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Decision

Matter of: Vet Industrial Inc.

File: B-419966

Date: October 6, 2021

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Brian A. Darst, Esq., Brian A. Darst Attorney At Law, for Environet, Inc., the intervenor.

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April Y. Shields, Esq., and Christina Sklarew, 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's best-value tradeoff decision was reasonable and consistent with the terms of the solicitation, and dismissed where protester is not an interested party to raise other challenges because, even if successful, the firm would not be next in line for award.

DECISION

Vet Industrial Inc., of Bremerton, Washington, protests the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) construction contracts to six firms¹ under request for proposals (RFP) No. N44255-18-R-5003, issued by the Department of the Navy, Naval Facilities Engineering Systems Command, for new construction, repair, alteration, demolition and renovation work. The protester challenges various aspects of the agency's evaluation and best-value tradeoff decision.

We deny the protest in part and dismiss it in part.

¹ The six successful firms were identified as: Advanced Technology Construction Corporation, of Tacoma, Washington; Environet, Inc., of Kamuela, Hawaii; I.E. Pacific, Inc., of Escondido, California; SeaPac Engineering, Inc., of Los Angeles, California; Shape Construction Inc., of Poulsbo, Washington; and Veterans NW Construction, of Seattle, Washington. Protest, exh. 6, Award Notice at 1; Agency Report (AR), exh. 12, Source Selection Authority Decision Document (SSADD) for Phase Two at 3.

BACKGROUND

On March 28, 2019, the agency issued the RFP as a set-aside for service-disabled veteran-owned small businesses and historically underutilized business zone businesses. The RFP sought contractors to provide new construction, repair, alteration, demolition and renovation work for facilities primarily in the Naval Facilities Engineering Systems Command Northwest area of responsibility. The RFP contemplated the award of up to six multiple-award IDIQ construction contracts, each for a base year and four 1-year option periods, under which fixed-price task orders would be issued. The maximum total value of the contracts to be awarded was \$240 million. AR, exh. 1, RFP at 1, 3; AR, exh. 2, RFP amend. 8.²

The RFP established a two-phase process;³ only phase two is relevant to this protest. In phase two and in making the award decision, the agency would consider price, past performance,⁴ and three technical factors: corporate experience, safety, and technical solution.⁵ The three technical factors were approximately equal to each other and, when combined, were approximately equal to past performance. The four non-price factors (the three technical factors and past performance), when combined, were approximately equal to price. Award was to be made on a best-value tradeoff basis. RFP at 9; RFP amend. 8 at 2.

Under the price evaluation factor, the RFP instructed offerors to propose prices based on a “seed project,” which was also to be the first task order, for repairing heating systems. The RFP also provided that the agency would evaluate proposals to determine fair and reasonable pricing using techniques such as comparison of proposed prices to each other and to the independent government estimate. RFP amend. 8 at 2-3, 8.

On or before the April 2, 2021 closing date for phase-two proposals, the agency received proposals from 14 offerors. The agency evaluated the proposals from Vet Industrial and the six awardees as follows:

² The agency amended the RFP 16 times. All citations are to the Adobe PDF page numbers of the documents provided in the record.

³ Advancement from phase one to phase two was based on the evaluation of another non-price factor, technical approach, on an acceptable or unacceptable basis. RFP at 9.

⁴ For the past performance factor, proposals were assigned confidence ratings of substantial, satisfactory, or neutral confidence.

⁵ For these three technical factors, proposals were assigned adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. Proposals could also be assessed strengths and weaknesses.

	Overall Technical	Past Performance	Price
Advanced Technology Construction Corporation	Good	Satisfactory Confidence	\$4,495,558
Environet	Acceptable	Satisfactory Confidence	\$3,446,610
I.E. Pacific	Good	Substantial Confidence	\$4,687,000
SeaPac Engineering	Good	Substantial Confidence	\$4,475,000
Shape Construction	Good	Substantial Confidence	\$4,240,803
Veterans NW Construction	Good	Substantial Confidence	\$4,494,500
Vet Industrial	Good	Substantial Confidence	\$5,967,576

AR, exh. 12, SSADD for Phase Two at 2; see *also* AR, exh. 10, Source Selection Evaluation Board (SSEB) Phase Two Report; AR, exh. 11, Source Selection Advisory Council (SSAC) Phase Two Report.

Based on the evaluation reports from the SSEB and the SSAC, as well as “a comparative assessment of the proposals” and his “independent judgment,” the Source Selection Authority (SSA) selected six proposals for award as presenting the best value to the government. The Source Selection Authority (SSA) also selected Environet to be issued the first task order. AR, exh. 12, SSADD for Phase Two at 3.

Of note, the SSA’s decision considered the agency’s price evaluation, which included a comparison of the proposed prices to each other and to the independent government estimate.⁶ The agency’s price evaluation also included a ranking of the 14 proposals from lowest to highest price; Vet Industrial’s proposal was ranked 13th, as it proposed the second-highest price. The evaluators also noted that eight of the 14 proposals fell below the calculated mean and were less than \$5 million, compared to the six higher-priced proposals, which were above the calculated mean and above \$5 million. AR, exh. 10, SSEB Phase Two Report at 28. The SSA further noted that all of the prices were found to be reasonable and that the solicitation provided for the award of up to six contracts. AR, exh. 12, SSADD for Phase Two at 3.

The SSA noted that the six proposals selected for award were all assigned overall technical ratings of acceptable or higher, and were the lowest in price. The SSA also

⁶ The independent government estimate was \$2,600,806. AR, exh. 10, SSEB Phase Two Report at 28.

asserted that “[n]one of the strengths found by the SSEB and SSAC for higher cost offerors justifi[es] paying the higher price.” AR, exh. 12, SSADD for Phase Two at 3.

The agency notified Vet Industrial of its award decision on June 17, 2021. This protest followed.

DISCUSSION

Vet Industrial argues that the agency’s award decisions were flawed because they were inconsistent with the basis for award established in the solicitation and not adequately justified. Primarily, the protester argues that the agency’s award decisions reflect a lowest-price, technically acceptable source selection methodology, instead of the best-value tradeoff analysis provided for in the solicitation. The protester also challenges the selection of Environet to receive one of the awards. Protest at 10-14; Comments at 1-9.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. *Client Network Servs., Inc.*, B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9. In reviewing an agency’s source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement statutes and regulations. *The SI Org., Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14. A protester’s disagreement with the agency’s judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. *VT Griffin Servs., Inc.*, B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Our review of the record shows that Vet Industrial’s contentions here are without merit. As noted above, the terms of the solicitation provided that price was approximately equal to the four non-price factors, combined; in other words, as the agency points out, price was the single most important evaluation factor. RFP at 9; RFP amend. 8 at 2; Memorandum of Law (MOL) at 6 n.3. Vet Industrial’s focus on the agency’s ranking of the proposals from lowest to highest price, and the selection of the multiple awardees that proposed the lowest prices, does not support the protester’s view that the agency improperly used a lowest-price, technically acceptable methodology.

In our view, the agency’s price evaluation, which included comparison of the proposed prices to each other and the independent government estimate, was consistent with the terms of the solicitation and was properly considered by the SSA in the award decision. See AR, exh. 10, SSEB Phase Two Report at 28; AR, exh. 12, SSADD for Phase Two at 3; see also AR, exh. 17, SSA Declaration at 2 (further explaining that the SSA reviewed the price evaluation, which noted “a natural break point in prices” where eight offerors proposed prices of less than \$5 million and six offerors proposed prices of greater than \$5 million).

Moreover, Vet Industrial's contention that the award decision was not adequately justified reflects its disagreement with the agency's judgment. The record shows that the SSA considered the evaluation reports from the SSEB and the SSAC; "a comparative assessment of the proposals"; and his "independent judgment," in making the award decision. AR, exh. 12, SSADD for Phase Two at 1. The SSA noted that the six proposed awardees were the lowest in price and assigned overall technical ratings of acceptable or higher, and, more importantly, that "[n]one of the strengths found by the SSEB and SSAC for higher cost offerors justif[ies] paying the higher price." *Id.* at 3; see *also* AR, exh. 17, SSA Declaration at 1-2.

In this regard, while Vet Industrial challenges the selection of Environet for award, it fails to establish that the agency's selection as supported by the record was not, as the agency puts it, "within the bounds of a reasonable decision." MOL at 10. While Vet Industrial is correct in noting that its own proposal received a higher rating than Environet's under each non-price evaluation factor, the protester's complaint ignores the SSA's conclusion that none of the strengths identified in the higher-priced proposals, including Vet Industrial's, merited paying the associated price premium. In this regard, the protester's reliance on adjectival ratings, alone, to challenge the agency's ranking of proposals and to argue that the Navy did not base its source selection on a best-value tradeoff analysis, is misplaced. See, e.g., *Valiant Gov't Servs., LLC*, B-416488, Aug. 30, 2018, 2018 CPD ¶ 311 at 3 (agency may not rely on adjectival ratings to determine which proposal offers the best value).

Moreover, the agency points out that the protester's various filings to our Office fail to specifically contest the selection of the other five awardees. MOL at 10. We note that Vet Industrial and four of the awardees received equal overall technical ratings and past performance ratings; we also note that, under the agency's price evaluation ranking discussed above, Vet Industrial proposed the second-highest price and was ranked 13th out of the 14 offers received. AR, exh. 12, SSADD for Phase Two at 2.

Under these circumstances, and based on the record, we find no basis to object to the agency's best-value tradeoff decision. This protest ground is denied.

Interested Party Status

Prior to submitting the agency report, the agency asked that we dismiss this protest, arguing that Vet Industrial was not an interested party as it was not next in line for award. See *generally* Req. for Dismissal. While we agreed at the time that some of the protest grounds were procedurally deficient, we declined to fully grant the agency's request. See, e.g., *DMS Int'l*, B-409933, Sept. 19, 2014, 2014 CPD ¶ 278 at 6 (explaining where, prior to receipt of the agency report, we declined to dismiss a protest based on a challenge to the protester's interested-party status, because "a fair reading of [the] protest included a challenge to the tradeoff methodology"). Having addressed Vet Industrial's relevant arguments regarding the agency's best-value tradeoff decision methodology, above, we now agree that dismissing the remainder of Vet Industrial's

protest grounds is appropriate because the firm is not an interested party to pursue the remainder of its protest.

An offeror is an interested party if it is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1); *DMS Int'l, supra* at 6-7. A protester is not an interested party if it would not be next in line for award if we were to sustain its protest. *Resource Title Agency, Inc.*, B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9.

Even were we to sustain Vet Industrial's specific complaints about the award to Environet, other offerors, and not Vet Industrial, would be next in line for award. Consequently, Vet Industrial is not an interested party to pursue the remainder of its protest, such as its arguments that the agency's evaluation of Environet's proposal was unreasonable or that "the non-price factors overwhelmingly favor [the p]rotester over the first ranked proposal." Protest at 11.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel