeror’s proposal” responded to the accompanying subfactor requirements. Id. at 94. Subfactor 2F required offerors to provide phase-in/phase-out plans. For these plans, the RFP specified that the plans “shall include the period of time required for each action, staff requirements, and major steps to be accomplished during these periods.” Id. at 95. With respect to the evaluation of the staff resources factor, the RFP stated that the evaluation would “consist of the responses to the Subfactors and Elements outlined in Section L of this solicitation,” and that the agency would “evaluate the Offeror’s overall responses, including the identification of any strengths or weaknesses in the proposed approaches, and provide an overall rating for Staff Resources.” Id. at 104. The RFP further provided that phase-in/phase-out plans would 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 105. The RFP also instructed offerors that the failure to address any of the enumerated topics in their respective proposals would be viewed as nonresponsive or deficient. Id.

DOL received complete, timely proposals from only Adams and MTC in response to the RFP. Contracting Officer’s Statement of Facts at 7. DOL initially selected MTC’s proposal for award. Adams filed a protest with our Office, and the agency elected to take corrective action by reevaluating proposals and issuing a new source selection decision. Based on the agency’s proposed corrective action, we dismissed Adams’ protest as academic. See Adams and Assocs., Inc., B-417120, B-417125, Jan. 16, 2019, 2019 CPD ¶ 21 at 3-4. Following the agency’s reevaluation of proposals, the agency evaluated the two proposals as follows:

	Adams	MTC
Technical Approach	Acceptable	Acceptable
Staff Resources	Unacceptable	Acceptable
Relevant Experience	Very Relevant	Relevant
Past Performance	Substantial Confidence	Substantial Confidence
Total Price	\$92,852,097	\$91,309,059

Agency Report, Tab 14, Business Clearance Memo./Source Selection Decision, at 42.

With respect to Adams' unacceptable rating under the staff resources factor, DOL assessed a deficiency because Adams failed to provide required information in its phase-out plan. The agency found that Adams' phase-out plan failed to include the period of time required for each action, as well as the major steps to be accomplished during those periods. Specifically, DOL found that Adams' proposal:

[O]utlined the staff to be involved and their roles during the phase out process, but a timeline of each required action was not included. The offeror states on page 16 of the written Staff Resource Proposal, "Our detailed phase out plan is available upon request by the government but is not included due to RFP page limitations." Without the inclusion of the detailed plan and timeline the offeror failed to demonstrate knowledge of the scope of the tasks to be accomplished such as the required actions needed to complete the transition to a new contractor, the time required for each action, and staff requirements for the major steps to be accomplished during this period. The proposal also failed to demonstrate that the offeror proposed adequate corporate resources to complete the tasks to be accomplished. Given these major omissions/deficiencies, the proposed approach cannot be expected to meet the solicitation requirements and presents a very high degree of risk for the Government.

Id. at 18.

The source selection authority concluded that Adams was ineligible for award because its proposal received an unacceptable rating under the staff resources evaluation factor. Id. at 43. As a result, MTC, the offeror who submitted the only acceptable proposal, was selected for award. Id. Following a debriefing, Adams filed this protest with our Office.

DISCUSSION

Adams challenges DOL's assessment of a deficiency in Adams' phase-out plan for failing to include the period of time required for each action, as well as the major steps to be accomplished during those periods. In this regard, the protester does not contest that the RFP's instructions unequivocally required such information, see RFP, amend. No. 0003 at 95, or that its phase-out plan did not include a proposed timeline. Rather, Adams argues that the agency's evaluation of offerors' proposed phase-in/phase-out

timelines amounts to the imposition of an unstated evaluation criterion because the RFP's evaluation criteria did not explicitly state that phase-in/phase-out plan timelines would be evaluated. In this regard, the protester cites to the RFP's evaluation criteria for the proposition that the agency would only evaluate the plans "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 104-05. For the reasons that follow, we find that the RFP's requirement for offerors' phase-in/phase-out plans to include proposed timelines was an explicit and material requirement that Adams' proposal failed to satisfy. As a result, we find no basis to question the agency's determination that Adams' proposal was deficient, and therefore ineligible for award.¹

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. Federal Acquisition Regulation § 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. Innovative Pathways, LLC, B-416100.2, June 13, 2018, 2018 CPD ¶ 212 at 5. 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.

¹ Adams also challenges the agency's evaluation of offerors' past performance. Because we find that the agency reasonably assessed a deficiency in the protester's phase-out plan, and, therefore, concluded that Adams was ineligible for award, Adams is not an interested party to challenge other aspects of the agency's evaluation. See, e.g., MacAulay-Brown, Inc., B-417159, Mar. 13, 2019, 2019 CPD ¶ 108 at 5; Serka Taahut Insaat, A.S., B-416391.2, B-416391.3, Aug. 13, 2018, 2018 CPD ¶ 284 at 5; AmVet Techs., LLC, B-415150.2, B-415150.3, June 5, 2018, 2018 CPD ¶ 202 at 3 n.3. As a result, we need not address Adams' past performance contentions.

Here, Adams does not contest that the RFP explicitly required offerors' phase-in/phase-out plans to include "the period of time required for each action" and the "major steps to be accomplished during these periods." RFP, amend. No. 0003, at 95. Where, as here, the RFP unequivocally requires that an offeror provide specific information, such a requirement is neither unstated nor immaterial.

We similarly find no merit to Adams' argument that the RFP's evaluation criteria were insufficient to put offerors on notice that DOL would consider whether offerors included the required timeline information in their respective phase-in/phase-out plans. In this regard, the evaluation criteria for the staff resources factor provided that the agency would evaluate the offeror's "responses to the Subfactors and Elements outlined in Section L" of the RFP. *Id.* at 104 (emphasis added). Thus, in light of the RFP's explicit statement that the agency would evaluate offerors' proposals on the basis of the items outlined in the RFP's proposal instructions in Section L, and, as addressed above, phase-in/phase-out timelines were explicitly required in the RFP's instructions, we find no merit to Adams' arguments that offerors were not on explicit notice regarding how DOL intended to evaluate offerors' proposals.

Furthermore, even assuming for the sake of argument that the above provision was not sufficiently explicit, consideration of the offerors' proposed phase-in/phase-out timelines were reasonably encompassed within the stated evaluation criteria of "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 104-05. While solicitations must inform offerors of the basis for quotation or proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation, agencies are not required specifically to list every area that may be taken into account, provided such areas are reasonably related to, or encompassed by, the stated criteria. *Ascella Techs. Inc.*, B-412679, B-412679.2, Apr. 27, 2016, 2016 CPD ¶ 123 at 3. In this regard, DOL requested offerors to propose transition timelines in order to reasonably assess whether the offeror understood both the necessary steps and whether adequate resources were assigned to effectuating a transition. Therefore, we find that an offeror's ability to clearly delineate and estimate the time needed to execute the various transition steps is reasonably encompassed within the RFP's stated criteria.

The protest is denied.

Thomas H. Armstrong
General Counsel