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Decision

Matter of: NSR Solutions, Inc.

File: B-406337; B-406337.2

Date: April 18, 2012

Janice Davis, Esq., Davis & Steele, for the protester.
Karen M. Reilley, Esq., National Aeronautics and Space Administration, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest objecting to exclusion of proposal from competitive range is denied where agency reasonably determined that proposal failed to demonstrate a comprehensive understanding of, and sound approach to meeting, solicitation requirements, and thus was unacceptable.

DECISION

NSR Solutions, Inc., of Rockville, Maryland, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. NNJ11373245R, issued by the National Aeronautics and Space Administration (NASA) for custodial services at three NASA facilities (the Johnson Space Center, Ellington Field, and the Sonny Carter Training Facility) in Houston, Texas.¹ The protester argues that the evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The solicitation, which was set aside for Historically Underutilized Business (HUB) Zone small businesses, contemplated the award of a fixed-price contract for a

¹ Services to be furnished under the RFP include facilities cleaning, recycling, solid waste removal, pest control, hurricane preparation, emergency services, and special events.

45-day phase-in period, 5-month base period, and four 1-year options. The RFP provided that proposals would first be evaluated for technical acceptability against four subfactors (management approach, labor relations plan and total compensation, phase-in plan, and safety/health plan); proposals determined to be technically acceptable or potentially acceptable would then be evaluated based on past performance and price, and award made to the offeror whose proposal represented the best value to the government. The RFP advised that for a proposal to be rated as technically acceptable, it had to pass all of the technical acceptability subfactors; the solicitation also advised that a rating of unacceptable under any of the subfactors would preclude a rating of potentially acceptable.

The protester and several other offerors submitted proposals. An evaluation panel evaluated the proposals and assigned the protester's proposal ratings of unacceptable under the management approach, phase-in plan, and safety/health plan subfactors and a rating of potentially acceptable under the labor relations and total compensation subfactor, leading to an overall technical rating of unacceptable. By letter of December 12, 2011, the agency notified the protester that its proposal had not been included in the competitive range. NSR timely requested a pre-award debriefing, which the agency furnished on January 11, 2012. NSR protested to our Office on January 17, challenging the agency's evaluation of its proposal as unacceptable under each of the management approach, phase-in plan, and safety/health subfactors.²

DISCUSSION

The evaluation of technical proposals is a matter within the discretion of the contracting agency, and in reviewing protests of an agency's evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation. CMI Mgmt., Inc., B-402172, B-402172.2, Jan. 26, 2010, 2010 CPD ¶ 65 at 2. It is well settled that a technically unacceptable proposal cannot be considered for award, and thus properly may be excluded from the competitive range. TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 4. As discussed below, the agency reasonably found the protester's proposal technically unacceptable and properly excluded it from the competitive range.

² NSR also objects to the composition of the agency evaluation panel, arguing that two of the three evaluation team members lacked sufficient technical expertise to ensure a comprehensive evaluation of proposals. We dismiss this complaint as failing to state a legally sufficient basis for protest. The composition of a technical evaluation panel is within the discretion of the contracting agency, and absent evidence of bad faith, bias, or conflict of interest, none of which has been alleged, let alone shown, here, we will not question the agency's choice of evaluators. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588 at 3.

Regarding the management approach subfactor, the RFP instructed offerors to submit a management plan describing, among other things, their organizational structure; subcontract management approach; plans for scheduling work, allocating budgetary resources, and completing tasks; and processes for planning, estimating, authorizing, and executing ordered services. The solicitation also instructed that the management plan should state whether the proposed project manager would be 100-percent dedicated to the contract, and, if not, describe how the contract requirements would be met in the program manager's absence.

The evaluation team assigned NSR's proposal a rating of unacceptable under the management approach subfactor, finding that the protester's management plan was "not reasonable and sound" and that it failed to demonstrate a comprehensive understanding of the solicitation's requirements. Technical Acceptability Evaluation Worksheet at 1. In this regard, the evaluators found the protester's description of its organizational structure to be internally inconsistent, noting, for example, that NSR had indicated in its narrative, but not in its organizational chart, that its project manager would report to NSR's president. Additionally, the evaluators noted that NSR's organizational chart indicated that its supervisors would report to the assistant project manager instead of the project manager; it was not clear whether the position of CEO in its organizational chart was to be filled by the CEO of the prime contractor or the CEO of its major subcontractor; and that NSR identified a regional manager in its organizational chart, but furnished no description of the position in its narrative.

The panel also questioned the protester's representation in its proposal that its project manager would be 100-percent committed to the contract. In this regard, the evaluators noted that NSR's proposal indicated that the project manager position was "staffed for the majority of normal campus hours", which, according to the evaluators, indicated "either a potential 'figurehead' position, or someone who might be traveling and performing other duties for the Offeror." Technical Acceptability Evaluation Worksheet at 1, citing Protester's Proposal, Vol. I (Management Plan), at 8. The evaluators further found that the protester had failed to explain its relationship to its major subcontractor and to describe a unified approach to work planning, work authorization, scheduling, and completion of tasks.

The protester disputes these findings, arguing that (1) the failure of its organizational chart to depict a connection between the project manager and NSR's president was a minor oversight; (2) there was no inconsistency between its narrative, which indicated that its supervisors would report to the project manager, and its organizational chart, which showed them reporting to the assistant project manager, because the assistant project manager acts for the project manager in his absence; (3) it was obvious that the position of CEO in its organizational chart was to be filled by the CEO of its principal subcontractor since the organizational chart also included the position of "president", which clearly referred to NSR's president/CEO; and (4) the evaluators relied on an unstated evaluation criterion in

attributing a weakness to its proposal for its failure to furnish a description of the regional manager position given that the solicitation did not require such a description.

The protester further argues that there was no basis for the agency to question whether its project manager was 100-percent committed to the contract based on the statement in its proposal that the position was to be staffed for the majority of campus hours. NSR maintains in this connection that this statement merely acknowledges the fact that the project manager will perform some job responsibilities (such as arranging for vehicle servicing and meeting with union representatives) off-site. NSR also argues that the evaluators improperly downgraded its proposal for presenting a seamless approach to contract management and that it provided information regarding the percentage of work to be performed by its subcontractor elsewhere in its proposal. Finally, the protester maintains that contrary to the evaluators' finding, it proposed an integrated approach to work scheduling and task completion through the use of [deleted].

Notwithstanding the protester's arguments to the contrary, the evaluators reasonably determined that the protester's management plan lacked detail and contained inconsistencies that rendered it technically unacceptable. In this connection, it is the responsibility of the offeror to submit an adequately written proposal with sufficient detail to demonstrate an understanding of, and ability to meet, solicitation requirements, and proposals that fail to make this showing may properly be found unacceptable. Phoenix Mgmt., Inc., B-299477, May 16, 2007, 2007 CPD ¶ 95 at 6. In our view, the evaluators reasonably concluded that NSR failed to explain adequately its intended organizational structure by failing to depict two significant reporting relationships (*i.e.*, the project manager's relationship to NSR's president and the supervisors' relationship to the project manager) in its organizational chart; by failing to make clear whether the CEO identified in its organizational chart was the CEO of NSR or its major subcontractor; and by including in the organizational chart a position (*i.e.*, regional manager) that it did not otherwise address or describe in its proposal. We also conclude that the evaluators reasonably questioned the protester's representation that the project manager position was 100-percent committed to the contract given the statement in NSR's proposal that the project manager position would be staffed for a majority of the normal campus hours. While the protester has provided an explanation of this statement to address any potential confusion, this explanation was not furnished in the proposal.

There is also no merit to the protester's contention that the agency acted unreasonably when it assigned NSR's proposal a weakness based on its failure to describe its relationship to its major subcontractor. The solicitation instructed offerors to describe their subcontract management approach, and NSR simply failed to do so. While NSR represented that it would subcontract "a portion of the services" to its major subcontractor, Protester's Proposal, Vol. I, at 1, NSR did not

provide any detail as to which portion of the work would be performed by its major subcontractor, as opposed to NSR, or the firms' respective roles and responsibilities. Further, to the extent the protester maintains that it described its relationship to its subcontractor in Volume IV (Subcontracting Arrangement) of its proposal, the solicitation made clear that the evaluators would not consider this information in evaluating offerors' management approaches for technical acceptability. Rather, the RFP established that the subcontractor arrangement information was to be used to determine a firm's eligibility for award. As noted above, the competition was limited to HUBZone small businesses; thus, as established by the RFP, the agency sought the subcontractor arrangement information to assess the need to obtain a formal size determination from the Small Business Administration with respect to the apparently successful offeror. RFP at M-5.

Finally, with regard to the protester's argument that it proposed an integrated approach to work scheduling and task completion through the use of [deleted], the protester proposed [deleted] for use in two contexts—(1) "emergency custodial services, special events, and work associated with [IDIQ] orders," and (2) as a means of communicating with the customer. Protester's Proposal, Vol. I, at 9 and 15. There was no representation in NSR's proposal that [deleted] would be used for the planning and scheduling of routine work. Thus, we have no basis to question the reasonableness of the agency's evaluation findings regarding this matter.

In conclusion, we find that the evaluators reasonably determined the protester's proposal unacceptable under the management approach subfactor. Pursuant to the terms of the RFP, which provided that a rating of unacceptable under any of the technical subfactors would prevent a proposal from being rated as potentially acceptable, this resulted in an overall rating of technically unacceptable for NSR's proposal. Accordingly, we need not address NSR's protest allegation pertaining to its ratings under the phase-in plan and safety/health plan subfactors.

The protest is denied.

Lynn H. Gibson
General Counsel