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Decision

Matter of: NCI Information Systems, Inc.

File: B-417685; B-417685.2

Date: September 23, 2019

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Debra J. Talley, Esq., and Todd J. Liebman, Esq., Department of the Army, for the agency.
Lois Hanshaw, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The agency reasonably found the protester's proposal to be ineligible for award, and thus the protester is not an interested party to challenge the agency's best-value tradeoff and award decision.

DECISION

NCI Information Systems, Inc. (NCI), of Reston, Virginia, protests the issuance of a task order to General Dynamics Information Technology (General Dynamics), of Reston, Virginia, under request for proposals (RFP) No. W91RUS-18-R-ADCN, issued by the Department of the Army under the General Services Administration's (GSA) Alliant 2 governmentwide acquisition contract (GWAC) for mission support services. The protester challenges the evaluation of proposals and the agency's award decision.

We deny the protest.

BACKGROUND

On March 15, 2019, the agency issued the RFP to firms holding contracts under GSA's Alliant 2 multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5. Agency Report (AR), Tab 5, RFP at 1, 2. The RFP required a contractor to provide capability

management, engineering, database, and documentation support for the Network Enterprise Technology Command's mission to develop, implement, and enforce enterprise systems management processes and activities. RFP, Performance Work Statement (PWS) at 47. The solicitation contemplated the issuance of a cost-plus-fixed-fee task order for an 8-month base period, four 1-year options, and a 6-month option to extend services under FAR clause 52.217-8, Option to Extend Services. AR, Tab 15, Task Order Decision Document (TODD), at 1.

The RFP provided that award would be made on a best-value tradeoff basis considering technical capability/risk, small business participation, and cost. RFP at 19. The technical capability/risk factor consisted of three subfactors: technical expertise, management approach, and staffing. Id. at 20. The technical capability/risk factor was considered significantly more important than the small business participation and cost factors, and the cost factor was more important than the small business factor. Id. The management approach subfactor was considered significantly more important than the technical expertise and staffing subfactors, and the staffing subfactor was considered more important than the technical expertise subfactor. Id. Cost proposals were to be evaluated for reasonableness and realism. Id. at 18.

As relevant to this protest, under the small business participation factor, the RFP required offerors to meet small business participation requirements and to provide substantiating documentation demonstrating how these participation requirements would be met. Id. at 12. The RFP identified the minimum quantitative small business participation requirement as 15 percent of total contract dollars for the life of the contract. Id. at 13. The RFP advised that there were no minimum requirements for individual small business socioeconomic categories; however, if an offeror did not propose participation for a category, it was required to explain why.¹ Id. Both the instructions and evaluation sections of the RFP stated that substantiating documentation would be used to evaluate the scope of an offeror's proposed commitment to use small businesses in the performance of this acquisition. Id. at 12, 17-18.

The RFP required offerors to complete two tables. The first table sought information about small businesses--as defined in FAR part 19, Small Business Programs--that would be used to satisfy the offeror's proposed approach for the duration of performance. Id. at 12. Offerors were required to identify the name of the company; the small business category(s); product(s) and service(s) to be provided, including type and variety of work; and to demonstrate the nature of the firm's commitment, including, for example, a letter of commitment, joint venture agreement, or other types of agreements. Id. The second table sought information about the minimum quantitative participation of

¹ Small business socioeconomic contracting programs include 8(a), Historically Underutilized Business Zone (HUBZone), service-disabled veteran-owned small business (SDVOSB), or woman-owned small business (WOSB) programs. FAR § 19.203.

small businesses by dollar value and percentage of total contract value.² Id. at 13. Any proposed participation percentages for small business socioeconomic programs would be incorporated into the task order. Id.

The RFP stated that an offeror would be evaluated on the extent to which it committed to use small businesses in the performance of the established requirements. Id. at 17. To determine whether an offeror met or exceeded the participation requirements, the agency would evaluate the extent to which: (1) small business concerns were specifically identified in the proposal; (2) offerors demonstrated a substantive commitment to small businesses, such as, letters of commitment or other demonstrations of commitment, “inclusive of identification of the type and variety of the work” that a small business would perform;³ and (3) offerors provided detailed explanations or documentation supporting the proposed quantitative participation. Id. at 17-18.

Proposals were to be rated as outstanding, good, acceptable, marginal, and unacceptable.⁴ Id. at 17. The RFP advised that to be considered for award, an offeror was required to receive a minimum rating of acceptable under each of the non-cost factors and subfactors. Id. at 20. The RFP also stated that the evaluation would consider whether an offeror’s proposal had adequately and completely considered, defined, and satisfied the specified requirements and that proposals would be evaluated to determine the extent to which each requirement had been addressed in the proposal. Id. at 16.

Six offerors submitted proposals, including NCI and General Dynamics.⁵ AR, Tab 15, TODD, at 2. The agency evaluated proposals as follows:

² The table identified the following five small businesses categories: small disadvantaged, WOSB, HUBZone, veteran-owned, and SDVOSB. RFP at 13.

³ The RFP stated that binding commitments would become enforceable/contractual requirements and that enforceable commitments would be weighted more heavily than non-enforceable commitments. Id. at 18.

⁴ As relevant here, a marginal rating under the small business participation factor was defined as a proposal that has not demonstrated an adequate approach and understanding of the small business objectives. Id. at 17.

⁵ Three offerors, including NCI, were found ineligible for award; and three offerors, including General Dynamics, Offeror E, and Offeror F were found technically acceptable and considered for award. AR, Tab 15, TODD, at 19.

	General Dynamics	NCI	Offeror E	Offeror F
Technical Capability	Good	Good	Acceptable	Acceptable
<i>Technical Expertise</i>	Good	Good	Acceptable	Acceptable
<i>Management Approach</i>	Good	Good	Acceptable	Acceptable
<i>Staffing</i>	Acceptable	Good	Acceptable	Acceptable
Small Business Participation	Acceptable	Marginal	Good	Acceptable
Most Probable Cost	\$116,262,862	\$182,994,938	\$132,617,291	\$124,974,072

Id. at 5, 13.

As relevant here, under the small business participation factor, the agency assessed a weakness to NCI's proposal because it did not provide adequate documentation to support the small business participation requirement. AR, Tab 12, Small Business Participation Factor Evaluation, at 9. The agency found that NCI's proposal did not provide any specific descriptions of work to be completed by subcontractors. AR, Tab 15, TODD, at 12. Additionally, the agency concluded that the teaming agreements NCI submitted to support its small business participation rate included stipulations and did not adequately describe the work to be performed. Id. For example, the agency found that some of the agreements stated that a "definitive workshare could not be promised at this time" and that agreements for teammates eligible for socioeconomic programs stated that NCI would make its "best effort to allocate" an approximate percentage of the contract goal. Id. The agency also noted that it could not determine work distribution because there was no correlation between the scope of work in the teaming agreements and the type and variety of work included in the table for identifying small businesses. Id. The agency assigned NCI's proposal a marginal rating under the small business participation factor. Id.

The contracting officer, who was also the source selection authority (SSA), compared proposals and based on the integrated evaluation results and her independent judgment, determined that General Dynamics' proposal offered the best overall value to the government. Id. at 19. The SSA found that NCI's proposal received a marginal rating under the small business participation factor because the proposal did not adequately support NCI's proposed small business participation rate. Id. at 12, 19. The agency also concluded that NCI's proposed costs were realistic, but inconsistent with the unique method of performance described in NCI's technical proposal, and that its methodology was not consistently applied throughout the proposal. Id. at 16. Due to its marginal rating under the small business participation factor, the SSA found NCI's proposal ineligible for award. Id. at 19. Additionally, the SSA determined that the proposals of General Dynamics, Offeror E, and Offeror F were rated technically acceptable and eligible for award. Id. at 20. The SSA concluded that a tradeoff between these three offerors' proposals was unnecessary because General Dynamics'

proposal offered the lowest cost and highest technical rating, and there were no advantages that warranted paying a higher price. Id.

On June 3, the Army notified NCI of award. After requesting and receiving a debriefing, NCI timely protested to our Office.⁶

DISCUSSION

The protester asserts that the agency's evaluation of the small business participation factor was flawed and unequal and that the agency's cost realism analysis of General Dynamics' proposal was unreasonable. While we do not address every argument or variation thereof raised by the protester, we have reviewed them all and find that none provides a basis to sustain the protest.

In a task order procurement, our Office will not independently evaluate proposals; rather, where there is a challenge to an agency's evaluation, we will examine the evaluation record, and assess whether the evaluation was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6. The evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Id. An offeror's disagreement with the judgment of the evaluators does not render the evaluation unreasonable. Epsilon Sys. Sols., Inc., B-414410, B-414410.2, June 6, 2017, 2017 CPD ¶ 199 at 6.

Small Business Participation Factor

The protester contends that the agency unreasonably evaluated its proposal under the small business participation factor. Specifically, NCI contends that the marginal rating assigned to its proposal was unreasonable because its proposal complied with the RFP instructions to demonstrate its proposed approach to small business participation by identifying small businesses and their quantitative participation, and by providing supporting documentation in the form of teaming agreements. Comments at 5. NCI argues that its teaming agreement "inarguably" demonstrated the exact substantive commitment required by the RFP and the agency's conclusion that NCI failed to provide binding, enforceable, exclusive teaming agreements was inconsistent with the RFP. Protest at 16-17; Comments at 7.

⁶ This protest is within our jurisdiction to hear protests of task orders valued in excess of \$10 million placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B); Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 6 n.12. The authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying IDIQ task order contract, which in this instance is GSA. Wyle Labs., Inc., B-413989, Dec. 5, 2016, 2016 CPD ¶ 345 at 4.

The agency explains that in addition to identifying the dollar value and small business category, the RFP required an offeror to provide detailed explanations or documentation to support its proposed quantitative participation. Joint Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 16-17; RFP at 13, 18. In this regard, the agency explains that NCI chose to support its quantitative participation through its teaming agreements, which failed to identify the specific type and amount of work to be completed by NCI's small business teammates. COS/MOL at 19; AR, Tab 12, Small Business Participation Factor Evaluation, at 9-10. Based on this lack of detail, the agency explains that it could not validate the quantitative participation that NCI proposed. COS/MOL at 19. Additionally, the agency agrees that the RFP did not require binding, enforceable, exclusive teaming agreements to demonstrate an offeror's commitment to small businesses; yet asserts that the information in NCI's proposal and teaming agreements failed to demonstrate a substantive commitment to small businesses. Id. at 20-21. In this regard, the agency states that NCI's proposal warranted a marginal rating because it not only lacked detailed documentation necessary to support its proposed participation rate, but also indirectly failed to demonstrate a substantive commitment to small businesses. Id. at 18, 22-23.

We find no merit to NCI's challenge. The RFP required offerors to meet small business participation requirements and to explain how they would meet these requirements. RFP at 12. In addition to evaluating proposals based on the extent to which small businesses were identified in the proposal, the RFP stated that the agency would also evaluate an offeror's substantive commitment to small businesses, and the detailed explanation or documentation provided to support the proposed participation rate. Id. at 17-18.

The record shows that NCI proposed to meet the minimum 15 percent small business participation requirement through its "fully executed teaming agreements with each of [its] proposed [subcontractors]." AR, Tab 6, NCI Proposal, at 587.⁷ The record also shows that the agency reviewed these teaming agreements and concluded that statements indicating that "a definitive workshare could not be promised at this time," or that NCI would make its "best effort" to allocate a percentage of the contract goals did not provide a detailed explanation to support NCI's quantitative participation requirement or provide a substantive commitment to small businesses. See Tab 15, TODD, at 12. In this regard, we conclude that the agency's assignment of a weakness was reasonable because the lack of details prevented the agency from verifying NCI's representations. In accordance with the solicitation requirement that an acceptable rating be achieved under this factor, the assessment of a marginal rating rendered NCI's proposal ineligible for award. Although the protester disagrees with the agency's conclusions, NCI has not shown that the agency's evaluation was unreasonable. Epsilon Sys. Sols., Inc., supra.

⁷ Citations are to the pages in the Adobe pdf version of the document provided by the agency.

Unequal Treatment

The protester also contends that the agency evaluated NCI's and General Dynamics' proposals unequally under the small business participation factor. In this regard, the protester contends that due to the similarity of their teaming agreements, both NCI's and General Dynamics' teaming agreements should have received a similar weakness.⁸ Protest at 19. NCI also argues that in assessing strengths, the agency improperly applied a more lenient standard when evaluating General Dynamics' proposal and a more exacting standard when evaluating NCI's. Comments at 13-14.

In response, the agency explains that similar to NCI, the agency assessed a weakness to General Dynamics' proposal based on the lack of information in its teaming agreements. COS/MOL at 24. Specifically, the agency notes that it found that General Dynamics' teaming agreements "did not provide any descriptions of subcontracted work" and that the "non-binding nature of these agreements, combined with an unknown distribution of work . . . [was] considered a weakness." Id. (citing AR, Tab 12, Small Business Participation Factor Evaluation, at 13). Additionally, the agency explains that General Dynamics' proposal warranted an acceptable rating because it "offered countervailing strengths not present in NCI's proposal." COS/MOL at 24; see AR, Tab 12, Small Business Participation Factor Evaluation, at 13.

It is a fundamental principle of government procurement that agencies must treat offerors equally, which means, among other things, that they must evaluate proposals in an even-handed manner. Nexagen Networks, Inc., B-416947, B-416947.2, Jan. 11, 2019, 2019 CPD ¶ 57 at 8. Where a protester alleges unequal treatment in an evaluation, we will review the record to determine whether the differences in ratings reasonably stem from differences in the proposals. Raytheon Co, Space and Airborne Sys., B-411631, Sept. 16, 2015, 2015 CPD ¶ 361 at 8.

We find no basis to sustain the protest. The record shows that the agency concluded that both NCI's and General Dynamics' teaming agreements warranted a weakness because the agreements lacked descriptions of subcontracted work and could not be interpreted as binding in nature. See AR, Tab 12, Small Business Participation Factor Evaluation, at 9, 13. Additionally, NCI's assertion that the agency applied a more exacting standard in evaluating NCI's proposal is not supported by the record. Rather, the record shows that General Dynamics' proposal was assessed strengths based on information that was not present in NCI's proposal. For example, the record shows that the agency assessed a significant strength to General Dynamics' proposal for proposing to distribute an 18 percent minimum participation requirement across all five small business categories, including WOSBs. Id. at 13; AR, Tab 22, General Dynamics Proposal, at 139. In comparison, NCI's proposal proposed a 15 to 16 percent participation rate and explained that its "approach [to small business participation] did

⁸ NCI alleges that NCI and General Dynamics use a standard form teaming agreement that is "similar in all material respects." Protest at 19.

not consider socio-economic categories and as a result, the WOSB category [was] not represented.” AR, Tab 12, Small Business Participation Factor Evaluation, at 11; AR, Tab 6, NCI Proposal, at 588. Accordingly, we conclude that the differences in the agency’s assessment of proposals here reasonably stemmed from differences in the proposals themselves, rather than unequal treatment. Thus, we deny this protest ground.

Challenges to the Evaluation of General Dynamics’ Proposal

The protester next argues that the agency’s cost realism evaluation was flawed and failed to properly evaluate specific elements of General Dynamics’ cost proposal, such as labor rates and professional employee compensation. Protest at 20. NCI also contends that General Dynamics failed to provide all of the cost information required by the RFP. Supp. Protest at 2.

Under our Bid Protest Regulations, only interested parties may protest procurement actions by federal agencies. 4 C.F.R. § 21.1(a). That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it would not be in line for an award if its protest were sustained. See Stone Hill Park, LLC, B-414555.4, July 18, 2017, 2017 CPD ¶ 226 at 5.

The RFP advised that to be considered for award, an offeror was required to receive a minimum rating of acceptable under each of the non-cost factors and subfactors. RFP at 20. Since we find no basis to question the agency’s evaluation of NCI’s proposal as marginal under the small business participation factor, as discussed above, NCI is not an interested party to challenge the agency’s best-value award decision and cost realism analysis of General Dynamics’ proposal. In this regard, NCI’s proposal is ineligible for award, and there were other offerors whose proposals were found to be technically acceptable, which NCI has not challenged. Even if we found that NCI’s remaining allegations had merit, the other acceptable offerors, rather than NCI, would be next in line for award. See Stone Hill Park, LLC, supra. Accordingly, we dismiss the remainder of NCI’s allegations.

The protest is denied.

Thomas H. Armstrong
General Counsel