



Decision

Matter of: Britz & Company

File: B-419163

Date: December 17, 2020

William Britz, Britz & Company, for the protester.
Giovanna Jean-Baptiste, Esq., and Tony A. Ross, Esq., Department of Health and Human Services, for the agency.
Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the record shows that the agency reasonably evaluated the protester's technical proposal, and the agency's consideration of enhancements in evaluating the awardee's proposal was consistent with the solicitation terms.

DECISION

Britz & Company, a small business of Wheatland, Wyoming, protests the award of a contract to Lab Products, Inc., a small business of Seaford, Delaware, under request for proposals (RFP) No. NIMH-20-001641, issued by the Department of Health and Human Services, National Institute for Mental Health, for a quantity of Lenderking marmoset racks, cages, and excreta pans. Britz primarily argues that the agency unreasonably evaluated its proposal as technically unacceptable.

We deny the protest.

BACKGROUND

The RFP was issued as a small business set-aside on March 26, 2020, under the acquisition of commercial items and simplified acquisition procedures of Federal Acquisition Regulation part 12 and subpart 13.5. Agency Report, Tab 3a, RFP at 3. The solicitation called for 60 Lenderking marmoset racks, each with two cages, for a total of 120 cages, and 30 additional excreta pans. AR, Tab 3b, RFP, amend. 1, attach. 6, Question & Answer Follow-Up at 1. This equipment is for the agency's Veterinary Medicine and Resource Branch, which supports investigators who use

animals in their research into the causes, treatment, and prevention of mental health disorders. AR, Tab 3b, RFP, amend. 1 at 8.

Award was to be made on a best-value tradeoff basis considering four evaluation factors: equipment capability, delivery, past performance, and cost/price. AR, Tab 3b, RFP amend. 1 at 3, 5. The non-cost/price factors were significantly more important than cost/price. *Id.* The agency used an adjectival rating scheme of excellent, good, acceptable, marginal, or unacceptable. *Id.*

The offered equipment was to be brand name-or-equal and be compatible with the agency's existing Lenderking marmoset cages; prospective offerors were directed to a purchase description (PD) for a list of the equipment's salient requirements. AR, Tab 3a, RFP, attach. 1, PD at 1-2. Under the equipment capability factor, the only one at issue here, the solicitation instructed that each firm "shall detail" in its technical proposal how it would meet each of the PD requirements. AR, Tab 3a, RFP, amend. 1 at 10. The solicitation stated that each proposal would be evaluated for the ways in which it "meets or exceeds" the PD requirements; "[e]xceeding requirements shall be considered favorably." *Id.*

The PD set forth numerous specific salient requirements for the racks and cages. Among these were that cages be made of stainless steel tubing welded water-tight; that racks be equipped with suspended runners under each cage to hold an excreta pan; and that cages have two perches at two different heights and locations. In addition, the PD generally required that the racks be sufficiently robust to withstand the rigors of mechanical washers. AR, Tab 3a, RFP, attach. 1, PD at 1-2.

The agency received proposals from seven firms by the April 10 closing date. AR, Tab 7, Source Selection Decision (SSD) at 6. The agency evaluated proposals and awarded the contract to Lab Products on June 26. Britz subsequently filed an agency-level protest alleging, among other things, that the agency unreasonably evaluated its proposal and applied unstated solicitation criteria. On August 7, the agency notified offerors that it intended to reevaluate all proposals and write a new source selection decision. AR, Tab 9a, Notice of Corrective Action at 1. The reevaluation yielded the following results with respect to Lab Products and Britz:¹

	Total Price	Equipment Capability	Delivery	Past Performance	Overall Rating:
Lab Products	\$397,702.50	Excellent	Good	Acceptable	Acceptable
Britz	\$296,284.00	Unacceptable	Acceptable	Acceptable	Unacceptable

AR, Tab 7, SSD at 7.

¹ The awardee's proposal was the only one rated acceptable overall.

The contracting officer, acting as the source selection official, considered the merits of each proposal. Under the equipment capability factor, she explained that Lab Products was rated excellent as it proposed equipment that met all of the salient requirements of the brand name product and exceeded the requirements in several respects. *Id.* at 21. The Britz proposal was rated unacceptable because it did not meet several of the salient requirements and the agency was concerned that its equipment might not be sufficiently robust to withstand the rigors of mechanical washers. *Id.* at 16-17. She also noted the good ratings for Lab Products and another firm under the delivery factor, and the acceptable ratings for Lab Products, Britz, and another firm under the past performance factor. *Id.* at 21. She found adequate price competition to establish that Lab Products's price was reasonable,² determined that the firm represented the best value to the government, and again selected the firm for award. This protest followed.

DISCUSSION

Britz primarily raises various challenges to the agency's evaluation of its proposal as technically unacceptable. We have considered all of the allegations raised and find no basis to question the evaluation. We note at the outset that, 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 judgment was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *MacAulay-Brown, Inc., B-417205 et al.*, Mar. 27, 2019, 2019 CPD ¶ 129.

One salient requirement for the racks was that they be made of stainless steel tubing and "welded water tight." AR, Tab 3b, RFP, amend. 1, PD at 1. The agency found that Britz "failed to provide welded watertight stainless tubing," which was critical for the longevity of the rack, the prevention of pest harborage, and the elimination of standing water which contributes to pest harborage and creates an environment where bacteria and molds can grow and adversely impact the animals. AR, Tab 6, Technical Evaluation at 13.

Britz argues that the language in its proposal, "[c]age [f]rame is 1inx1in [s]quare [t]ubing (per spec)" (AR, Tab 4, Revised Britz Proposal at 8), indicates that the tubing would be fully compliant with the terms of the solicitation, and therefore would be welded water-tight. Comments at 9. Britz contends that no manufacturer would produce a cage that was not welded water-tight and the agency should have reasonably assumed that Britz's cage was welded water-tight based on the notation and this common knowledge. *Id.*

Another salient requirement for the racks was that they be equipped with suspended runners under each cage to hold an excreta pan. AR, Tab 3a, RFP, amend. 1, PD, at 2.

² The awardee's price was within \$1,000 of the independent government cost estimate. AR, Tab 7, SSD at 20.

The agency found that Britz stated that there was a mesh floor and an excreta pan, but did not specify that there were suspended runners to hold excreta pans. AR, Tab 6, Technical Evaluation at 13.

Britz argues that the pans have to be held in place by runners because they would otherwise fall to the top of the lower cage or to the floor. Comments at 10. The firm asserts that the agency should have reasonably expected that the pans were held in place by the requisite suspended runners because the pans were called for in Britz's proposal and the agency should have known the pans would be held in place with runners based on past experience with Britz. *Id.*

One of the salient requirements for the cages was:

Cages shall have two, six-inch-wide perches . . . supported by steel angles that run along the front of the cage edge. The first perch shall hang 14" above the cage floor and run from front to rear on either side of the cage. The second perch shall be 12 inches wide, hang 24" above the floor, positioned at the rear of the cage, and run from left to right.

AR, Tab 3a, RFP, amend. 1, PD at 2.³

The Britz proposal contained the language, "[t]wo (2) 6" wide perches made of same materials as sides supported by steel angles 14" above cage floor. Runs front to rear." AR, Tab 4, Britz Proposal at 8. As a result, the agency found that the firm's proposed equipment did not meet the requirement for the first perch to be 14 inches above the cage floor and for the second perch to be 24 inches above the cage floor. AR, Tab 6, Technical Evaluation at 14.

Britz argues that this language from its proposal just repeats the requirements and was to be used as a checklist, and that a drawing in its proposal shows that it met the requirements. Comments at 10.

An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, allows a meaningful review by the procuring agency, and contains all the information necessary to demonstrate its capabilities in response to the solicitation. *Dependable Disposal and Recycling*, B-400929, Feb. 3, 2009, 2009 CPD ¶ 69 at 3 n.6.

³ Britz also argues that the requirements of the solicitation contain an ambiguity with respect to whether the solicitation required two six-inch wide perches or one six-inch wide perch and one 12 inch wide perch. Comments at 10. However, challenges to the terms of a solicitation must be raised prior to the proposal submission due date. Since Britz raised this allegation after award, it is untimely and therefore dismissed. 4 C.F.R. § 21.2(a)(1); *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4.

Clearly-stated solicitation technical requirements are considered material to the needs of the government, so a proposal that fails to conform to such material terms is technically unacceptable and may not form the basis for award. See *UNISSET Co., LLC*, B-411792, Sept. 11, 2015, 2015 CPD ¶ 297 at 3. The record shows that the agency reasonably found that Britz did not clearly meet the salient requirement at issue. While Britz's proposal does display stainless steel tubing (AR, Tab 4, Revised Britz Proposal at 8-9), it does not state or show that the tubing is welded water-tight. *Id.* Similarly, while Britz's proposal displays excreta pans underneath each cage, the proposal does not show or state that the excreta pans are held in place by suspended runners. AR, Tab 4, Revised Britz Proposal at 10. As to the cage perches, Britz's proposal does not indicate that its language concerning two perches 14 inches above the cage floor merely repeated the requirement; in fact, it is contrary to the requirement. Even if its proposal drawing shows the requisite perches, the proposal is, at best, ambiguous as to whether Britz proposed to meet the requirement.

Finally, in connection with the PD's general requirement that the racks be brand name-or-equal, and sufficiently robust to withstand the rigors of mechanical washers, the agency identified as a weakness the fact that the Britz design used a different type of welding from that used in the brand name product. In this regard, the agency explained that its experience led it to conclude that the type of welding Britz proposed was not as durable as that used in the brand name product.⁴ AR, Tab 6, Technical Evaluation at 13.

Britz argues that its welding method is actually superior to that used for the Lenderking cages because Britz's cages have two times the amount of weld as the Lenderking cages. Protest at 2; Comments at 5-7. The agency states that the protester's proposal was assessed a weakness for the tab and spot welding used for its cages. Memorandum of Law at 5-6; AR, Tab 7, SSD at 17. The agency also explains that the Lenderking cages are produced using direct and continuous stitch welding which, in the agency's experience, is more durable than the tab and spot welding Britz proposed to use. *Id.* With respect to durability, the agency explained that the continuous stitch welding used for the Lenderking cages has been shown to survive the rigors of the animal facility and the washing process. *Id.*; Agency's Resp. to GAO's Req. for Information, exh. 2, Technical Evaluation Panel Chair Statement at 1. The agency

⁴ Britz also argues that the agency applied an unstated welding evaluation criterion by assigning this weakness. Comments at 5-6. In light of this robustness requirement, we do not agree. Agencies are not required to identify all areas which might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. *PTSI Managed Services, Inc.*, B-411412, July 20, 2015, 2015 CPD ¶ 236 at 9. In our view, the type of welding on the cages is directly related to their robustness, and is thus reasonably encompassed under the equipment capability factor.

observed that while the Britz method of welding can create strong welds, this strength depends on variables which were not set forth in the proposal. *Id.*

As with the above salient requirements, it was Britz's responsibility to affirmatively demonstrate that its proposal met the requirement to be at least equal to the brand name product and be sufficiently robust. Having chosen to offer a product using a different welding method than the brand name product, it was incumbent on the firm to ensure that its proposal demonstrated its method was equal or superior to that brand name product. While the protester now provides support for its welding method in its pleadings, nothing in its proposal, which did not include a technical narrative, put the agency on notice of this information. As a result, we have no basis to question the agency's evaluation.

Britz also argues that the agency improperly evaluated Lab Products' proposal as having strengths for providing certain enhancements which exceeded the solicitation's salient requirements. Comments at 11-13. The firm argues that the solicitation did not permit enhancements. *Id.* However, the solicitation provided that, under the equipment capability factor, proposals would be evaluated for the way in which the proposed equipment met or exceeded the PD requirements. The solicitation also advised that offers exceeding requirements would be considered favorably. AR, Tab 3b, RFP, amend. 1 at 10. As a result, Britz's allegation is dismissed as lacking a legally sufficient basis. 4 C.F.R. §§ 21.1(c)(4) and (f); *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Finally, Britz argues that the agency was prejudiced against it for filing an agency-level protest. Protest at 1-2; Comments at 9. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Hanford Integrated Infrastructure Servs. Contractor, LLC*, B-418411 *et al.*, Apr. 22, 2020, 2020 CPD ¶ 159 at 18. There is no evidence in the record showing that the agency acted with a specific, malicious intent to harm Britz, and we find that Britz's assertions, made without supporting evidence, are insufficient to meet the high bar necessary to establish bad faith or bias on the part of government personnel.

The protest is denied.

Thomas H. Armstrong
General Counsel