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Decision

Matter of: Dawson Solutions, LLC

File: B-418587; B-418587.2

Date: June 19, 2020

Kristin Zachman, Esq., and Johnathan Bailey, Esq., Bailey & Bailey, PC, for the protester.

Damien C. Specht, Esq., James Tucker, Esq., and Victoria D. Angle, Esq., Morrison & Foerster LLP, for Kupono Government Services, LLC, the intervenor.

Robert B. Neill, Esq., Susan Kim, Esq., Scott N. Flesch, Esq., and Andrew J. Smith, Esq., Department of the Army, for the agency.

Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging a contracting agency's evaluation of the protester's proposed key personnel is denied where the agency's evaluation was reasonable and in accordance with the solicitation criteria.
 2. Protest alleging that the agency evaluated the protester's and the awardee's proposals on an unequal basis is denied where the protester has not shown that the differences in ratings did not stem from differences in the proposals.
 3. Protest alleging that the agency requested clarifications on an unequal basis is denied where the record shows that the agency sought only clarifications from the awardee, in contrast to any exchanges the protester argues the agency was required to conduct regarding deficiencies in protester's proposal, which would have constituted discussions.
 4. Protester is not an interested party to challenge other aspects of the evaluation where its proposal was reasonably evaluated as technically unacceptable.
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DECISION

Dawson Solutions, LLC (Dawson), a small business of Huntsville, Alabama, protests the award of a contract to Kupono Government Services, LLC (Kupono), a small business of Orlando, Florida, under request for proposals (RFP) No. W91249-20-R-0003, issued

by the Department of the Army, Mission and Installation Contracting Command, for Information Technology (IT) services at Fort Gordon in Georgia. The protester contends that the agency's technical evaluation of key personnel was inconsistent with the terms of the solicitation, and that the agency treated the offerors disparately with regard to the technical evaluation and conduct of clarifications. The protester also challenges various other aspects of the agency's evaluation.

We deny the protest.

BACKGROUND

On November 21, 2019, the army issued the RFP as a set-aside procurement for small businesses in the Small Business Administration's 8(a) program¹ to provide IT services in support of the Cyber Center of Excellence (CCoE) G-6 mission.² Agency Report (AR), Tab 6, RFP at 1, 58, 86³ The RFP contemplated the award of a fixed-price contract with a 1-year base period and two 1-year options. RFP at 32-33, 57. The RFP provided for award on a best-value basis and established the following evaluation factors, listed in descending order of importance: (1) technical capability; (2) past performance; and (3) price. RFP at 79-80. The technical capability factor included five subfactors: (1) key personnel; (2) staffing; (3) cyber virtualized training network; (4) IT project management; and (5) cyber security services. *Id.* at 79. The technical capability factor was significantly more important than the past performance factor, and the non-price factors, when combined, were significantly more important than price. *Id.* at 79-80.

Relevant to this protest, under the addendum to Federal Acquisition Regulation (FAR) clause 52.212-1, the RFP instructed offerors to include the following information in their proposals regarding key personnel:

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by awarding subcontracts to socially and economically disadvantaged small business concerns. FAR 19.800. This program is commonly referred to as the 8(a) program.

² The CCoE is the U.S. Army's force modernization proponent for cyberspace operations, signal/communications networks and information services, and electronic warfare. See <https://cybercoe.army.mil/index.html> (last visited June 12, 2020). The Army G-6 mission is to lead "Army network modernization to deliver timely, trusted and shared information for the Army and its mission partners." <https://www.army.mil/CIOG6#org-about> (last visited June 12, 2020).

³ The agency amended the solicitation twice. Unless otherwise noted, all citations to the RFP are to the conformed copy provided by the agency in its report.

Provide name and Resumes/Curriculum Vitae (CV) of all key personnel along with letters of commitment, which shall adequately and explicitly address key personnel, relevant past experience and how their experience and qualifications are relevant to this requirement. Specifically, offerors shall provide the following for all proposed key personnel (at a minimum):

- (1) Name
- (2) Education (Degree/discipline/year attained, educational institution)
- (3) Certifications (certification member ID; expiration date)
- (4) Security Clearance (List clearance(s) currently held)
- (5) Proposed Labor Category
- (6) Experience
- (7) Present Position
 - a. Company and title of position
 - b. Dates of employment (month/year to month/year or to “present”)
 - c. Brief description of duties and responsibilities, including supervisory experience
 - d. Number and type of personnel supervised

Id. at 73. The RFP provided that the agency would evaluate proposed key personnel by, in part, determining whether the provided resumes “clearly demonstrate all key personnel meet the qualifications, experiences, [and] certifications.” *Id.* at 80. The RFP specified that the agency would evaluate whether the resumes addressed all qualifications and experience requirements from the list above. *Id.* at 80. The RFP provided that an unacceptable⁴ rating under any of the technical capability subfactors would render a proposal ineligible for award. *Id.* at 83.

The RFP identified five positions as key personnel, including senior IT project manager and senior system administrator. *Id.* at 103. As relevant here, a senior IT project manager was required to possess an information assurance technical level II (IAT II) certification at the contract start date, *id.* at 98, and the senior system administrator was required to possess a 2019 or later VMware certified professional (VCP) certification for data center virtualization as of the contract start date. *Id.* at 99. The RFP also provided that the agency intended to make an award without conducting discussions. *Id.* at 69.

⁴ The RFP defined an unacceptable rating as a proposal “does not meet requirements of the solicitation, and thus, contains one or more deficiencies . . .” RFP at 83. The RFP defined a deficiency as “a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” *Id.*

On or before the January 9, 2020 closing date, the agency received timely proposals from eighteen offerors, including Dawson and Kupono. Contracting Officer's Statement (COS) at 3. The agency evaluated Dawson's proposal as unacceptable under the technical capability factor.⁵ AR, Tab 23, Dawson Technical Evaluation at 1; AR, Tab 26, Source Selection Decision Document (SSDD) at 4. As relevant here, the agency evaluated Dawson's proposal as unacceptable under the key personnel subfactor, where it received two deficiencies based on Dawson's proposed senior IT project manager and senior systems administrator not possessing the respective IAT II and VCP certifications required by the solicitation. AR, Tab 23, Dawson Technical Evaluation at 1, 4-5.

The agency evaluated Kupono's proposal as good under the technical capability factor. AR, Tab 24, Kupono Technical Evaluation at 1; AR, Tab 26, SSDD at 5. The agency evaluated Kupono's proposal as acceptable under the key personnel subfactor, noting that while four of Kupono's proposed key personnel did not have all required certifications, the proposal indicated that each would obtain the required certifications by the contract start date.⁶ AR, Tab 24, Kupono Technical Evaluation at 6; *see also* AR, Tab 22, Kupono Technical Proposal at 1, 3.

After evaluating the proposals, the agency emailed clarification questions to Kupono requesting confirmation that the proposed key personnel who did not currently possess all required certifications would obtain the required certifications before the contract start date. *See* AR, Tab 27, Clarification with Kupono. On March 9, 2020, Kupono confirmed the information in its proposal to the agency's satisfaction. *Id.*; *see also* COS at 3. The source selection authority concluded that Kupono's proposal provided the best value. AR, Tab 26, SSDD at 15. On March 13, the agency subsequently notified Dawson of the award to Kupono and provided Dawson with a debriefing. AR, Tab 28, Notification of Unsuccessful Offer; COS at 4. This protest followed.

⁵ The agency evaluated offerors' proposals under each of the five subfactors and assigned strengths, weaknesses, significant weaknesses, and deficiencies. *Id.* The agency assigned an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable for each technical capability subfactor, which were then rolled up into an overall technical rating. *See Id.* The agency also assigned each subfactor a technical risk rating of low, moderate, high, or unacceptable. *Id.* at 83-84.

⁶ The record shows that only three of Kupono's proposed key personnel resumes failed to demonstrate current possession of all required certifications, not four, as indicated above. The agency acknowledges that it incorrectly concluded that one of Kupono's proposed senior project managers did not possess a required program management professional certification despite the corresponding resume listing the certification as current through January 2021. *See* COS at 8; *see also* AR, Tab 22, Kupono Technical Proposal at 2.

DISCUSSION

Dawson contends that the agency unreasonably found its proposal technically unacceptable on the basis that its proposed senior IT project manager and senior systems administrator did not meet the solicitation's certification requirements. Protest at 17-21. Dawson also argues that the agency treated Dawson and Kupono disparately in its technical evaluation and by requesting clarifications from only Kupono. Comments & Supp. Protest at 15-19; Supp. Comments at 2-10. The protester also challenges various other aspects of the solicitation.⁷ For the reasons set forth below, we conclude that the protester's arguments provide no basis to sustain the protest.⁸

Key Personnel

Dawson first argues that the agency's evaluation of Dawson's key personnel was unreasonable and inconsistent with the RFP. Comments & Supp. Protest at 2. The protester contends it addressed the missing key personnel certifications in a different section of its technical proposal addressing the staffing subfactor. Comments & Supp. Protest at 6. Specifically, Dawson points to the statement that "[t]eam DAWSON is also committed to retaining our current workforce and will invest in training and certifying existing employees within the allotted six-month grace period⁹ so that we retain a workforce already familiar with CCoE G6 operations reducing risk to CCoE operations." AR, Tab 21, Dawson Technical Proposal at 27. The agency responds that Dawson failed to demonstrate that its proposed key personnel possessed or would possess the required certifications within the section of its proposal addressing the key personnel. Memorandum of Law (MOL) at 12-14.

It is an offeror's responsibility to submit a well-written proposal with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and

⁷ For example, Dawson argues that the agency unreasonably evaluated its proposal under the staffing subfactor and that the agency unreasonably failed to assess its technical proposals with additional strengths. See Protest at 18-26.

⁸ Dawson raises other collateral issues. While our decision does not address every issue, we have considered the arguments and find that none provides a basis to sustain the protest.

⁹ The RFP provided for a 6-month grace period for incumbent key personnel to obtain required certifications which were "new" contract requirements, instead of requiring such certifications by the start of contract performance. RFP at 6. The protester and the agency disagree about the applicability of the 6-month grace period to the two required certifications Dawson's proposed key personnel do not possess. Protest at 18-21; MOL at 11-12; Comments & Supp, Protest at 2-7. However, because we conclude below that the agency reasonably found Dawson failed to address the required certification in the key personnel resumes, we do not reach whether the grace period was applicable to these requirements.

allows a meaningful review by the procuring agency. *CACI Techs., Inc.*, B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Here, the RFP specified that the agency would evaluate whether the key personnel resumes "clearly demonstrate" the certifications required for each position and whether they addressed all qualifications and experience requirements from the list in the addendum to FAR clause 52.212-1. RFP at 80. This list, set forth in the solicitation, required offerors to adequately and explicitly address the key personnel requirements, including the required certifications. *Id.* at 73. The portion of Dawson's proposal that included the resumes for its proposed key personnel did not include any information regarding the required IAT II certification for one of the proposed senior IT project managers, or the required level of VCP certification for the senior system administrator. AR, Tab 21, Dawson Technical Proposal at 10, 18.

In light of Dawson's failure to address these two key personnel certification requirements, we find the agency reasonably concluded that the protester's proposal failed to demonstrate it met the solicitation requirement to propose "personnel whose qualifications and experience are commensurate with the responsibilities and tasks that are to be performed." RFP at 80. *Cf. Summit Group, LLC*, B-412499, Mar. 3, 2016, 2016 CPD ¶ 81 at 7 (concluding that the agency was reasonable in excluding from the competitive range an offeror that had failed to demonstrate its proposed key personnel possessed or would possess a required certification).

Further, we disagree with the protester's argument that its broad statement in a different section of its proposal addressing staffing, was sufficient to meet the key personnel certification requirements. See Comments & Supp. Protest at 6; see *also* AR, Tab 21, Dawson Technical Proposal at 27. An agency is not required to search other sections of an offeror's proposal for information to meet requirements related to a different section. See *Dewberry Crawford Group; Partner 4 Recovery*, B-415940.10 *et.al.*, July 2, 2018, 2018 CPD ¶ 297 at 13. Also, it is well-settled that it is the offeror's duty to include sufficiently detailed information to establish that its proposal meets the solicitation requirements, and that blanket statements of compliance are insufficient to fulfill this duty. *Dewberry Crawford Group; Partner 4 Recovery*, B-415940.11 *et.al.*, July 2, 2018, 2018 CPD ¶ 298 at 13 .

Here, Dawson's statement, in addition to being from a different portion of its proposal, does not identify with any specificity the key personnel or the missing required

certifications which are the basis for the assigned deficiencies. Rather, the proposal states only that Dawson “will invest in training and certifying existing employees.” AR, Tab 21, Dawson Technical Proposal at 27. On this record, we find no basis to question the reasonableness of the agency’s determination that Dawson’s proposed key personnel failed to meet the solicitation requirements.

Disparate Treatment

Dawson contends that the proposals were evaluated unequally because Kupono was not assessed deficiencies for failing to meet the key personnel certification requirements, in contrast to the deficiencies assessed against Dawson’s proposal for the same omission. Dawson also complains that Kupono’s proposal was rated as acceptable under the key personnel subfactor despite being evaluated as presenting high risk, while Dawson’s high-risk proposal was rated as unacceptable. Comments & Supp. Protest at 15-18. Dawson also challenges the agency’s decision not to request clarifications regarding the key personnel certifications in its proposal. Comments & Supp. Protest at 18-19.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation’s requirements and evaluation criteria. *Abacus Tech. Corp.; SMS Data Prods. Grp., Inc.*, B-413421 *et al.*, Oct. 28, 2016, 2016 CPD ¶ 317 at 11. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors’ proposals. *Nexant Inc.*, B-417421, B-417421.2, June 26, 2019, 2019 CPD ¶ 242 at 10. Dawson has not made this showing here.

Dawson first argues that the agency’s evaluation of Kupono’s key personnel is unequal because Kupono used blanket statements of certification compliance similar to Dawson, but was not assessed a key personnel subfactor rating of unacceptable. Comments & Supp. Protest at 17-18. However, the record demonstrates that Dawson’s and Kupono’s statements were not similar. Kupono, unlike Dawson, identified each of the required certifications within its proposed key personnel resumes and affirmatively stated in each resume that the proposed key personnel would possess the required clearance by the contract start date.¹⁰ AR, Tab 22, Kupono Technical Proposal at 1, 3.

¹⁰ To the extent Dawson challenges the underlying reasonableness of the agency accepting such statements from Kupono’s key personnel resumes, it has not provided a basis to sustain a protest. An agency may not accept at face value a proposal’s promise to meet a material requirement where there is significant countervailing evidence reasonably known to the agency evaluators that should create doubt whether the offeror can or will comply with that requirement. See *Sealift, Inc.*, B-405705, Dec. 8, 2011, 2011 CPD ¶ 271 at 3. However, here, Dawson has not presented evidence or arguments, significantly countervailing or otherwise, that create doubt as to whether Kupono can timely comply with the key personnel certification requirements.

We find unobjectionable the agency's explanation that Kupono's statements of compliance met the RFP requirements to address each key personnel certification and qualification within the submitted resumes, while Dawson's broad statement in a different section of the proposal addressing another subfactor did not. See Supp. MOL at 6.

Dawson also contends that the agency disparately evaluated proposals where it assessed a high technical risk rating to both offers under the key personnel subfactor, but unevenly assessed an acceptable technical rating to Kupono's proposal, while assessing an unacceptable technical rating to Dawson's proposal. Comments & Supp. Protest at 15-16; Supp. Comments at 3-5. However, the record does not support Dawson's claim. Instead, the record clearly demonstrates that both proposals did not receive the same technical risk rating under the key personnel subfactor. Dawson was assessed a technical risk rating of high risk, while Kupono was assessed a technical risk rating of moderate risk.¹¹ Compare AR, Tab 23, Dawson Technical Evaluation at 1, with AR, Tab 24, Kupono Technical Evaluation at 1. Under the RFP's evaluation scheme, this difference in the technical risk rating made Kupono's proposal eligible to receive a rating of acceptable under the key personnel subfactor, but barred Dawson's proposal from being rated acceptable under this subfactor.¹² See RFP at 83-84.

Dawson further contends that the agency treated Dawson disparately with regard to clarifications. The protester points to the agency's clarifications requests to Kupono regarding its proposed key personnel, in contrast to the agency's failure to seek similar clarifications from Dawson regarding its key personnel. Comments & Supp. Protest at 18-19. The agency responds that it acted reasonably in seeking clarifications from Kupono and not from Dawson, arguing that FAR 15.306(a) allows agencies to seek clarifications from one offeror and not others. Supp. MOL at 13-16.

Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR 15.306(a); *ADNET Sys., Inc., et al.*, B-408685.3 *et al.*, June 9, 2014, 2014 CPD ¶ 173 at 15. Although

¹¹ The protester's argument attempts to conflate the subfactor's technical risk rating with a single statement from Kumpono's evaluation noting that there is a high risk that some proposed personnel will not be able to assume work on day one of the contract start. See AR, Tab 24, Kupono Technical Evaluation at 2; see also Comments & Supp. Protest at 16. This single statement was not reflected in the rating assigned to this subfactor.

¹² Under the RFP's evaluation scheme, a subfactor which received a high technical risk rating could not be assessed a technical rating higher than marginal. See RFP at 83. In addition, any subfactor that received a technical rating of marginal would result in the proposal being ineligible for award. *Id.*

agencies have broad discretion as to whether to seek clarifications from offerors, offerors have no automatic right to clarifications regarding proposals, and such communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.¹³ *Id.*

We find no merit to Dawson's contention that the agency was required to seek clarifications with respect to Dawson's deficient proposed key personnel. As noted above, an agency is permitted, but not required, to obtain clarifications from offerors. Moreover, requesting clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. See *Serco Inc.*, B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 13. As also discussed above, the agency reasonably assessed deficiencies to Dawson's proposed key personnel because the resumes in the proposal failed to contain required information regarding required certifications. The clarifications issued to Kuponon involved confirmation of key personnel qualification information that was present in Kuponon's proposal. Any exchanges between the agency and Dawson would have necessarily concerned the acceptability of Dawson's proposal and would have required that Dawson revise its proposal in some manner, thereby constituting discussions. See FAR 15.306(d). On this record, we find no merit to any of Dawson's allegations of disparate treatment.

Remaining Challenges

Dawson raised additional protest allegations, including challenging the agency's evaluation of Dawson's proposal under the staffing subfactor, and asserting that the agency's technical evaluation should have assessed more strengths to Dawson's proposal. We dismiss these remaining allegations because Dawson, having been found ineligible for award, is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party if it would not be next in line for award if its protest were sustained. *BANC3, Inc.*, B-416486, B-416486.2, Sept. 10, 2018, 2018 CPD ¶ 316 at 9.

We find that Dawson is not an interested party to maintain these remaining allegations because it would not be eligible for award in the event we sustained any of them. As noted above, Dawson's only remaining challenges relate to the evaluation of its own

¹³ As we note above, the RFP informed offerors that the agency intended to make award without conducting discussions. RFP at 69.

proposal. Consequently, even if we found that Dawson's remaining allegations had merit, Dawson would still be ineligible, and Kupono would remain eligible for award. Accordingly, we dismiss the remaining allegations.

The protest is denied.

Thomas H. Armstrong
General Counsel