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Decision

Matter of: Zolon PCS, LLC

File: B-417930

Date: November 18, 2019

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Bree A. Ermentrout, Esq., and Mark B. Grebel, Esq., National Geospatial-Intelligence Agency, for the agency.
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DIGEST

Protest that the agency unreasonably evaluated protester's proposal is denied where the record shows that the evaluation was consistent with the terms of the solicitation.

DECISION

Zolon PCS, LLC, of Ashburn, Virginia, protests its exclusion from the competitive range under request for proposals (RFP) No. HM0476-19-R-0017, issued by the National Geospatial-Intelligence Agency (NGA) for systems engineering and integration support services. Zolon argues that the agency unreasonably evaluated its proposal.

We deny the protest.

BACKGROUND

On January 24, 2019, NGA issued the RFP to procure systems engineering and integration support services to be performed on a cost-plus-award-fee contract over a 1-year base period and four 1-year option periods. RFP at 4-10. When evaluating proposals, NGA would initially assess on a pass or fail basis whether each proposal was compliant with the solicitation's instructions. Id. at 80. NGA would then evaluate proposals under technical/management, past performance, security, and cost factors. Id. at 79-80. The security factor would be assessed on a pass or fail basis, but NGA would perform a best-value tradeoff analysis considering the remaining factors. Id. at 81-82. The technical/management factor was more important than the past

performance factor, and the non-cost factors, when combined, were more important than the cost factor. Id.

The technical/management factor was comprised of four subfactors: enterprise schedule and effectivity management; standards compliance, definitions, development and management; configuration management; and management approach.¹ RFP at 83-84. Under the management approach subfactor, offerors were required to describe their key personnel qualifications, and demonstrate capability to provide key personnel with the requisite skills and experience in accordance with the Statement of Work (SOW). Id. at 84.

NGA received [DELETED] proposals prior to the March 18, closing time. Agency Report (AR), Source Selection Evaluation Board (SSEB) Report at 3. Zolon was assigned an unacceptable/red adjectival rating for its proposed management approach. AR, Competitive Range Determination Document (CRDD) at 3. Zolon was assigned this rating because its proposal received four deficiencies under this subfactor. Id. at 5-6. The deficiencies were assigned because Zolon's proposed key personnel did not possess the requisite qualifications provided in the SOW. Id. Zolon was also assigned a yellow/marginal rating under the standards compliance, definitions, development, and maintenance subfactor because its proposal demonstrated a poor technical understanding of the requirement. Id. In view of these evaluations, NGA did not select Zolon for the competitive range because it determined that Zolon's technical proposal would require significant revision to meet the solicitation's requirements. Id. at 6, 8. After learning that its proposal was unsuccessful, Zolon filed this protest with our Office.

DISCUSSION

Zolon alleges that the agency unreasonably assigned its proposal deficiencies and an unacceptable/red rating under the management approach technical subfactor. Comments at 2. The firm argues that its proposal should have only been assigned strengths and weaknesses, as opposed to deficiencies, because its proposal was already deemed materially compliant. Id. at 3. The agency responds that the solicitation permitted it to assign deficiencies when evaluating proposals against the technical subfactor criteria. Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 16-17.

¹ The RFP provided that the agency would evaluate proposals using the following color/adjectival rating combinations: outstanding/blue; good/purple; acceptable/green; marginal/yellow; and red/unacceptable. RFP at 82. An unacceptable/red rating would be assigned when a "proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable." Id.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. Soliel LLC, B-414060, Jan. 26, 2017, 2017 CPD ¶ 43 at 2.

On this record, we do not find the evaluation to be unreasonable because, consistent with NGA's position, the RFP expressly provided that NGA would assign deficiencies when evaluating proposals. Indeed, the solicitation provided that NGA would assess strengths, weaknesses, and deficiencies, and take into account any strengths, weaknesses, or deficiencies when determining which color/adjectival rating should be assigned. RFP at 80. Further, we do not find persuasive Zolon's position because the compliance assessment was clearly designed to determine whether proposals were prepared in accordance with the instructions, not whether proposals satisfied minimum evaluation standards. See id. ("Proposals shall be reviewed to ensure the Offeror materially and substantially comply with the proposal submittal instructions as delineated in Section L before advancing to the proposal evaluation stage."). Moreover, Zolon has not identified any solicitation language which expressly limited NGA to assigning only strengths or weaknesses following the compliance assessment. See Comments 2-3. Accordingly, we deny the protest allegation because NGA's evaluation was consistent with the terms of the solicitation.²

Zolon also argues that it should have been assigned higher color/adjectival ratings under the other technical subfactors because its proposal was assigned multiple strengths and significant strengths, and because the agency overlooked material contained in its proposal. Protest at 6-7. Additionally, Zolon argues that its proposal should have received higher technical ratings because its past performance was highly rated. Id. at 7. In its report, NGA responded to each of these allegations, explaining that its evaluation was consistent with the terms of the solicitation or that the protester's argument merely disagreed with the evaluation results. COS/MOL at 18-19. Zolon did not respond to the agency's argument in its comments, but rather summarily explained that "[a]ny issues not addressed by these comments are not abandoned, but instead should be considered submitted on [its] original protest submissions." Comments at 1.

² We note that, even if Zolon's proposal was unreasonably assigned deficiencies, we do not think that this resulted in competitive prejudice. Competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain a protest. Next Tier Concepts, Inc., B-406620.3, B-406620.4, Nov. 13, 2012, 2013 CPD ¶ 5 at 4. In addition to the concerns with Zolon's key personnel, NGA also expressed concern with Zolon's poor technical understanding of the requirement under the standards compliance, definitions, development, and maintenance subfactor, and concluded that this portion of Zolon's proposal would not be easily rectifiable. AR, CRDD, at 5-6, 8. Thus, assuming that NGA unreasonably assigned deficiencies, the evaluation would still support NGA's decision to exclude Zolon from the competitive range.

Where, as here, the agency responds to an allegation in its report but the protester does not rebut the agency's position in its comments, we dismiss the allegation as abandoned because the protester has not provided us with a basis to find the agency's position unreasonable. Medical Staffing Solutions USA, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3. Here, while Zolon summarily responded to the agency's argument, Zolon did not offer any specific legal argument that would provide us with a basis to find NGA's position unreasonable.³ Accordingly, we dismiss these allegations as abandoned.

The protest is denied.

Thomas H. Armstrong
General Counsel

³ Zolon also argued that NGA unreasonably adjusted upward its proposed cost during the cost realism analysis. Protest at 7-8. Zolon withdrew this allegation in its comments. Comments at 6.