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Decision

Matter of: Excalibur Laundries, Inc.

File: B-405814; B-405814.2

Date: January 3, 2012

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Hennessy, Boe & Gondring, P.A., for the protester.

Brian A. Darst, Esq., Brian A. Darst Law Office, for Martin Edwards &
Associates, Inc., the intervenor.

Maj. James W. Nelson, Department of the Army, for the agency.

Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's proposal was technically unacceptable under solicitation's relevant experience factor is denied where record reflects that portion of awardee's proposal relating to solicitation's past performance factor contained, and agency reasonably considered, information demonstrating technical acceptability under relevant experience factor.
 2. Protest that agency improperly considered awardee's performance of subcontract to determine technical acceptability under relevant experience factor is denied where record reflects that awardee's proposal was technically acceptable under relevant experience factor regardless of whether subcontract was considered.
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DECISION

Excalibur Laundries, Inc., of Prairie du Chien, Wisconsin, protests the award of a contract by the Department of the Army to Martin Edwards & Associates, Inc. (MEA), of Erwin, North Carolina, under request for proposals (RFP) No. W9124N-11-R-0027 for clothes washer and dryer rental services. Excalibur challenges various aspects of the source selection process and the agency's evaluation of MEA's proposal.

We deny the protest.

BACKGROUND

The solicitation, which was issued on March 8, 2011 as a total small business set-aside, sought clothes washer and dryer rental services for barracks, guest quarters, and temporary lodging facilities at the United States Army Garrison at the Presidio of Monterey, California. RFP at 1, 29; Performance Work Statement §§ 1, 2. The solicitation anticipated the award of a single fixed-price contract with a base period of 1 year and four 1-year option periods. RFP at 3, 5-7, 12; Agency Report (AR), Tab 4, Source Selection Decision Document (SSDD), ¶¶ 1, 2.

Award was to be made to the lowest-priced, technically acceptable offer. RFP at 12. The solicitation provided that in order to be considered technically acceptable, an offer must meet evaluation criteria under two factors: relevant experience and past performance. Id. The criteria for relevant experience were described as follows:

Relevant Experience: The Offeror provided a list of relevant projects, current or completed within the past five (5) years that best demonstrated the Offeror's experience with this type of work; included dates, locations, types of contracts, dollar values, a description of the work, and references. The list should be reflective of at least one (1) but no more than five (5) contracts.

Id.

The criteria for past performance required the offeror to provide a minimum of three references regarding the offeror's past performance on recent and relevant contracts. Id. Following these evaluation criteria, the solicitation stated that offerors without a record of relevant past performance would not be evaluated favorably or unfavorably under the past performance factor. Id.

The agency received five proposals by the solicitation's closing date, including proposals from Excalibur and MEA. AR, Tab 4, SSDD, ¶ 5. In response to the solicitation's relevant experience factor, MEA's proposal provided summaries of five contracts performed by the firm. AR, Tab 13, MEA Proposal Excerpt, at 1-4. The contracting officer determined that two of these contracts were not relevant and that a third contract would not be considered because information such as the dates and location of performance was not provided. AR, Tab 5, Technical Evaluation of MEA Proposal, ¶ 1(a). The contracting officer determined that the two remaining contracts were "washer and dryer contracts." Id.

Under the first washer and dryer contract, MEA was a prime contractor and furnished washers and dryers to the United States Navy. AR, Tab 13, MEA Proposal Excerpt, at 1, 6. Under the second washer and dryer contract, MEA performed as a

subcontractor under an Army prime contract.¹ Id. at 2, 5. Using the Department of Defense (DOD) Electronic Document Access database (EDA),² the contracting officer verified that the Navy contract had in fact been awarded to MEA. AR, Tab 5, Technical Evaluation of MEA Proposal, ¶ 1(b). Through a telephonic communication with the prime contractor point of contact listed in MEA’s proposal, the contracting officer also verified that MEA had provided washer and dryer services under the Army subcontract. Contracting Officer’s Statement at 5. The contracting officer then determined that MEA’s proposal was technically acceptable under the relevant experience factor because it listed at least one contract involving a relevant project.³ See AR, Tab 5, Technical Evaluation of MEA Proposal, ¶¶ 1(a) to 1(c).

Both Excalibur’s proposal and MEA’s proposal were deemed technically acceptable. AR, Tab 4, SSDD, ¶¶ 7, 8. The three lowest-priced, technically acceptable proposals were determined to be (in order of lowest to highest price) from Offeror A, MEA, and Excalibur. Id. ¶ 9. However, based on an analysis of Offeror A’s proposal, the contracting officer found that Offeror A’s pricing was unbalanced and posed an unacceptable level of risk to the government. Id. ¶ 17. Based on this finding, the contracting officer rejected Offeror A’s proposal. Id. Because MEA had submitted the next-lowest-priced, technically acceptable offer, the contracting officer selected MEA for award. Id. ¶ 18.

After the agency made award to MEA, Excalibur filed this protest with our Office.

DISCUSSION

Excalibur challenges various aspects of the source selection process and the agency’s evaluation of MEA’s proposal. We have considered all of Excalibur’s arguments and conclude that each argument either fails to state a valid basis of protest or lacks merit. Excalibur’s most significant arguments are discussed below.

¹ Throughout this decision, this contract is referred to as “the Army subcontract.”

² EDA is an online system that provides acquisition-related information to authorized users throughout DOD. See About EDA, <http://eda.ogden.disa.mil/about.htm> (last visited Dec. 29, 2011).

³ In her contemporaneous memorandum for the record, the contracting officer noted that MEA’s Navy contract and Army subcontract “alone” met the solicitation requirement to list at least one contract involving a relevant project. AR, Tab 5, Technical Evaluation of MEA Proposal, ¶ 1(a). Her determination that MEA’s proposal was technically acceptable under the relevant experience factor, however, apparently was based on the EDA verification regarding the Navy contract. See id. ¶¶ 1(b), 1(c) (indicating that the technical acceptability finding was “a result” of the EDA verification).

Excalibur asserts that the agency unreasonably determined MEA's proposal to be technically acceptable under the relevant experience factor. Protest at 10; Comments at 3. In this regard, Excalibur claims that because the relevant experience section of MEA's proposal did not describe the type of work that MEA performed under the Navy contract, MEA's proposal did not meet the relevant experience criteria, and therefore was not technically acceptable. Comments at 3-4; Supp. Comments at 4.

As a general matter, the evaluation of an offeror's experience and past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based evaluation ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a protester challenges an evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. JVSCC, B-311303.2, May 13, 2009, 2009 CPD ¶ 138 at 5; S4, Inc., B-299817, B-299817.2, Aug. 23, 2007, 2007 CPD ¶ 164 at 9. The evaluation of experience and past performance, by its very nature, is subjective; an offeror's mere disagreement with the agency's evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

It is true, as Excalibur claims, that the relevant experience section of MEA's proposal does not describe the type of work that MEA performed under the Navy contract. The past performance section of MEA's proposal, however, provides a detailed description of the work that MEA performed under each of the contracts listed in the relevant experience section, including the Navy contract.⁴ AR, Tab 13, MEA Proposal, Section 4, Past Performance, at 5-6. A bid or proposal submitted to the government is properly evaluated by reading the bid or proposal as a whole. See Management Tech. Servs., B-251612.3, June 4, 1993, 93-1 CPD ¶ 432 at 6; Earth Res. Corp., B-248662.5, B-248662.7, Dec. 29, 1992, 93-1 CPD ¶ 17 at 4. We see no solicitation provision--and Excalibur has cited to none--that would have precluded the agency from considering information in the past performance section of an offeror's proposal for purposes of evaluating the offeror's technical acceptability under the relevant experience factor. Further, due to the direct relationship here between MEA's relevant experience and past performance, we view the agency's consideration of MEA's proposal as a whole to have been logical and reasonable. This ground of protest is denied.

⁴ The past performance section of MEA's proposal immediately followed the relevant experience section of the proposal, and the two sections combined were seven pages in length. AR, Tab 13, MEA Proposal Excerpt.

Excalibur also challenges the agency's consideration of MEA's performance of the Army subcontract. Comments at 4-5; Supp. Comments at 5. Excalibur presents two bases for this challenge. First, Excalibur asserts that the Army subcontract is not relevant because MEA performed the work as a subcontractor, rather than as a prime contractor. Comments at 4. Second, Excalibur asserts that the contracting officer's verification that MEA performed washer and dryer services under the subcontract was improper because this information was beyond the "four corners" of MEA's proposal and because at the time of the verification, the prime contractor point of contact allegedly had become an employee of MEA. Comments at 4; Supp. Comments at 5.

As described above, the solicitation provided that the relevant experience criteria would be met through the listing of "at least one," but no more than five, relevant contracts. See RFP at 12. Accordingly, we need not consider Excalibur's allegations regarding the Army subcontract because the record shows that the agency reasonably could--and apparently did⁵--determine MEA's proposal to be technically acceptable under the relevant experience factor on the basis of the Navy contract alone. See AR, Tab 5, Technical Evaluation of MEA Proposal, ¶¶ 1(a) to 1(c); see also Contracting Officer's Statement at 5. In other words, the agency's finding that the Navy contract met the relevant experience criteria rendered the agency's consideration of the Army subcontract unnecessary. Thus, to the extent that the agency considered the Army subcontract, such consideration did not prejudice Excalibur. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. This ground of protest is denied.⁶

Excalibur's protest includes a number of allegations that are not legally cognizable and reflect an apparent failure on the part of Excalibur to comprehend various aspects of the solicitation. For example, Excalibur alleges that the agency unreasonably found MEA's proposal technically acceptable under the past performance factor because, according to Excalibur, MEA's listing on the Central Contractor Registration (CCR) website shows no performance history and because another "unofficial" online database shows only two prior contract awards. Protest at 10. As discussed above, following the description of the past performance criteria, the solicitation indicated that an offeror's lack of past performance would not be a

⁵ See note 3, supra.

⁶ Excalibur also asserts that the agency failed to adequately document its evaluation of MEA's proposal under the relevant experience factor. Comments at 1, 5; Supp. Comments at 2-5. We disagree. The record adequately reflects the basis for the agency's determination that MEA's proposal met the relevant experience criteria. See AR, Tab 5, Technical Evaluation of MEA Proposal, ¶¶ 1(a) to 1(c).

basis to find a proposal technically unacceptable. See RFP at 12. Accordingly, Excalibur's allegation that MEA's proposal was technically unacceptable due to a purported lack of past performance does not constitute a valid basis of protest.⁷ See 4 C.F.R. § 21.5(f) (2011).

As another example, Excalibur alleges that MEA could not have submitted a proposal that met a purported solicitation requirement that the offeror perform 50 percent of the cost of the services with its own personnel. Protest at 11-12. Excalibur's protest, however, fails to include a citation to any such requirement in the solicitation, and we see nothing in the record to show that the solicitation included such a requirement. See RFP at 30 (indicating that Federal Acquisition Regulation (FAR) § 52.219-14, Limitations on Subcontracting, is not incorporated by reference into the solicitation). Accordingly, this allegation is factually and legally insufficient, and we will not consider it.⁸ 4 C.F.R. §§ 21.1(c)(4), 21.5(f).

As a final example, Excalibur claims that the agency's "best-value award decision" was flawed. Protest at 12. As stated above, the solicitation stated that award would be made on the basis of the lowest-price, technically acceptable offer. RFP at 12. The solicitation therefore did not contemplate that the agency would make a best-value tradeoff decision. Consequently, this allegation also fails to state a valid basis of protest.⁹ 4 C.F.R. § 21.5(f).

The protest is denied.

Lynn H. Gibson
General Counsel

⁷ Excalibur also alleges that the CCR website and "unofficial" online database show the agency's finding that MEA's proposal was technically acceptable under the relevant experience factor to be unreasonable. Protest at 10. Although the agency's report responded to this allegation, Memorandum of Law at 5, Excalibur's comments on the agency report did not rebut the agency's response. Accordingly, we consider Excalibur to have abandoned this ground of protest. Tiger Truck LLC, B-310759, B-310759.2, Feb. 7, 2008, 2008 CPD ¶ 44 at 3.

⁸ To the extent that Excalibur claims that the solicitation should have included such a requirement, such a claim is untimely. See 4 C.F.R. § 21.2(a)(1) (protests based on alleged solicitation improprieties which are apparent prior to time set for initial proposals must be filed prior to time set for receipt of initial proposals).

⁹ Excalibur's initial protest also alleged that the agency improperly failed to provide Excalibur with a pre-award notice that identified the intended awardee, as required by FAR § 15.503(a)(2). Prior to the due date for the agency's report, Excalibur withdrew this ground of protest. See Protester Response to Agency Request for Dismissal at 2 (stating that Excalibur "voluntarily dismisses" this ground of protest).