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Decision

Matter of: Highlight Technologies, LLC

File: B-417620

Date: September 6, 2019

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Theresa S. Keenan, Esq., Department of the Navy, for the agency.

Sarah T. Zaffina, Esq., Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the agency failed to properly evaluate the awardee's cost proposal is denied where the record shows that agency's cost realism assessment was reasonable, and conducted in accordance with the solicitation.
 2. Protest challenging evaluation of protester's technical proposal is denied where the record shows that the agency's evaluation reasonably determined that the protester did not explain how it would leverage its prior experience to successfully perform the solicitation requirements.
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DECISION

Highlight Technologies, LLC (Highlight) of Fairfax, Virginia, protests the award of a contract to Advanced Decision Vectors, LLC (ADV), of Alexandria, Virginia, under request for proposals (RFP) No. N00189-17-R-Z001, issued by the Department of the Navy, Naval Supply Systems Command, for security consulting services. Highlight challenges the agency's evaluation of its technical proposal, and of ADV's cost proposal.

We deny the protest.

BACKGROUND

On October 12, 2016, the Navy issued the RFP, pursuant to Federal Acquisition Regulation (FAR) part 15, under the Small Business Administration's 8(a) Business Development Program. Agency Report (AR), Tab 1, RFP at 1, 6.¹ The solicitation contemplated award of a single cost-plus-fixed-fee, level-of-effort contract with a 1-year base period and three 1-year options to provide administrative and technical Special Access Program (SAP) security services for the Joint Staff (JS), Special Access Program Central Office (SAPCO).² See RFP at 10-11, 83-84. The overall objective of the contract is to obtain administrative, engineering, technical, and other support services as required to provide planning, monitoring, research, evaluation, assessment, and documentation for the JS and other government agencies. RFP at 10-11. The performance work statement (PWS) described in detail the specific tasks to be performed under the contract across nine functional task areas. AR, Tab 4, PWS at 25-35.

Award was to be made on a best-value tradeoff basis considering the following non-cost evaluation factors (listed in descending order of importance) and cost: performance approach, management approach, and past performance. RFP at 76, 78, 83. The RFP advised that the non-cost factors would be considered more important than the cost factor. Id.

The Navy received six timely proposals, including those from Highlight and ADV, which were evaluated as follows:

| | ADV | Highlight |
|---------------------------------|------------------------|------------------------|
| Performance Approach | Good | Acceptable |
| Management Approach | Acceptable | Good |
| Past Performance | Substantial Confidence | Substantial Confidence |
| Overall Technical Rating | Good | Good |
| Total Proposed Cost | \$7,493,063 | \$(DELETED) |
| Total Evaluated Cost | \$8,772,811 | \$9,411,872 |

AR, Tab 7, Source Selection Decision, at 1, 2.

The contracting officer, who served as the source selection authority, reviewed and concurred with the Source Selection Evaluation Board's (SSEB) evaluation findings;

¹ The solicitation was amended four times. Citations to the solicitation are to the final version as amended.

² JS SAPCO provides support to the Joint Staff and Combatant Command in supporting the Chairman, Joint Chiefs of Staff's vision to better integrate and apply SAP capabilities to current and future security challenges. RFP at 10.

performed a comparative assessment; and concluded that ADV's proposal represented the best value to the government. Id. at 5.

On May 7, 2019, Highlight was informed that the agency awarded the contract to ADV. AR, Tab 22, Unsuccessful Offeror Letter, at 1. Highlight timely requested and received a debriefing. AR, Tab 9, Debriefing, at 2. This protest followed.

DISCUSSION

Highlight primarily challenges the Navy's evaluation of ADV's cost proposal, as well as the evaluation of its own technical proposal. While our decision does not specifically discuss each and every argument and variation of the arguments, we have considered all of Highlight's allegations and find no basis on which to sustain the protest.³

Evaluation of ADV's Cost Proposal

Highlight asserts that the agency failed to properly evaluate ADV's cost proposal, and failed to consider the increased risk to the government in making award to ADV. In this regard, the protester essentially argues that a proper cost realism analysis would show that ADV's proposed costs were too low to perform the contract. Protest at 5-6; Protester Comments at 2-4. The Navy responds that it performed a cost realism evaluation in accordance with the solicitation and reasonably considered the risks inherent in ADV's proposal. COS/MOL at 16-25.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR § 15.305(a)(1); YWCA of Greater Los Angeles, B-414596.7, B-414596.8, Mar. 11, 2019, 2019 CPD ¶ 104 at 11. Consequently, an agency must perform a cost

³ For example, Highlight challenges the agency's evaluation of its proposal under the past performance factor, arguing that the agency unreasonably failed to consider its subsidiaries' past performance in its evaluation. Protest at 13-14; Protester Comments at 8-9. The agency responds that it followed the evaluation criterion set forth in the solicitation, which did not require the agency to consider an offeror's subsidiary's past performance. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 35-36. An agency may consider the experience or past performance of an offeror's parent or affiliated company where, among other things, the proposal demonstrates that the resources of the parent or affiliate will affect contract performance, and there is no solicitation provision precluding such consideration. Eagle Eye Elec., LLC, B-415562, B-415562.3, Jan. 18, 2018, 2018 CPD ¶ 33 at 3. There is, however, no requirement that the agency do so. Id. Accordingly, Highlight's argument provides no basis to sustain this protest ground where the agency was not obligated to evaluate Highlight's subsidiaries' past performance and the solicitation did not establish that the agency would do so.

realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR §§ 15.404-1(d)(1), (2); See Pueblo Env'tl. Sol., LLC, B-291487, B-291487.2, Dec. 16, 2002, 2003 CPD ¶ 14 at 13. That is, since the government, not the contractor, bears the cost risk associated with unrealistically low proposed costs on a cost-reimbursement contract or order, it is the very purpose of a cost realism analysis to determine whether an offeror's proposed costs are realistic and reasonably represent the most probable cost of performance to the government. See R & D Maint. Servs., Inc., B-292342, Aug. 22, 2003, 2003 CPD ¶ 162 at 4. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. Alphaport, Inc., B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 11.

Here, the RFP specified the labor categories, and the level-of-effort for each labor category, offerors were required to propose--a total of 92,160 hours in nine labor categories--over the 4-year performance period. RFP at 7, 81. The RFP also specified the other direct costs (*i.e.*, travel, materials) that offerors were to include in their proposals. Id. at 80. Consequently, offerors' were essentially limited to submitting their unburdened direct labor rates, burdened labor rates, escalation rates, indirect rates, and fee. Id. at 80-81.

Despite the protester's contention that the cost evaluation was inadequate, the record shows that in conducting its cost realism analysis, the agency reviewed the offerors' (including any subcontractors') direct labor rates, escalation rates, indirect rates, and fixed fee. COS/MOL at 18; AR, Tab 8, Business Clearance Memorandum (BCM), at 13-15. Based on this review, the agency made upward adjustments to ADV's and its subcontractor's proposed direct labor rates in several labor categories that the agency determined were understated; the agency also made upward adjustments to ADV's proposed escalation rates.⁴ Id. at 16-21. As a result, the agency determined the most probable cost of ADV's proposal was \$8,772,810, which was 17 percent higher than its proposed cost of \$7,493,063. Id. at 16. The agency also determined these costs were fair and reasonable, as a result of adequate competition and the Navy's comparison of ADV's cost proposal with the independent government cost estimate. Id. at 24-25. The agency also analyzed ADV's compensation plan in accordance with FAR provision 52.222-46, Evaluation of Compensation for Professional Employees, and determined there was little risk in ADV's ability to "deliver, high quality, uninterrupted contract support." Id. at 26.

⁴ In the absence of information from the Defense Contract Audit Agency and/or the Defense Contract Management Agency, the agency compared offerors' proposed direct labor rates and escalation rates to information gathered from the Economic Research Institute, which the agency explains is a "reliable salary research and data website." AR, Tab 8, BCM, at 14-15. To the extent the offerors' proposed rates were understated when compared to those rates, the agency made upward adjustments as necessary. Id.

We find the Navy's cost realism analysis to be reasonable. When conducting a cost realism analysis, agencies are required to consider the realism of a firm's proposed costs in light of its unique technical approach. Metro Mach., Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6. However, where, as here, a solicitation provides a cost model that specifies the labor mix and level of effort for offerors' proposals, an agency may reasonably evaluate the rates proposed for those established labor categories based on other data. See CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 10-11; Energy Enter. Sols., LLC; Digital Mgmt., Inc., B-406089 et al., Feb. 7, 2012, 2012 CPD ¶ 96 at 9-10. The record reflects that the agency analyzed ADV's proposed labor rates, made upward adjustments to labor rates that the agency found were understated, and calculated a most probable cost to the government in accordance with the RFP's stated evaluation factor.

Despite the protester's contentions, the agency's cost realism analysis also considered the risk associated with making an award to ADV. In this regard, the agency observed that ADV's proposed direct labor rates were based on the actual salaries of the incumbent and on named employees ADV proposed; the agency also determined that the risk of ADV failing to retain incumbent staff currently performing the contract was low. See AR, Tab 8, BCM, at 26. The agency also found that the risk of ADV not retaining its own employees was low because ADV's proposed fringe rate was comparable to its historical rates. Id. As a result, the agency concluded there was little risk of ADV's unsuccessful performance. Id.

Agencies are given broad discretion in conducting cost realism evaluations. See Alphaport, Inc., supra, at 7 (finding no basis to question the reasonableness of a cost evaluation where the protester fails to make substantive arguments challenging the agency's analysis and the record demonstrates the agency used various cost analysis techniques as set forth in the FAR). Highlight's arguments do not provide a basis to sustain its challenges to the Navy's evaluation of ADV's cost proposal. Accordingly, this protest ground is denied.

Evaluation of Highlight's Technical Proposal

As an initial matter, Highlight contends that the solicitation failed to clearly disclose the evaluation factors upon which the agency would evaluate offerors and gave no information about how each approach would be evaluated. Protest at 8-9. In response, the Navy argues this allegation is untimely, as it was not raised before the time for proposal submission. COS/MOL at 26 n.27; see also Req. for Dismissal at 4. We agree.

The RFP informed offerors generally that proposals shall "clearly and concisely [set] forth the contractor's response to the requirements of the solicitation." RFP at 77. For the performance approach factor, the solicitation instructed offerors to "provide in detail a performance approach that will successfully accomplish the requirements of the

solicitation, including the PWS.” Id. at 78. While the solicitation stated that the offeror’s responses to the solicitation would form the basis of the evaluation of proposals, the solicitation did not detail how the proposals would be evaluated. Id. at 83.

Here, the solicitation’s lack of detail regarding how proposals would be evaluated under each factor was apparent before the deadline for proposal submission. It is well-settled that a party who has the opportunity to object to allegedly improper or patently ambiguous terms in a solicitation, but fails to do so prior to the time set for receipt of proposals, waives its ability to raise the same objection later. See, e.g., Baldt Inc., B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2 (finding protest was untimely when protester challenged use of simplified acquisition procedures after award). We note that this rule prevents an offeror from taking advantage of the government, as well as other offerors, by waiting silently during the procurement process, only to spring forward after award with an alleged solicitation defect in an effort to restart the procurement. See, e.g., Del-Jen Educ. & Training Grp./Fluor Fed. Sols. LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8 (arguments that a solicitation is defective should be “raised and resolved as early as possible in the procurement process”). Because Highlight did not challenge the solicitation’s failure to include specific details regarding the evaluation factors prior to the solicitation’s closing date, it is untimely and will not be considered further.

Highlight also argues that the agency’s evaluation of its proposal was unreasonable under the performance approach factor. Protest at 9-14. Specifically, the protester argues that in assigning its proposal a rating of acceptable the agency ignored parts of its proposal and improperly overlooked the protester’s prior experience. Id. at 9-10. Highlight also asserts that if the agency had properly evaluated its proposal, the agency would have assigned its proposal a rating of exceptional. Id. at 11-13.

The agency explains that Highlight was rated acceptable because its proposal indicated an adequate approach and understanding of the requirements.⁵ COS/MOL at 8. The agency further explains that it did not ignore the protester’s proposal which relied heavily on its incumbent experience without explaining how Highlight would leverage its prior experience to successfully perform the PWS requirements.⁶ Id. at 9.

⁵ An acceptable rating was defined as “[p]roposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than expected of a competent offeror.” AR, Tab 23, First Set of Debrief Questions & Answers (Q & As), at 4.

⁶ A good rating was defined as “[p]roposal indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate.” AR, Tab 23, First Set of Debrief Q & As, at 4. An outstanding rating was defined as “[p]roposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low.” Id.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits. See Del-Jen Educ. & Training Group/Fluor Fed. Sols. LLC, supra, at 8; FPM Remediations, Inc., B-407933.2, Apr. 22, 2013, 2013 CPD ¶ 107 at 3. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria and applicable procurement statutes and regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

For each of the nine PWS task areas, the SSEB reviewed Highlight's proposal and meticulously documented its assessment regarding how Highlight proposed to fulfill the PWS requirements and whether Highlight's proposal demonstrated a performance approach for each PWS task area. AR, Tab 6, SSEB Report, at 16-20. The SSEB determined that for most of the tasks, Highlight's proposal provided examples of its prior experience and recent experience as the incumbent under the JS SAPCO contract without explaining how it would use that experience to accomplish the requirements specified in the PWS. Id. at 16-20. Where Highlight's proposal cited examples of its incumbent performance without then describing how it would use this experience to successfully accomplish the PWS tasks, the evaluators determined "[t]his demonstrates prior cited experience but does not represent an approach." Id. at 17, 19. However, where Highlight explained how its prior experience would be utilized for successful accomplishment of the PWS requirements, the SSEB credited Highlight for demonstrating a performance approach that exceeded the PWS requirements and assessed a strength for the task. Id. at 18-19.

Overall, the SSEB found that Highlight's proposal demonstrated an adequate approach and understanding of the PWS that met the solicitation requirements, with a risk of unsuccessful performance that was no worse than expected from a competent offeror. Id. at 20. In this regard, the SSEB concluded that Highlight's recitation of its prior experience--while demonstrating an adequate understanding of the requirements--was not a proposed performance approach that addressed how Highlight would leverage that experience to successfully perform the contract. Id. Therefore, there was no basis to rate Highlight above acceptable. See id.

On this record, we find the agency's evaluation here to be reasonable. As set forth above, the solicitation expressly informed offerors to submit a clear and concise proposal, which provides in detail a performance approach that will successfully accomplish the PWS requirements. Highlight described its prior experience and current performance as the incumbent without specifying how this experience will be used to perform under this solicitation. The agency extensively documented its analysis of Highlight's proposal and concluded Highlight's description of its incumbent performance

did not constitute the performance approach the solicitation required, and therefore, Highlight's proposal did not warrant a rating higher than acceptable for this factor.

While Highlight argues that the prior experience set forth in its proposal "establish[es] a pattern of continuous dealing and the relevance of such continuous dealings is implicit," we are unpersuaded. Protest at 11. 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, e.g., G4S Secure Sols. (USA), Inc., B-414755, Sept. 8, 2017, 2017 CPD ¶ 281 at 6 ("Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide."). Simply because the agency does not credit Highlight for identifying its prior experience, does not mean, as the protester contends, that the agency ignored parts of Highlight's proposal. Id. Here, Highlight's proposal failed to explain, as required by the solicitation, how its experience would be used to successfully perform the contract. AR, Tab 6, SSEB Report, at 16-20. As a result, on this record, the protester's arguments provide no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel