



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: ASPEC Engineering

File: B-406423

Date: May 22, 2012

Stephen R. Bosin, Esq. for the protester.
Carrie Willett Fogle, Esq., Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of rejection of proposal as technically unacceptable is denied where record shows the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

ASPEC Engineering, of Holtsville, New York, protests the award of a contract to Sociedade de Empreitada e Trabalhos Hidraulicos (SETH), of Portugal, under request for proposals (RFP) No. FA4486-12-R-0001, issued by the Department of the Air Force for operation and maintenance services at water and waste water treatment plants at Lajes Field, Azores. ASPEC, the incumbent contractor for the waste water treatment plant portion of the solicitation's requirements,¹ contends the agency unreasonably evaluated and rejected its proposal as technically unacceptable.

We deny the protest.

BACKGROUND

The RFP, which was issued on November 22, 2011, sought proposals for the award of a fixed-price contract to operate and maintain both the water and waste water

¹ SETH is the incumbent for the water treatment plant requirements.

treatment plants.² RFP at 3. Award was to be made to the lowest-priced, technically acceptable offeror with satisfactory past performance. Id. at 60. As it relates to the protest, for the purpose of evaluating technical acceptability, the RFP identified two technical evaluation factors: (1) Key Personnel Qualifications and Requirements (composed of subfactor 1a, Organization and subfactor 1b, Manpower/Experience); and (2) Workforce Management. Id.

Three firms submitted proposals. The agency evaluated ASPEC's proposal and assigned it ratings of unacceptable under the organization subfactor of the key personnel factor as well as the workforce management evaluation factor. In this regard, the agency determined that the protester failed to meaningfully address the evaluation factors in various respects. Award was made to SETH as the lowest-priced, technically acceptable offeror with satisfactory past performance.³ ASPEC protested to our Office on February 17, 2012, challenging the agency's evaluation of its proposal as unacceptable.⁴

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. Barents Group, L.L.C., B-276082, B-276082.2, May 9, 1997,

² The plants had previously been managed under two separate contracts.

³ After SETH was determined to be in line for award under the RFP's evaluation terms, the agency did not evaluate the third proposal received in light of its higher price.

⁴ ASPEC also argued "on information and belief" that SETH must not have proposed a licensed lead operator, as required by the solicitation, since SETH offered an ASPEC employee a lead operator position at the waste water treatment plant after award, and because SETH had allegedly performed much of its previous water treatment plant operations and maintenance contract without a licensed lead operator. We dismiss this challenge regarding SETH's technical acceptability since it is based on unsupported factual assumptions regarding the content of SETH's proposal. See Siebe Env'tl. Controls, B-275999.2, Feb. 12, 1997, 97-1 CPD ¶ 70 at 2. Additionally, we dismiss as untimely the protester's challenge of SETH's past performance based on SETH's alleged previous failure to use a licensed lead operator to operate its treatment plant. The protester did not specifically challenge the agency's evaluation of SETH's proposal under the RFP's past performance evaluation factor until it filed comments on the agency report. Since the matter was not raised within 10 days of when the protester knew or should have known its basis for protest, it is untimely. 4 C.F.R. § 21.2(a)(2) (2011).

97-1 CPD ¶ 164 at 6. A protester's mere disagreement with the evaluation does not show it lacked a reasonable basis. Id. On the record here, we have no basis to question the agency's evaluation of the protester's proposal as technically unacceptable.

Under the organization subfactor, offerors were required to describe their "organization as it will be used to ensure successful performance[.]" "[s]tate the level of management personnel and their responsibilities[.]" and "[p]rovide a description of the methods used to ensure personnel are knowledgeable and qualified in Reverse Osmosis/Nano-filtration (RO/NF) water treatment plants and potable water system operations and maintenance." RFP at 60. As noted above, ASPEC received a rating of unacceptable under this subfactor.

The record shows that ASPEC provided an organization chart in its proposal identifying the individuals the firm proposed to use during performance, along with their job titles, and the resumes of the individuals' past work responsibilities and experience. However, the record also reflects that ASPEC did not address how the individuals proposed would be used to perform the agency's requirements under the contemplated contract. Thus, we find reasonable the agency's determination that ASPEC's proposal failed to adequately demonstrate how its proposed organization would be used to complete the work successfully.⁵

The agency also faulted ASPEC for failing to address the methods it would use "to ensure personnel are knowledgeable and qualified in Reverse Osmosis/Nano-filtration (RO/NF) water treatment plants and potable water system operations and maintenance." Id. The protester suggests that the agency's evaluation in this regard was unreasonable since ASPEC identified a lead operator with the requisite water and waste water treatment plant operation certifications. We find this argument unpersuasive. This individual's certifications alone do not meaningfully respond to the requirement for ASPEC to describe the methods the offeror will use to ensure its proposed personnel are knowledgeable and qualified in RO/NF water treatment plants and potable water system operations and maintenance. Thus, we have no basis to find the agency's evaluation in this regard unreasonable.

⁵ ASPEC generally responds to its unacceptable evaluation by suggesting that the agency should have known it had the necessary capability to perform the contract based on its incumbent performance of the waste water treatment plant contract. ASPEC's view that the agency was required to recognize ASPEC's incumbency as providing an adequate substitute for including required information in its proposal is unpersuasive; an offeror must submit an initial proposal that is adequately written and affirmatively states its merits, or run the risk of having its proposal rejected as technically acceptable where the proposal omits or provides inadequate information addressing fundamental factors. Essex Electro Eng'rs, Inc., B-284149, B-284149.2, Feb. 28, 2000, 2000 CPD ¶ 72 at 6.

Additionally, we conclude that the agency's evaluation of the ASPEC proposal as technically unacceptable under the workforce management factor was also reasonably based. In this regard, the agency concluded that ASPEC failed to provide a proposed shift schedule in its proposal, as required by the terms of the solicitation. Under the workforce management factor, offerors were to provide, among other things, a "Personnel Workload Management Estimate" and a "proposed shift schedule." Id. They were also to "[d]escribe a plan to retain qualified personnel to perform service under the contract and to assure that a qualified employee of the firm with full authority to bind the contractor can be contacted during normal duty hours." Id.

While the protester asserts that it provided a "shift schedule", the document the protester cites in this regard is actually its personnel workload management estimate, which, as noted above, was separately required under the same evaluation factor. Further, the record supports the agency's evaluation under this factor where it faulted ASPEC's proposal for lacking any information about its proposed plan to retain qualified personnel or its plan to assure a qualified employee of the firm with full authority to bind the contractor can be contacted during normal duty hours of performance, as required. ASPEC does not meaningfully address the former, and, as to the latter, we find unpersuasive the protester's contention that it adequately addressed the requirements based on its general acceptance of the performance work statement requirements. An offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection if it fails to do so. See HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Further, no matter how competent an offeror may be, the technical evaluation must be based on the information included in the firm's proposal. See Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371 at 3-4.

In conclusion, since the record supports the agency's determinations that ASPEC failed to address the evaluation criteria as specified in the solicitation, we find that the agency reasonably evaluated the protester's proposal as technically unacceptable under the organization subfactor and workforce management factor.

The protest is denied.

Lynn H. Gibson
General Counsel