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Decision

Matter of: NIKA Technologies, Inc.

File: B-418563

Date: June 5, 2020

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Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

NIKA Technologies, Inc., of Rockville, Maryland, protests the elimination of its proposal from consideration for award under request for proposals (RFP) No. W912DY-16-R-0104, issued by the Department of the Army, U.S. Army Corps of Engineers, for specialized medical operations and maintenance services. NIKA argues that the agency misevaluated its proposal and unreasonably did not award it a contract.

We deny the protest.

BACKGROUND

This acquisition is referred to overall as the Operations and Maintenance Engineering Enhancement VI program. The solicitation contemplates the award of multiple indefinite-delivery, indefinite-quantity contracts for a base period of 24 months and three 12-month option periods. The RFP was issued on an unrestricted basis but reserved a portion of the awards for small businesses. RFP at 3. The RFP provided that the agency would make award to all those firms submitting proposals that were determined "qualifying" based on an evaluation of non-price considerations (detailed below). RFP

at 180. Price would not be an evaluation consideration for award of the contracts; instead, price would be considered after award during subsequent competitions for the issuance of task orders under the contracts. *Id.*

The cumulative ceiling value for all contracts is \$990 million, and these contracts will be to provide operations and maintenance services to support the Army Medical Command, the Air Force Medical Support Agency, the U.S. Navy Bureau of Medicine and Surgery, and the Defense Health Agency. RFP at 3. The services at issue are to provide facility maintenance and specialized medical facilities operations and maintenance services for the Department of Defense's medical facility infrastructure.

The solicitation provided that proposals would be evaluated using four non-price factors: corporate experience, past performance, technical and management approach, and small business participation. Under the corporate experience, technical and management approach, and small business participation factors, the agency would evaluate proposals on a pass/fail basis and assign adjectival ratings of acceptable or unacceptable. RFP at 181, 183, 185.

For the past performance factor, the offerors' past performance examples were to be assigned relevancy ratings of either relevant or not relevant, and each firm's overall past performance also would be assigned a performance confidence adjectival rating of satisfactory confidence, neutral confidence (where a firm had no recent or relevant past performance), or no confidence. RFP at 181-182.¹

The agency rated NIKA's proposal unacceptable under the corporate experience factor and eliminated it from further consideration. After being advised that its proposal had been eliminated and requesting and receiving a debriefing, NIKA filed the instant protest.

DISCUSSION

NIKA's protest is confined to challenges to the agency's evaluation of its proposal under the corporate experience factor. NIKA argues that the agency used an unstated evaluation factor in finding its proposal unacceptable; that the agency erred in not crediting it with the corporate experience of its key subcontractor; that the agency erred in failing to credit NIKA with its own corporate experience; and that the agency engaged in disparate treatment of its proposal in comparison to two other proposals in the evaluation of corporate experience.

We have considered all of NIKA's allegations and find no merit to any of them. We note at the outset that, in considering challenges to an agency's evaluation of proposals, our Office does not substitute our judgment for that of the agency; rather, we review the

¹ The RFP did not specify weights for the non-price evaluation factors, so we conclude that they were equally weighted. *High Noon Unlimited, Inc.*, B-417830, Nov. 15, 2019, 2019 CPD ¶ 387 at 2.

record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, and applicable statutes and regulations. *CDO Technologies, Inc.; Abacus Technology Corporation*, B-418111, *et al.*, Jan. 14, 2020, 2020 CPD ¶ 26 at 5. We discuss our findings below.

Application of an Unstated Evaluation Factor

The record shows that the agency made reference to "preventive maintenance" in its evaluation of the NIKA proposal under the corporate experience factor. In particular, the record shows that the agency made the following finding in concluding that the NIKA proposal was unacceptable:

[deleted] demonstrates significant O&M [operations and maintenance] experience in medical facilities, as the proposed key-subcontractor. However, the offeror (NIKA), failed to demonstrate acceptable O&M experience in medical facilities as the Prime, specifically preventive maintenance experience. Preventive maintenance is approximately 75% of OMEE [operations and maintenance engineering enhancement] task order work. *Also, NIKA proposed to self-perform 65% of the work, in their small business proposal.*

Agency Report (AR), exh. 16, Source Selection Evaluation Board (SSEB) Report, at 24 (emphasis in original). NIKA argues that the corporate experience evaluation factor made no mention of "preventive maintenance" experience and, accordingly, that it was improper for the agency to have rated NIKA's proposal unacceptable for a lack of preventive maintenance experience.

We find no merit to this aspect of NIKA's protest. While procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify every aspect of each factor that might be taken into account; rather, agencies reasonably may take into account considerations, even if unstated, that are reasonably related to or encompassed by the stated evaluation criteria. *Raytheon Company*, B-416578, B-416578.2, Oct. 22, 2018, 2018 CPD ¶ 376 at 7.

The corporate experience factor provided, in relevant part, as follows:

These [corporate experience] projects will be evaluated for breadth and depth of experience in the operation and maintenance (O&M) of medical facilities. Offerors must demonstrate relevant experience in performing medical O&M services in private or government medical facilities. In addition, Offerors should possess experience in medical O&M services in supporting facilities; equipment maintenance and repair services in medical facilities; medical facilities corrective maintenance services; and construction services such as the alteration, renovation, conversion, and/or reconfiguration of rooms, areas, and/or facility systems of real property medical facilities. Extensive experience in one specific type of

technology, building system, or facility type is not by itself considered a qualifying factor.

* * * *

Small businesses must demonstrate full spectrum O&M services performed at ambulatory care facilities.

RFP at 180-181.² While we agree with NIKA that the corporate experience factor did not expressly use the phrase “preventive maintenance,” we nonetheless conclude that experience contemplated by the RFP reasonably encompassed preventive maintenance experience for several reasons.

First, and most obviously, as pointed out by the agency evaluators, preventive maintenance comprises approximately 75 percent of all of the work contemplated under the solicitation, and NIKA has not shown otherwise. An examination of the RFP bears out the agency’s position. For example, the solicitation expressly defines the term “maintenance” as including preventive maintenance, RFP at 24,; separately defines the term “preventive maintenance” in its list of definitions, RFP at 25; identifies requirements for preventive maintenance for all facilities listed in a technical exhibit (Performance Work Statement (PWS) section 5.6); identifies requirements for preventive maintenance to be performed on the central utility plant (PWS section 5.14); identifies requirements to perform preventive maintenance on roofing systems (PWS section 5.15.2); identifies requirements to perform preventive maintenance, repairs and certifications for medical gas and vacuum systems (PWS section 5.15.5); identifies requirements to provide preventive maintenance for nurse call systems (PWS section 5.15.8.6); and identifies requirements for preventive maintenance on all kitchen equipment (PWS section 5.15.16). This non-exhaustive, illustrative list demonstrates the solicitation’s heavy emphasis on preventive maintenance requirements.

Given that the work to be performed under any resulting contract consists principally of preventive maintenance services, there is no basis for our Office to conclude that the RFP, read in its entirety, failed to put all offerors on notice that preventive maintenance was a large component of the operations and maintenance services being solicited, and that any evaluation of a firm’s corporate experience necessarily would include consideration of whether their experience included preventive maintenance experience.

Second, although NIKA is correct that the phrase “preventive maintenance” is not expressly used in the language of the corporate experience factor, operations and maintenance services, by their very nature, include preventive maintenance services which, as noted, comprise the majority of the services to be performed here. As detailed above, the RFP, while calling generally for operations and maintenance

² The agency report also includes the RFP’s evaluation factors as a separate solicitation attachment. AR, exh. 5, RFP Attachment 3, Evaluation Factors for Award, at 1-2. The text of both versions of the corporate experience factor is identical.

services, clearly includes a large proportion of the total work that amounts to preventive maintenance. Consistent with that basic underlying premise, the language of the evaluation factor makes express reference to providing medical operations and maintenance services in supporting facilities; and to providing equipment maintenance services at medical facilities. Preventive maintenance clearly is related to, and encompassed by, these broad, overarching requirements.

Third, the language of the corporate experience factor also specifically advised small business offerors (of which NIKA is one) as follows: “Small businesses must demonstrate *full spectrum* O&M services performed at ambulatory care facilities.” RFP at 181 (emphasis supplied). As discussed above, preventive maintenance services make up the majority of the operations and maintenance services being solicited, and the “full spectrum” of operations and maintenance services necessarily includes preventive maintenance services.

Finally, while NIKA appears to dwell on the evaluators’ use of the phrase “preventive maintenance,” an examination of the agency’s finding shows that the evaluators were concerned in the first instance--and more broadly--that NIKA lacked overall operations and maintenance services experience. As discussed in detail below, the record shows that NIKA’s lack of experience is more fundamental and far reaching than simply a lack of preventive maintenance experience; NIKA lacks any direct operations and maintenance experience at all.³

In view of the foregoing, we have no basis to object to the agency’s consideration of NIKA’s lack of preventive maintenance experience in its evaluation of NIKA’s proposal. Rather, preventive maintenance is clearly related to, and encompassed by, the stated evaluation factor. We therefore deny this aspect of NIKA’s protest.

Alleged Failure to Attribute NIKA’s Key Subcontractor’s Experience to NIKA

NIKA argues that the agency erred in failing to attribute to it the experience of its key subcontractor. According to the protester, the offeror submitting the proposal here was “Team NIKA” which was comprised of NIKA Technologies, Inc., and [deleted], its key subcontractor. NIKA therefore reasons that, even if the agency is correct that it lacks operations and maintenance experience, [deleted] has adequate experience that should have resulted in NIKA’s proposal being rated acceptable under the corporate experience factor. According to NIKA, the RFP defined the “offeror” as the prime contractor and any subcontractors included with the team submitting the proposal.

We find no merit to this aspect of NIKA’s protest. The corporate experience factor included language that required each key member of a proposing team (prime

³ NIKA also has not argued or demonstrated that it would have submitted different corporate experience examples if it had known of the agency’s intent to evaluate whether offerors had, among other things, preventive maintenance experience.

contractors and key subcontractors) to individually satisfy the corporate experience requirements. The corporate experience factor expressly provided as follows:

Under this [corporate experience] Factor the Offerors shall be required to demonstrate that *both the prime (to include any joint venture partners) and all key subcontractors* have acceptable experience in the performance of O&M services for medical facilities.

RFP at 181 (emphasis supplied). Thus, regardless of how the term “offeror” may have appeared or been defined elsewhere in the RFP, for the express purpose of evaluating corporate experience, the RFP made clear that each key member of any proposal team was required to have the requisite experience. We therefore deny this aspect of NIKA’s protest.

Evaluation of NIKA’s Corporate Experience

NIKA argues that the agency’s evaluation finding about its corporate experience was unreasonable because, in fact, its proposal demonstrates that NIKA does possess preventive maintenance experience. NIKA therefore argues that it was unreasonable for the agency to have assigned its proposal an unacceptable rating under the corporate experience factor.

We find no merit to this aspect of NIKA’s protest. As noted above, the record shows that, although the evaluators specifically made reference to NIKA’s lack of preventive maintenance experience, the agency’s evaluators were more broadly concerned about a lack of any medical operations and maintenance experience. In responding to the protest, the agency explains that NIKA has no experience providing actual operations and maintenance services. AR at 17-20. Instead, the firm’s experience is confined to providing operations and maintenance support services. Such services might include, for example, the design--but not actual implementation or use of--a preventive maintenance program or system.

The agency’s explanation is borne out by the contents of NIKA’s proposal. For example, the first corporate experience example included in NIKA’s proposal is a contract for NIKA to provide operations and maintenance support services to the Air Force Medical Support Agency (AFMSA). In describing the work on that contract, NIKA’s proposal provides, in part, as follows:

Specific emphasis was placed on helping AFMSA prepare for handling uncertain preventative maintenance issues. If preventive maintenance were not regularly performed on critical facility equipment, it may have resulted in failure, which could impact a medical treatment facility’s ability to provide care or meet the high standards set by TJC [The Joint Commission]. *Therefore, NIKA designed customized preventive maintenance programs to update current procedures and build out new maintenance service programs to prolong the useful life of equipment, exceed stringent compliance requirements, save taxpayer money, and*

provide the highest quality care to facility constituents. The success of implementing NIKA's customized preventative maintenance program led to a decrease in critical systems failures and proactive identification of the need for major equipment repair prior to failure.

AR, exh. 20, NIKA Proposal at 10 (emphasis supplied).⁴ From this proposal excerpt, it is clear, as explained by the agency, that NIKA has not actually perform any operations and maintenance services. Rather it designed a preventive maintenance program that was subsequently implemented by the agency using the services of actual operations and maintenance service providers.⁵ In light of the foregoing, we deny this aspect of NIKA's protest.

Alleged Disparate Evaluation

Finally, NIKA argues that the agency evaluated proposals disparately because, according to the protester, two firms that also did not have any preventive maintenance experience were nonetheless awarded contracts. NIKA argues that this shows that the agency's evaluation was inconsistent among the proposals submitted.

We find no merit to this aspect of NIKA's protest. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences in the proposals. *IPKeys Techs., LLC*, B-414890, B-414890.2, Oct. 4, 2017, 2017 CPD ¶ 311 at 9. The protester's allegations in this respect are based on a flawed premise, namely that these offerors did not demonstrate preventive maintenance experience that was comparable to the preventive maintenance experience of NIKA. As discussed above, the agency's concern about NIKA was more fundamental; NIKA's lack of any actual operations and maintenance experience, a central deficiency that extended to the firm's lack of any actual preventive maintenance experience as well.

In contrast, the challenged offerors both had extensive actual operations and maintenance experience, which included preventive maintenance experience. The first awardee challenged by NIKA, VW International, Inc., demonstrated the full spectrum of

⁴ NIKA's proposal included two other contract examples performed by NIKA. One was another contract with AFMSA, also to provide operations and maintenance support services--not actual operations and maintenance services--on a worldwide basis. AR, exh. 20, NIKA Proposal, at 13-14. The third contract was yet another contract with AFMSA, in this instance to provide engineering technical support, but again, no actual operations and maintenance services. *Id.* at 19-21.

⁵ This example, along with the other two examples of contracts performed by NIKA, also bear out the agency's more specific explanation offered during the protest, namely, that NIKA had no corporate experience providing preventive maintenance services, but, rather, only support services in leading up to the actual provision of preventive maintenance services.

actual operations and maintenance experience at medical facilities--including preventive maintenance experience at medical facilities--throughout its proposal in every one of the 7 corporate experience examples that it submitted. AR, exh. 22, VW International Proposal, at I.B-3, I.B-6, I.B-9, I.B-12, I.B-16, I.B-18-I.B-19, I.B-21-I.B-22. In each of these examples, VW International describes a full range of building systems for which it provided operations and maintenance services. In each example, the range of services provided on the identified building systems are described in a similar fashion:

Operational maintenance, repair, preventive maintenance, grounds maintenance, custodial services, pest control, facility operations support, incidental construction, corrective maintenance and minor repairs are provided daily. Facilities supported include a Full Service Medical/Dental Clinic, Ambulance Shelter, Veterinary Clinic, Administrative Building, Emergency Generator Building, Transformer Station and other support facilities.

AR, exh. 22, VW International Proposal, at I.B-3; see *also id.* at I.B-6, I.B-9, I.B-12, I.B-16, I.B-18-I.B-19, I.B-21-I.B-22 (describing a similar, but not identical, range of services under each of VW International's remaining corporate experience examples).

As to the second challenged awardee, Zero Waste Solutions, Inc., the record shows similarly that it performed the full spectrum of operations and maintenance services--including preventive maintenance services--on all major equipment and systems at a large hospital facility. Zero Waste's proposal describes that work as follows:

Zero Waste Solutions, Inc. (ZWS) operated and maintained all major equipment and systems, including HVAC, plumbing, electrical, and fire systems at the 987,500 square foot campus including main hospital with 258 beds, outpatient facilities, laboratories, and a mental health clinic. We were responsible for all facility maintenance including scheduled [preventive] and corrective maintenance for specialized electrical and mechanical equipment and systems.

AR, exh. 21, Zero Waste Solutions Proposal, at 12; see *also id.* at 13, (explicitly referencing the performance of preventive maintenance services on all equipment located at the facility); *id.* at 9 (describing the provision of hospital aseptic management services under a different contract performed at 23 Air Force medical facilities).⁶

⁶ NIKA also argues that, although the agency declined to give it credit for the operations and maintenance experience of its key subcontractor, [deleted], the agency nonetheless attributed the operations and maintenance experience of Zero Waste Solutions to that firm's subcontractors who, NIKA argues, did not have any preventive maintenance experience of their own. However, the record shows that neither of the subcontractors included in the Zero Waste team were identified as "key" subcontractors. AR, exh. 21, Zero Waste Solutions Proposal at 15, 18, 21, 24. As noted above, the RFP required

In light of these considerations, we have no basis to find that the agency engaged in disparate treatment in its evaluation of the proposals submitted. We therefore deny this aspect of NIKA's protest.

The protest is denied.

Thomas H. Armstrong
General Counsel

only that an offeror's key subcontractors possess the requisite experience. RFP at 181 (quoted in full above). Since these subcontractors were not identified as key subcontractors, there was no requirement for them to independently demonstrate their own operations and maintenance services experience. In any event, one of the two subcontractors actually did demonstrate extensive actual operations and maintenance experience at medical facilities. *Id.* at 15-16, 18-19.