



Decision

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Matter of: NCS/EML Joint Venture II, LLC

File: B-417686

Date: September 23, 2019

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DIGEST

Protest challenging the agency's evaluation of technical proposals is denied where the evaluation was reasonable and consistent with the solicitation requirements.

DECISION

NCS/EML Joint Venture II, LLC, of Louisville, Kentucky, protests the award of contract to Sunik, LLC, of Herndon, Virginia, under request for proposals (RFP) No. N6247017R4003, issued by the Department of the Navy, Naval Facilities Engineering Command (NAVFAC) for base operating support services at the Marine Corps Base in Quantico, Virginia. NCS/EML challenges the evaluation of technical proposals and source selection decision.

We deny in part and dismiss in part the protest.

BACKGROUND

On July 23, 2018, the Navy issued the solicitation as a set-aside for participants in the Small Business Administration's 8(a) program. The awardee is to provide all management, supervision, labor, materials, and equipment necessary to provide services in a number of areas, including force protection, facility management, and

grounds maintenance/landscaping.¹ RFP at 1, 16. The solicitation anticipated a fixed price, indefinite-delivery, indefinite-quantity (IDIQ) contract, made up of both recurring work and non-recurring work items, for a base year with seven 12-month options.²

The solicitation provided for award on a best-value basis considering the following factors: corporate experience, technical/management approach, safety, past performance, and price. *Id.* at 356. The corporate experience, technical/management approach, and safety factors were equal in weight, and when combined, were equal in importance to the past performance factor. *Id.* All four of the non-price factors combined were considered approximately equal to price. *Id.*

The Navy received timely proposals from five offerors, including NCS/EML and Sunik. Combined Contracting Officer Statement and Memorandum of Law (COS/MOL) at 2, 11. In accordance with the solicitation, the agency evaluated the non-price and price proposals separately. *Id.* at 11. The agency evaluated NCS/EML's and Sunik's proposals as follows:

	NCS/EML	SUNIK
Corporate Experience	Good	Good
Technical/Management Approach	Acceptable	Acceptable
Safety	Good	Good
Past Performance	Substantial	Substantial
Overall	Good	Good
Total Price	\$88,512,883.37	\$75,985.807.74

Agency Report (AR), Tab 8, Source Selection Decision Document (SSDD), at 2.

Based on the evaluation, the source selection authority (SSA) determined that Sunik's proposal presented the best value to the government. Specifically, the SSA found that Sunik had advantages over NCS/EML under the corporate experience factor based on strengths assessed to Sunik's proposal under that factor. *Id.* at 4-5. The SSA concluded that Sunik had a slight advantage over NCS/EML under the past performance factor in that "Sunik's record reflects a stronger trend of customer

¹ Other services to be provided are: management and administration, facilities investment, custodial, pest control, integrated solid waste management, pavement clearance, utility management, wastewater, environment, and general information. RFP at 16.

² For each performance year, the RFP included one contract line item number (CLIN) for recurring work items, and one CLIN for non-recurring work items. *Id.* at 7-15. The recurring work CLINs are fixed price for defined services over the course of that year of performance; the non-recurring work CLINs operate on an IDIQ basis, with orders being placed at established rates for certain work items on an as-needed basis. *Id.*

satisfaction at the highest level, including a higher customer satisfaction [than NCS/EML] on its Very Relevant project." Id. at 5. The SSA concluded that Sunik and NCS/EML were essentially equal under the safety factor. Given the advantages of Sunik's proposal and its lower price, the SSA concluded that Sunik's proposal represented a better overall value to the government. Id. at 4-5. Accordingly, on May 20, 2019, the agency awarded the contract to Sunik. COS/MOL at 27. The agency advised NCS/EML of the award decision, and provided the offeror with a debriefing. Id. at 27-28. This protest followed.

DISCUSSION

NCS/EML protests the evaluation of proposals. With regard to its own evaluation, the protester argues that, under the corporate experience factor, the agency failed to consider EML's outstanding performance under the predecessor contract. The protester also asserts that the agency improperly evaluated its proposal under the safety factor based on unstated evaluation criteria. For the awardee's proposal, the protester asserts that agency unreasonably assessed a strength to Sunik's proposal under the corporate experience factor. The protester also challenges the evaluation of the awardee's proposal under the technical/management approach factor, arguing that the awardee should have received a lower technical rating because it cannot properly staff the project, and because its proposal inadequately accounts for equipment and other costs, representing a substantial performance risk. For the reasons discussed below, we find no basis to sustain the protest.³

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have consistently held that 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. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3.

Evaluation of NCS/EML's Proposal

NCS/EML first argues that it was unreasonable for the agency to ignore EML's outstanding performance on the incumbent contract when evaluating the protester's proposal under the corporate experience factor.⁴ As relevant here, due to EML's

³ Although we do not address every argument raised in NCS/EML's protest, we have reviewed them all and find that none provides a basis to sustain the protest.

⁴ EML, LLC performed as the prime incumbent contractor for the services at issue. AR, Tab 6, Technical Evaluation Team (TET) Report, at 26.

performance on the incumbent contract, NCS/EML’s proposal received the highest rating of “substantial confidence” under the past performance factor. The protester asserts that its proposal should have received a strength under the corporate experience factor in recognition of this same work. For the reasons discussed below, we find no merit to this argument.

As relevant here, the RFP included corporate experience and past performance as separate evaluation factors. Under the corporate experience factor, offerors were required to provide a minimum of one (maximum of five) contract examples demonstrating recent and relevant experience on contracts similar in size, scope, and complexity to the requirements described in the performance work statement. RFP at 359. The RFP provided that the agency would evaluate whether an offeror demonstrated adequate experience successfully performing at least one relevant contract of similar size, scope and complexity to the requirement, and then would use that assessment to evaluate the capability of the offeror to successfully meet the requirements of the RFP. Id.

For the past performance factor, the RFP required that offerors submit a completed Contractor Performance Assessment Reporting System (CPARS) rating for each contract the offeror identified under the corporate experience factor.⁵ Id. at 361. The RFP provided that the evaluation under this factor would evaluate how well the offeror performed on the recent and relevant contracts identified. Id. at 367.

The solicitation also explained the distinction between the corporate experience and past performance evaluation factors. Id. at 356. Specifically, the solicitation provided that corporate experience pertains to the “types of work and volume of work completed by a contractor that are comparable to the types of work covered by this requirement, in terms of size, scope and complexity,” while past performance pertains to “both the relevance of recent efforts and how well a contractor has performed on the contracts.” Id.

Although the protester argues that its proposal should have received a strength under the corporate experience factor based on EML’s outstanding past performance on the incumbent contract, as detailed above, the RFP identified corporate experience and past performance as separate factors and explained how proposals would be evaluated under each factor.⁶ Specifically, the RFP did not provide for consideration of the quality

⁵ If an offeror did not have a CPARS for a contract identified for review under the corporate experience factor, it could submit a past performance questionnaire completed by its client. Id. at 361-362.

⁶ The protester makes a similar argument with regard to the technical/management approach factor, asserting that based on EML’s performance as the incumbent contractor, and its rating under the past performance factor, its proposal should have been assessed an additional strength or received a higher rating under the technical/management approach factor. Protester’s Comments at 9. Again, the (continued...)

of offerors' past performance in assessing proposals under the corporate experience factor. Accordingly, there is no proper basis for the agency to assign NCS/EML's proposal a strength or higher rating under the corporate experience factor based on the quality of its past performance. See BAE Sys. Norfolk Ship Repair, Inc., B-297879, Mar. 29, 2006, 2006 CPD ¶ 75 at 8-9.

NCS/EML next challenges the evaluation of its proposal under the safety factor. The protester argues that the agency improperly relied on unstated criteria in its evaluation.

The RFP required that offerors submit the following information for the three previous calendar years: (1) experience modification rate (EMR);⁷ (2) Occupational Safety and Health Administration (OSHA) days away from work, restricted duty, or job transfer (DART) rate; and (3) total recordable case (TRC) rate. RFP at 361. The solicitation provided that the evaluation would collectively consider the EMR, OSHA DART, and TRC rates, and the offeror's technical approach to safety. Id. at 366. The solicitation also explained that the agency was seeking to determine if the offeror has "consistently demonstrated a commitment to safety" and "plans to properly manage and [i]mplement safety procedures for itself and its subcontractors." Id.

NCS/EML received a rating of good for the safety factor based on the assessment of two strengths and no weaknesses. The two strengths were assigned because NCS had both a DART Rate and TRC Rate of zero for all three reported years, which the evaluators concluded demonstrated "a history of safe working practices." AR, Tab 6, TET Report, at 76.

The protester argues that the agency's evaluation of the offerors' EMR, DART, and TRC rates was improper because it was based on unannounced risk tiers (i.e., very low risk, low risk, moderate risk, high risk, and extremely high risk).⁸ Protester's Comments at 9.

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technical/management approach and past performance factors were separate and distinct evaluation considerations under the RFP. Compare RFP at 366 (past performance factor provided for evaluating contract references to assess confidence that an offeror will perform successfully) with RFP at 367 (technical/management factor provided for evaluating an offeror's methods and approach for executing the requirements of the solicitation). Because the RFP did not provide for consideration of past performance under the technical/management approach factor, we find the protester's argument to be without merit.

⁷ The EMR compares the company's annual losses in insurance claims against its policy premiums. RFP at 361.

⁸ The source selection plan included the following risk ranges for the EMR, DART, and TRC rates: EMR: very low risk (less than 0.6), low risk (0.6 to 0.8), moderate risk (0.8 to 1.0), high risk (greater than 1.0 to 1.1) extremely high risk (greater than 1.1); DART Rate: very low risk (less than 1.0), low risk (1.0 to 1.99), moderate risk (2.0 to (continued...)

The protester maintains that, because the risk tiers were not identified in the solicitation, the evaluation was based on unstated criteria. Id. We disagree.

As the agency points out, the risk ranges, which were included in the source selection plan, were used by the evaluators as general guidelines for evaluating the EMR, DART, and TRC rates. See AR, Tab 1, SSP, at 20; COS/MOL at 21. As such, contrary to the protester's assertions, the risk ranges were not unstated evaluation criteria, but were instead evaluation standards used by the agency to evaluate the proposals. Agencies need not disclose evaluation standards or guidelines for rating proposal features as more desirable or less desirable since agencies are not required to inform offerors of their specific rating methodology. Olympus Bldg. Servs., Inc., B-285351, B-285351.2, Aug. 17, 2000, 2000 CPD ¶ 178 at 5. The particular method of proposal evaluation utilized, however, must provide a rational basis for source selection and be consistent with the evaluation criteria set forth in the solicitation. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 9.

Here, the RFP provided that the agency would evaluate EMR, DART, and TRC rates to determine whether the offeror has demonstrated a history of safe working practices. RFP at 366. Although the protester disagrees with the agency's use of its risk ranges in evaluating the EMR, DART and TRC rates, the protester has not demonstrated or even asserted that the risk ranges were in any way inconsistent with the RFP's stated method of evaluation. Instead, the protester maintains that "a reasonable person would likely find strengths in a proposal that beats the industry average in every category," and thus contends that the evaluators should have used a less stringent standard for evaluation. Protest at 13. Although NCS/EML disagrees with the agency's evaluation, such disagreement, without more, does not render the evaluation unreasonable or provide a basis to sustain the protest. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Evaluation of Sunik's Proposal

The protester challenges the evaluation of the awardee's proposal under the corporate experience and technical/management approach factors. As discussed below, we find that none of the protester's arguments provides a basis to sustain the protest.

The protester first asserts that the agency unreasonably assessed a strength to the awardee's proposal under the corporate experience factor for "experience performing a relevant contract with an annual value of \$72.8 [million]." AR, Tab 7, Source Selection Advisory Council Report, at 8. The protester contends that the agency's assessment of

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2.99), high risk (3.0 to 4.0) extremely high risk (greater than 4.0); TRC Rate: very low risk (less than 2.49), low risk (2.5 to 3.49), moderate risk (3.5 to 4.49), high risk (4.5 to 5.99) extremely high risk (greater than 6.0). AR, Tab 1, Source Selection Plan (SSP), at 20.

this strength is unreasonable because the solicitation, which defined a relevant contract as one with an annual value exceeding \$4 million, “contains no mention of greater weight being given to higher value contracts.” Protester’s Comments at 8. The protester also asserts that the strength is unreasonable because the value of the incumbent contract was only “approximately \$10 million,” and thus in the protester’s opinion, the awardee’s performance on a much larger contract “has little relevance to its performance here.” Id. We disagree.

The source selection plan defined a strength as “[a]n aspect of an offeror’s proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the [g]overnment during contract performance.” AR, Tab 1, SSP, at 19. Although the protester disagrees with the evaluators’ conclusion that the awardee’s experience performing a relevant contract with a very high annual value meets this definition, such disagreement, without more, is insufficient to render the evaluation unreasonable or provide a basis to sustain the protest. Ben-Mar Enters., Inc., supra.

The protester also challenges the evaluation of the awardee’s proposal under the technical/management approach factor, arguing that the awardee should have received a lower technical rating. According to the protester, Sunik’s lowest evaluated price reflects the awardee’s intent to reduce drastically the pay of its proposed staff, which will result in it being unable to staff the project properly. Protester’s Comments at 2. The protester also asserts that the awardee’s proposal should have received a lower technical rating because it inadequately accounts for equipment and other costs, representing a substantial performance risk. The agency requests dismissal of these protest grounds, arguing that because the contract at issue is fixed price, the agency was not required to evaluate whether proposed prices were too low, or assess technical risk, based on the awardee’s low price. COS/MOL at 28. For the reasons discussed below, we agree, and dismiss both arguments.

When awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a); Per Aarsleff A/S et al., B-410782 et al., Feb. 18, 2015, 2015 CPD ¶ 86 at 17. An agency’s concern in making a price reasonableness determination is whether the offered prices are too high, rather than too low. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. Arguments that the agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism not price reasonableness; price realism is not required to be evaluated by the agency unless the solicitation provides for such an analysis. SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4.

The protester’s arguments are tantamount to requiring that the agency conduct a price realism analysis. As the protester acknowledges, however, the RFP did not provide for

a price realism analysis.⁹ Protester's Comments at 4. To the extent the protester contends that the agency failed to consider whether Sunik's proposed rates were too low or proposed pricing was too low, such an evaluation was not permitted by the RFP. These arguments are therefore dismissed.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

⁹ NCS/EML also acknowledges that the agency "did not require 'offerors to submit information about proposed wage pricing under [Technical and Management Approach] or in any way correlate it to their proposed pricing[.]'" Protester's Comments at 5.