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Decision

Matter of: SECO Systems, Inc.
File: B-404905.3; B-404905.4
Date: October 4, 2011

Howell Roger Riggs, Esq., Government Contract Solutions, LLC, for the protester. Leigh Ann Bunetta, Esq., General Services Administration, for the agency. Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the exclusion of the protester's proposal from the competitive range is denied where the agency reasonably found that the protester's proposal was not among the most highly-rated offers.

DECISION

SECO Systems, Inc., of Huntsville, Alabama, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. GS-08P-11-JE-D-0006, issued by the General Services Administration (GSA), Public Buildings Service (PBS), for administrative and technical support services for GSA's Rocky Mountain Region.

We deny the protest.

BACKGROUND

PBS provides workspace for millions of federal employees in government-owned buildings and privately-owned, leased facilities across the nation. Agency Report (AR) at 2. In addition, PBS repairs, alters, renovates, and maintains these facilities. Id. PBS's Rocky Mountain Region leases, manages, and owns 650 properties in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Id.

The RFP, issued as a service-disabled, veteran-owned small business set-aside, provides for the award of an indefinite-delivery/indefinite-quantity contract for administrative and technical support services for the Rocky Mountain Region for a base period and four option years. The RFP provides that award will be made on a

best value basis, considering price and four non-price factors: key personnel qualifications/experience; past performance; staffing plan; and management and quality control plan. RFP at 202. The RFP provided that the non-price factors were equally weighted, and when combined, were significantly more important than price. Id.

With regard to the key personnel qualifications/experience factor, the RFP instructed offerors to submit three personal references for each of the following key personnel: program manager, contract administrator, and human resources manager. RFP amend. 3 at 205. With regard to the past performance factor, the RFP required offerors to identify two projects completed within the last five years that demonstrate, among other things, the “ability to provide quality and timeliness of services on multi-functional support services contracts of very similar scope, complexity and size,” and to have, for each project, at least two references submit completed questionnaires directly to the agency. In this regard, offerors were advised that only the prime contractor’s past performance would be considered. Id.

GSA received 23 offers, including a proposal from SECO.¹ The proposals were evaluated by the agency’s source selection evaluation board (SSEB). The SSEB assigned a numeric rating for proposals under each non-price evaluation factor. Proposals were rated on a 5-point scale as either: 1 (poor), 2 (marginal), 3 (satisfactory), 4 (very good), or 5 (exceptional). See AR, Tab 7, Source Selection Plan, at 14-18. The SSEB’s ratings were supported by narratives that discussed applicable strengths, deficiencies or weaknesses. See AR, Tab 12, SSEB Initial Summary and Final Report.

The SSEB recommended to the contracting officer (CO) that the agency establish a competitive range of the proposals of the five most highly-rated offerors and hold discussions with those firms. Id. at 41. SECO’s proposal was ranked 19th among the 23 offers received. The proposals of the five most highly-rated offerors and SECO were evaluated as follows:

¹ Following the receipt of proposals and prior to the consensus evaluation by the source selection evaluation board, the agency initially determined that the proposals of 10 offerors, including SECO, were “nonresponsive” to the solicitation and rejected those proposals. Following several agency-level protests, the agency clarified aspects of some of the proposals and determined that the proposals of 6 offerors, including SECO, would be included in the evaluation of proposals. AR, Tab 13, Competitive Range Determination Memorandum, at 2.

	Numeric/Adjectival Rating	Evaluated Price
Offeror A	4 (very good)	\$19.04 million
Offeror B	4 (very good)	\$19.76 million
Offeror C	4 (very good)	\$20.48 million
Offeror D	4 (very good)	\$34.28 million
Offeror E	3.75 (satisfactory)	\$19.99 million
SECO	2.75 (marginal)	\$34.79 million

Id. at 4; see also AR, Tab 13, Competitive Range Determination Memorandum, at 9. SECO's 2.75/marginal rating reflected the SSEB's judgment that, although SECO's proposal had some strengths, it also had a number of deficiencies and weaknesses. For example, under the key personnel qualifications/experience factor, the SSEB noted as a strength that SECO's proposed program manager was [Deleted], and that all its proposed key personnel had significant government experience. AR, Tab 12, SSEB Initial Summary and Final Report, at 30. The SSEB also noted as a deficiency under this factor that SECO's key personnel were [Deleted] and that the agency had not received past performance references for two of SECO's key personnel (its contract administrator and human resources manager). Id.

Under the past performance factor, the SSEB identified no strengths, but noted as a deficiency that only one past performance reference was received for each of the projects referenced, where two were required for each. Id. The agency also noted that, although SECO identified two projects for its past performance, only one of the projects was performed by SECO. The other project was performed by SECO's subcontractor, and, under the evaluation scheme here, this project could not be considered in evaluating SECO's past performance. RFP amend. 3 at 205; AR, Tab 12, SSEB Initial Summary and Final Report, at 30. The SSEB also noted as weaknesses that the questionnaire provided for SECO's project did not contain any narrative supporting the rating assigned to SECO's past performance, and that the small size of this project failed to demonstrate that SECO had experience with similar projects. Id.

The CO reviewed the technical and price evaluations and agreed that the five most highly-rated offers should be included in the competitive range. AR, Tab 13, Competitive Range Determination Memorandum, at 16. The CO also agreed that SECO's substantially lower-rated, marginal proposal should be excluded from the competitive range. Id. at 10. In this regard, the CO noted that SECO's proposed price of \$34.8 million dollars was substantially higher than all but one of the competitive range offerors' proposed prices. The CO also concluded that the higher technical ratings of the one competitive range offeror whose proposed price was slightly less than SECO's, justified including this offeror's proposal within the competitive range. Id. at 15.

Following notification of the exclusion of its proposal from the competitive range and a discussion with the CO concerning the exclusion, SECO filed this protest with our Office.

DISCUSSION

SECO challenges its exclusion from the competitive range, complaining that GSA applied unstated evaluation criteria.² Specifically, SECO states that the CO told SECO that GSA was looking for “over and above strengths,” which SECO’s proposal did not provide. SECO also complains that GSA downgraded SECO’s proposal because the price proposal did not provide a narrative discussion, and because SECO’s key personnel were [Deleted].

GSA responds that SECO’s proposal was not excluded from the competitive range for the reasons identified by the protester. Rather, GSA states that SECO’s proposal was not included in the competitive range because SECO’s proposal failed to satisfy a number of solicitation requirements. AR at 7. For example, GSA notes that, contrary to the RFP, SECO did not provide references for two of its key personnel, that is, its contract administrator and human resources manager. GSA also notes that SECO only identified one project that it performed, although the RFP required the identification of two projects. In addition, GSA notes that this project did not demonstrate experience with projects of similar scope, complexity, and size. Id. at 8. Furthermore, the agency notes that, contrary to the RFP’s requirements, SECO only submitted one reference (and not two) for the project it identified for its own past performance. Id.

Our Office will review an agency’s evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation § 15.306(c)(1); D&J Enter., Inc., B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2. In this regard, a protester’s mere disagreement with an agency’s evaluation and competitive range judgment does not establish that the agency acted unreasonably. SPAAN Tech, Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 9.

Here, the record establishes no reasonable possibility that SECO’s proposal would be considered to be among the most highly rated offers, even accepting the protester’s arguments concerning its price proposal and key personnel. As noted

² SECO does not challenge the agency’s evaluation of the proposals included in the competitive range.

above, the agency determined that, contrary to the RFP's requirements, SECO failed to provide references for two of its key personnel and failed to identify two projects for its past performance. AR, Tab 13, Competitive Range Determination Memorandum, at 9-10. SECO does not challenge the agency's determination in this regard. Instead, SECO's arguments focus upon the two statements in the competitive range determination memorandum that it contends are unreasonable.³ Even accepting SECO's arguments, however, SECO's proposal failed to satisfy all of the RFP's requirements. We cannot say based upon this record that SECO's proposal should have received higher than a marginal rating, given the proposal's material deficiencies. Furthermore, SECO's proposal was substantially higher priced than all but one of the offers included in the competitive range, and the one offer that was slightly lower priced was rated significantly higher technically.

In short, although SECO disagrees with the CO's competitive range judgment, the protester has failed to show that the agency unreasonably concluded that SECO's proposal was not among the most highly rated offers for inclusion in the competitive range.⁴

The protest is denied.

Lynn H. Gibson
General Counsel

³ SECO also alleges that the CO, in her discussion with the protester concerning the exclusion of SECO's proposal from the competitive range, informed SECO that the CO was looking for "over and above strengths." Protest at 3. GSA contends that SECO misinterpreted the CO's statement. The protester did not specifically respond to the agency's contention, and we therefore find no support for SECO's arguments in this regard.

⁴ SECO also complains that GSA should have communicated with SECO with regard to the agency's concern that SECO's proposed key personnel were [Deleted]. Supp. Comments at 2-3. We need not address this argument, because, as noted above, SECO's proposal was reasonably excluded from the competitive range, even accepting SECO's arguments concerning its key personnel.