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Decision

Matter of: ISS Action, Inc.

File: B-419469

Date: March 19, 2021

Robert K. Tompkins, Esq., Hillary J. Freund, Esq., and Kelsey M. Hayes, Esq., Holland & Knight LLP, for the protester.

Jeffrey E. Weinstein, Esq., Weinstein Law Group, PLLC, for Montech Inc., the intervenor.

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DIGEST

Protest that contracting agency misevaluated the awardee's proposal as technically acceptable is denied where the record reflects that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

ISS Action, Inc., of Jamaica, New York, a small business, protests the award of a contract to Montech Inc., of Albuquerque, New Mexico,¹ under request for proposals (RFP) No. 89233120RNA000078, issued by the Department of Energy (DOE), National Nuclear Security Administration (NNSA), for security services at the agency's Albuquerque complex campus and the Albuquerque complex project administrative building (currently under construction), which are located on Kirtland Air Force Base, in Albuquerque, New Mexico. ISS argues that DOE misevaluated Montech's proposal as technically acceptable.

We deny the protest.

¹ Montech represented that it was a small business in connection with the RFP. The agency states that a challenge to Montech's size is pending before the Small Business Administration's Office of Hearings and Appeals, and that the agency has left the contract in place pending the outcome. Agency Report (AR) Memorandum of Law (MOL), at 12 n.3.

BACKGROUND

The RFP, issued August 5, 2020, sought proposals from woman-owned small businesses to provide a range of security services. As described more in an accompanying performance work statement (PWS), the contractor's duties included providing security program planning, physical security, protective force, alarm monitoring and response, security management and supervision, access control, security officer and visitor control specialist training, security patrols, implementing and maintaining appropriate staffing for all positions, non-security emergency response, plans and procedures development and implementation, alarm monitoring station, visitor control and secure credential issuance and control, and other duties as required. AR, Tab 2.C, RFP amend. 1 attach. 1 (Revised PWS) at 4.

The RFP contemplated award of a contract to the offeror submitting the lowest-priced, technically acceptable proposal. AR, Tab 2.B., RFP amend. 1 appx. 1 at 8-10. The contract would be performed over a 1-year base period, four annual options, and an extension-of-services option for up to 6 months. *Id.*

Technical acceptability would be assessed under a single technical capability criterion comprised of three subcriteria: security requirements, personnel qualifications, and staffing approach. *Id.* at 11-12. The security requirements subcriterion assessed whether the offeror had an active facility clearance code for itself and for all subcontractors. *Id.* at 12. The personnel qualifications subcriterion assessed whether the offeror's proposed key personnel possessed the required qualifications for their positions of project manager and training manager. *Id.* Finally, the staffing approach subcriterion assessed whether the proposal had addressed "all minimum required elements listed under [RFP] Section L, NNS-L-1003 -- VOLUME II -- TECHNICAL CAPABILITY INSTRUCTIONS (b)(3)(i) and (b)(3)(ii)[.]" AR, Tab 2.B, RFP amend. 1 appx. 1 at 12. DOE acknowledges that there was no instruction (b)(3)(ii) in section L of the RFP, so the evaluation was limited to assessing compliance with instruction (b)(3)(i). MOL at 7 n.1. In section L, paragraph (b)(3)(i) of the instructions directed each offeror to explain its approach to recruitment and backfill of personnel as needed during contract performance by describing the offeror's specific resources, vetting processes, and timeframes to recruit and backfill personnel for each labor category. AR, Tab 2.B, RFP amend. 1 appx. 1 at 8.

DOE received proposals from ISS, Montech, and seven other offerors. MOL at 8. Both ISS and Montech were evaluated as acceptable under all three technical subcriteria. DOE then determined a total evaluated price for each firm's proposal. Montech's price was the lowest at \$12.5 million, while ISS's was \$12.6 million. *Id.* at 9; AR, Tab 7.A, Technical Evaluation Report at 7. After reviewing the evaluation, the contracting officer selected Montech for award as the lowest-priced technically acceptable offeror. ISS received a debriefing, and this protest followed.

DISCUSSION

ISS contends that because Montech lacks experience in the area of supplying protective services, it submitted an unacceptable technical proposal that DOE misevaluated as acceptable. In particular, ISS alleges that Montech's proposal was unacceptable under both the personnel qualifications subcriterion and the staffing subcriterion. ISS maintains that any reasonable evaluation would have recognized that Montech's lack of experience in providing protective force services resulted in multiple unacceptable elements, and an overall unacceptable technical proposal. DOE contends that the evaluation was reasonable and that the award to Montech was proper.

We have reviewed ISS's challenges to the evaluation of Montech's proposal under both the personnel qualifications and staffing subcriteria, and the record demonstrates that DOE had a reasonable basis for the evaluation of Montech's proposal as acceptable. Additionally, even if Montech's project manager's résumé did not clearly meet the applicable experience minimum, ISS has not shown that it was competitively prejudiced by a waiver of that requirement.

Under the personnel qualifications subcriterion, ISS raises two challenges: that Montech's project manager lacks the necessary authority to act on the company's behalf, and that the candidate lacks 5 years of comparable experience that the RFP required for that position. With respect to the project manager's authority, ISS notes that Montech's proposed project manager has been an employee of the incumbent contractor. ISS contends that Montech's proposal does not indicate that the project manager will be employed directly by Montech, but instead suggests that he will continue employment with the incumbent. Protester's Comments at 4. Although Montech proposed the incumbent contractor as a subcontractor, ISS contends that Montech's approach will mean that the project manager will necessarily lack the authority to act on behalf of Montech, thereby making the proposed technical approach unacceptable. *Id.*

In response, DOE acknowledges that the PWS stated that the contractor's project manager was to be responsible for ensuring adequate and timely performance of the work, and had to "have the authority to act on the behalf of the Contractor on all matters relating to the daily operation of the contract." Supp. MOL at 12 (quoting AR, Tab 2.C, Revised PWS, at 8-9). The agency argues that the RFP did not require offerors to discuss the basis for the project manager's authority; rather, the PWS established that the person proposed for that role, in effect, was thereby delegated the authority to act on behalf of the contractor. Supp. MOL at 12.

A contracting agency is afforded discretion in technical evaluations because it bears the burden of any difficulties incurred because of a defective evaluation. Our Office will question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the evaluation criteria. *Sherikon, Inc.; Tech. Mgmt. & Analysis Corp.*, B-256306 *et al.*, June 7, 1994, 94-1 CPD ¶ 358 at 8.

Our review of the record shows that Montech's proposal indicates that "Team Montech" will employ the project manager, without specifying which team member. AR, Tab 5, Montech Technical Proposal, at 12. However, even assuming that this ambiguity supports ISS's contention that the project manager will continue to be employed by the subcontractor, accepting that claim does not mean that DOE's evaluation of Montech's technical approach was unreasonable. To the contrary, the RFP did not require that the project manager be a direct employee of the offeror itself, and ISS has not shown that Montech would be unable to delegate authority to act on its behalf to an employee of its subcontractor. Accordingly, we conclude that this aspect of the evaluation was neither unreasonable nor inconsistent with the solicitation.

ISS's second challenge under the personnel qualifications subcriterion argues that the résumé for Montech's project manager does not show that the individual has at least the 5 years of experience that the RFP required for that position. The RFP required the project manager's minimum experience to reflect DOE protective force--or comparable--experiences in management, supervision, and implementation of a protective forces contract or contracts. ISS argues that the project manager's résumé in Montech's proposal shows that the project manager candidate has been working on the incumbent contract for a total of 15 years, but as a contract manager, and has not been a project manager for at least 5 years. Protester's Comments at 5.

DOE responds that the agency reviewed the résumé for Montech's proposed project manager and expressly concluded that it showed that the candidate's experience far exceeded the 5-year experience requirement in the RFP. Although ISS takes issue with the title listed in the candidate's résumé (contract manager), the agency contends that both the individual and Montech's training manager "occupied these same positions under the current incumbent contract and under predecessor contracts."² Supp. MOL at 12. The agency contends that the judgment of the evaluators in this regard was reasonable, and that it properly evaluated Montech's proposal as acceptable under the personnel qualifications subcriterion. *Id.* at 14.

Our review of the record shows that the agency determined that Montech's proposed project manager was acceptable because the candidate exceeds the minimum of 5 years of comparable or direct experience by having 14 years "as both a Project Manager and Training Manager for DOE NNSA for various Protective Force contracts." AR, Tab 7.A, Technical Evaluation Report at 23. The agency also noted that during those 14 years, the candidate "provided Protective Force Manager services where he supervised up to 20 Protective Force Security Officer's, three Visitor Control Badge Officers and 1 Training Manager[,] and also served 20 years in the Air Force gaining "comparable work experience and training with multiple leadership and management roles." *Id.*

² DOE asserts that the contract manager position identified in the résumé "was in fact the [project manager] position ('Project/Contract Manager') as earlier noted in the resume." Supp. MOL at 14.

Based on our review, the record supports DOE's evaluation of Montech's project manager as acceptable. The RFP required the agency to make judgments in determining whether at least 5 years of the proposed project manager's career showed comparable experiences in management, supervision, and implementation of a protective forces contract. The judgment that Montech's candidate, who the agency deemed had filled the same role (albeit by a different name) in both the incumbent contract and the predecessor contract, thus met that requirement was reasonable.

Even if we agreed with ISS that the résumé did not clearly show that the candidate had 5 years of the required experience, the record would not justify sustaining ISS's protest. In this regard, ISS has not demonstrated that it was competitively prejudiced from what would, in essence, be a waiver of the minimum experience requirement. Competitive prejudice is an essential element of a viable protest, so where a 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. To demonstrate competitive prejudice where an agency has allegedly waived a minimum experience requirement for key personnel, the protester must show how it would have benefitted from the same waiver; that is, how its proposal would have differed. *Brown & Root, Inc. & Perini Corp.*, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 10-11.

ISS has not shown prejudice here, and instead contends that it was prejudiced because it would have received the contract if DOE had rejected Montech's proposal. We disagree. ISS has not shown how it could have benefitted by a waiver of the 5-year experience requirement for its own project manager. Altogether, we deny ISS's challenges to the evaluation of Montech's proposal as acceptable under the personnel qualifications subcriterion.

ISS next argues that under the staffing subcriterion, Montech's proposal was misevaluated as acceptable despite lacking adequate approaches to recruiting and retaining qualified personnel, vetting prospective hires, and defining its timeframe for recruiting and backfilling personnel. ISS contends that instead of providing the required information, Montech's proposal claimed that the firm had the required knowledge and ability to fill positions based primarily on an internal resource pool of pre-vetted candidates. That claim should have been rejected, ISS argues, because Montech has no history of providing similar services, and thus could not have a usable internal pool of candidates, or knowledge of how to vet and hire personnel to perform protective services for DOE. Protest at 8; Protester's Comments at 7-8.

DOE argues that its evaluation of Montech's staffing reasonably determined that the firm's proposal was acceptable. The agency argues that both ISS and Montech proposed to capture incumbent personnel, and that Montech further identified an internal resource pool to provide candidates without delay, which Montech proposed to supplement with specific recruiting websites, industry-specific networks, and local job boards where necessary. Supp. MOL at 15. The agency also notes that specific experience recruiting for protective forces personnel was not required by the RFP, and that Montech successfully recruited personnel for other NNSA contracts for various other types of services--and that the incumbent contractor, proposed here as a

subcontractor to Montech, clearly had staffing resources for the protective force contract. *Id.* Further, the agency notes that Montech submitted a detailed approach to vetting candidates that included reviewing résumés, screening candidates' responses to technical questions, and then screening candidates through an interview. *Id.* at 16-17. The agency also argues that Montech provided details about the timeframe to on-board personnel after award, and its ability to fill positions quickly using a database of pre-vetted and cleared candidates. *Id.* at 18-19. The agency contends that the evaluators reasonably assessed Montech's proposal as acceptable under the staffing subcriterion.

Our review of the record shows that DOE exercised reasonable evaluation judgment in determining that Montech's proposed approach to staffing was acceptable. In this regard, the RFP directed offerors to "address[] all minimum required elements listed" in instruction (b)(3)(i) of RFP section L. AR, Tab 2.B, RFP amend. 1 appx. 1 at 12. In responding, the offeror was to describe its approach to recruitment and backfill of personnel, and specifically the resources, vetting processes, and timeframes to recruit and backfill personnel for each labor category. *Id.* at 8. Montech's proposal addressed each of these elements. Although ISS questions whether Montech's proposal was credible because Montech itself lacked experience in providing personnel for a protective force contract, it does not show that Montech's approach failed to address the required elements, departed from the RFP requirements, or was otherwise unacceptable. In short, the protester's arguments do not show that DOE's judgment was unreasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel