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Decision

Matter of: Sea Box, Inc.

File: B-408182.5

Date: January 10, 2014

Pamela J. Mazza, Esq., Brian F. Wilbourn, Esq., Kathryn V. Flood, Esq., and Peter B. Ford, Esq., PiliroMazza PLLC, for the protester.
David R. Johnson, Esq., Jamie F. Tabb, Esq., and Elizabeth A. Krabill, Esq., Vinson & Elkins LLP, for Technology and Supply Management, LLC, the intervenor.
Wade L. Brown, Esq., and Denise M. Marrama, Esq., Department of the Army, for the agency.
Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated the compliance of the awardee's proposal with a material solicitation requirement is denied where the record shows that the agency's evaluation of the awardee's proposal was reasonable and consistent with the solicitation terms.
 2. Protest that the agency unreasonably excluded the protester's proposal from the competitive range is denied where the agency reasonably determined that the protester's proposal did not address a solicitation requirement and was not among the most highly-rated offers.
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DECISION

Sea Box, Inc., of East Riverton, New Jersey, protests the award of a contract to Technology and Supply Management, LLC (TaSM), of Fairfax, Virginia, under Request for Proposals (RFP) No. W15QKN-12-R-0070, issued by the U.S. Army, Army Contracting Command, New Jersey, for energy efficient shelters. Sea Box protests the Army's evaluation of its proposal as technically unacceptable, and exclusion of its proposal from the competitive range. The protester also challenges the agency's technical evaluation of Sea Box's and TaSM's proposals, as well as the size status of TaSM.

We deny the protest.

BACKGROUND

On May 23, 2013, the Army issued an amended RFP¹ seeking single-story and two-story energy efficient shelters for the Kuwait Energy Efficiency Project (KEEP), at Camp Buehring, Kuwait. RFP at 2. The procurement is a small-business set-aside under North American Industry Classification System (NAICS) Code 332311, Prefabricated Metal Building and Component Manufacturing. Id. at 1. The solicitation anticipated the award of a 2-year fixed-price, indefinite-delivery, indefinite-quantity contract. Id. at 2. The estimated total value of the procurement is \$29,429,017. Id. at 6.

The solicitation advised that proposals would be evaluated based on three evaluation factors: (1) technical, (2) price, and (3) past performance. Id. at 70. The technical factor included the evaluation of the following three subfactors: (1) shelter structure and design flexibility; (2) energy efficiency; and (3) schedule. Id. For purposes of award, the technical factor was significantly more important than the price factor, which was more important than the past performance factor. Id. The two non-price evaluation factors, when combined, were significantly more important than the price factor. Id. To be considered for award, a proposal was required to receive a rating of at least acceptable for the technical factor, including all subfactors. Id.

As relevant here, the RFP stated that under the first subfactor--shelter structure and design flexibility--the agency would evaluate an offeror's proposed structure and design flexibility approach, and would focus on the extent to which an offeror "demonstrates that the specific Government requirements are addressed and met and all critical requirements in proposed design flexibility are in accordance with the [Performance Work Statement] PWS." Id. at 71. In this regard, offerors were required to propose shelters that complied with the requirements in PWS § 3.3.5 (General Shelter Configuration), which included the following specifications for the vestibule/foyer of the one-story shelters: "Each shelter shall include a minimum 6' wide by 6' long vestibule/foyer at each entrance" RFP, PWS at 7.

Twelve offerors responded to the amended RFP by the June 12 closing date, including Sea Box and TaSM. AR at 1. As relevant here, Sea Box's technical proposal stated that its one-story shelters would have an "[i]nsulated steel Quadcon

¹ All references to the RFP in this decision refer to the amended solicitation, unless otherwise specified. The Army issued the initial RFP on October 12, 2012. Agency Report (AR) at 1. After the Army awarded a contract to TaSM under the initial RFP, two unsuccessful offerors protested the award to our Office. Id. The protests were docketed as B-408182 and B-408182.2. As a result of the protests, the Army took corrective action, which included terminating the award, and issuing the amended RFP. Id.

Vestibule (8' x 4' 9-3/8" x 8')." AR, Tab H, Sea Box Technical Proposal, at 9. In addition, Sea Box's technical proposal included drawings and specifications of its one-story shelter, which showed the configuration of its proposed vestibule/foyer in relation to the main shelter room. Id. at 12, 14. Sea Box's proposal also discussed savings and efficiencies stemming from the design of its proposed vestibule/foyer, as well as the details of its proposed electrical and lighting plan for the vestibule/foyer. Id. at 10, 24, 27, 34.

The Army evaluated the proposals, and concluded that Sea Box's proposal was technically unacceptable under subfactor 1, shelter structure and design flexibility. AR, Tab D, Technical Evaluation, at 1. Specifically, the agency found that Sea Box's proposal failed to comply with PWS § 3.3.5.1, stating:

Page 9 of the proposal states that one-story shelters use an insulated steel Quadcon Vestibule (8' x 4' 9-3/8" x 8'). Section 3.3.5.1 of the PWS requires that one-story shelters include a minimum of 6' wide by 6' long vestibule/foyer at each entrance. This proposed vestibule does not meet the PWS requirement. As stated in the rationale above, the proposal has not adequately and completely considered, defined, and satisfied the requirements specified in the solicitation.

Id. at 2.

After evaluating all of the proposals, the source selection authority (SSA) established a competitive range consisting of three offerors.² AR at 2, 8. Sea Box's proposal was eliminated from the competitive range. Id. at 2. The agency provided a written debriefing to Sea Box on October 9. Protest, Debriefing Slides, at 1. This protest followed.

DISCUSSION

Sea Box contends that the Army unreasonably assessed a deficiency to its proposal under subfactor 1 (shelter structure and design flexibility) for failing to comply with the PWS's mandatory requirements, and thus improperly found Sea Box's proposal technically unacceptable. Sea Box also challenges numerous other weaknesses assessed to its technical proposal. Finally, Sea Box argues that the Army misevaluated TaSM's certifications and past performance, and asserts that the award to TaSM was improper because TaSM is not a small business for this procurement.³ For the reasons discussed below, we find that the agency

² The SSA is also the contracting officer. AR at 2.

³ While our Office will not consider challenges of the size status of particular firms, where, as here, a protester argues that the awardee's quotation showed, on its face, that the awardee was not eligible for award as a small business, we will review (continued...)

reasonably concluded that the proposal failed to comply with the mandatory PWS requirements under subfactor 1. Because offerors were required to receive a rating of at least acceptable for all subfactors to be considered for award, we need not address Sea Box's other protest grounds. F & S Env'tl, LLC, B-405232 et al., Sept. 22, 2011, 2011 CPD ¶ 195 (protester was properly excluded from the competitive range, and thus was not an interested party to challenge the qualifications of the awardee).

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester's mere 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. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

Technical Evaluation

Sea Box argues that the Army unreasonably rated its technical proposal unacceptable under subfactor 1, shelter structure and design flexibility, for failing to comply with the minimum mandatory dimensional requirements in PWS § 3.3.5.1 for the vestibule/foyer for the one-story shelters. As discussed above, the requirement for one-story shelters stated that "[e]ach shelter shall include a minimum 6' wide by 6' long vestibule/foyer at each entrance" RFP, PWS at 7.

To be considered for award, a proposal was required to receive a rating of at least acceptable for the technical factor, including all subfactors. RFP at 70. "Unacceptable" was defined as "[p]roposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable." Id. at 71. The agency defined "deficiency" as "a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." AR at 4.

(...continued)

the reasonableness of the contracting officer's decision not to refer the matter to the Small Business Administration. See Hydroid LLC, B-299072, Jan. 31, 2007, 2007 CPD ¶ 20 at 3.

The Army assessed a deficiency for Sea Box's technical proposal because Sea Box proposed to provide one-story shelters with a vestibule/foyer having dimensions of 8' (long) x 4'9-3/8" (wide) x 8' (high)--which did not comply with the PWS § 3.3.5.1 requirement that one-story shelters include a minimum of 6' wide by 6' long vestibule/foyer at each entrance. AR, Tab D, Technical Evaluation, at 1-2; see AR, Tab H, Sea Box Technical Proposal, at 9. In this regard, the width of the protester's proposed vestibule/foyer (4' 9-3/8") is approximately 14 inches narrower than the RFP's width requirement for the vestibule/foyer of 6'. AR, Tab D, Technical Evaluation, at 2. Based on this evaluated deficiency, the agency found Sea Box's technical proposal unacceptable. Id.

Sea Box concedes that its proposal did not comply with this stated minimum requirement. Protest at 17. Sea Box argues that its proposal should not have received a deficiency for failing to comply with the PWS requirement because "the 14 [inch]" discrepancy in the size of Sea Box's proposed vestibule/foyer was not a material failure to meet the Government's requirements." Protester's Comments (Nov. 18, 2013), at 2. The agency responds that the PWS § 3.3.5.1 requirement for "a minimum 6' wide by 6' long vestibule/foyer at each entrance" was a material requirement, and therefore, its evaluation of Sea Box's proposal as unacceptable for failing to meet the mandatory requirement was reasonable. AR at 2-4.

The Army's technical lead explains that this requirement was developed through collaboration between the requiring activity and the soldiers at Camp Buehring in Kuwait. Decl. of Army Logistics Management Specialist (Nov. 13, 2013) ¶ 5. In this regard, the technical lead states that this dimensional standard was set as the requirement because it is the current foyer size being used and because it allows for multiple soldiers to enter and exit the tent more rapidly, which is "absolutely necessary." Id. Specifically, he explains:

[T]he required shelter/foyer size is based on the current tent/foyer size being used in Camp Buehring. It was also made a requirement for specific advantages that allows more soldiers to rapidly enter/exit simultaneously by not just themselves, but with equipment and gear as well, while minimizing interference and the potential for collision Given the nature of this Forward Operating Base, and the fact eight (8) soldiers will be living in each shelter, the need for easier, rapid entry/exit of multiple soldiers at once is absolutely necessary. That is why the requirement was stated as it was.

* * * * *

During surge operations, there is a possibility of doubling the occupancy of Soldiers within this living space and the ability to rapidly enter/exit would be even more important with added personnel and

given the Camp's mission of supporting regional security, stability and theatre sustainment operations.

Id. ¶ 5, 6. The technical lead also explains the impact of Sea Box's proposed vestibule/foyer not meeting the PWS's minimum width requirements, stating:

The Sea Box design fails to meet the requirement and results in a longer, narrower entrance. This longer, narrower entrance will take the soldiers longer to traverse due to the increased length and would become more difficult for multiple soldiers to enter/exit simultaneously.

Id. ¶ 5.

Sea Box argues that its proposal's failure to meet the minimum dimensional requirements set forth in the PWS was "a minor and inconsequential variation as opposed to a 'material' defect," because the agency's explanation stating why the 6' x 6' vestibule/foyer is a "material" requirement "is completely implausible" and "throws common sense and basic spatial realities out the window." Protester's Comments (Nov. 18, 2013), at 3-4. Specifically, the protester contends that the PWS's requirement that all entryways/doors have a minimum width of 36" undermines the agency's stated rationale that a minimum 6' x 6' vestibule/foyer leading into the shelter allows more rapid entry and exit. Id. at 5. According to the protester: "[A]nyone entering or exiting the shelter would have to pass through one 36" door, walk only six feet, and then pass through another 36" door. Inasmuch as everyone entering or exiting the shelter must pass through [the] same two 36" doors within a minimum span of only six feet, there is no conceivable way that making the vestibule 14" wider would allow for more rapid entry/exit." Id. at 6. Instead, the protester posits, "[t]o the contrary, if anything, . . . Sea Box's proposed vestibule fits more people within the vestibule [with its longer, narrower design] to wait in line to make use of the doors, and, accordingly, accommodates rapid entry/exit better than the 6' x 6' minimum requirement." Id. at 7.

Based on the record, we have no basis to object to the agency's determination that Sea Box's failure to comply with the PWS § 3.3.5.1 requirement that one-story shelters include a minimum 6' wide by 6' long vestibule/foyer at each entrance was material. In this regard, the agency has reasonably explained its view that the minimum 6' wide by 6' long vestibule/foyer was a material requirement of the solicitation, and that Sea Box's proposed longer, narrower 8' (long) x 4'9-3/8" (wide) x 8' (high) vestibule/foyer poses increased risk to Army personnel. In addition, and as discussed above, the Army explained its reasoning for the requirement, which we have no basis to second-guess.

To the extent Sea Box contends that its narrower, longer design for the foyer accommodates rapid entry/exit better than the Army's wider requirement, and therefore should be sufficient for the Army's needs, the protester provides no support for this assertion. More importantly, the Army disagrees. In response to

the protester's assertions, it states that a "longer, narrower entrance will take the soldiers longer to traverse due to the increased length and would become more difficult for multiple soldiers to enter/exit simultaneously." Decl. of Army Logistics Management Specialist (Nov. 13, 2013) ¶ 5. We have no basis to think that Sea Box is in a better position than the Army to define the Army's needs. See URS Federal Support Servs., Inc., B-407573, Jan. 14, 2013, 2013 CPD ¶ 31 at 4 (contracting agencies have broad discretion to determine their needs and the best way to meet them).

In sum, the Army has reasonably explained why Sea Box's proposed design materially fails to meet the Army's requirements. Based on this record, we find reasonable the Army's evaluation of Sea Box's technical proposal as unacceptable under subfactor 1 for failing to comply with the requirements of PWS § 3.3.5.1.

Competitive Range

Sea Box also contends that even though its proposal was technically unacceptable, the agency should have included its proposal in the competitive range because the evaluated deficiency was "readily correctible." Protester's Comments (Nov. 18, 2013) at 8. In this regard, Sea Box argues that the Army failed to properly consider whether Sea Box's design for the vestibule/foyer could be easily modified to comply with the dimensional requirements in the PWS. Id.

Specifically, Sea Box contends that the only changes its proposal needed to comply with the PWS requirements is to substitute its Tricon vestibule⁴ for the Quadcon vestibule it proposed. Id. The protester also states that it would have had to update the width dimensions in Sea Box's narratives and drawings. Id. The record, however, does not support Sea Box's contentions, and the protester has not shown that the agency's decision to exclude its proposal from the competitive range was unreasonable.

The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. In reviewing a protest challenging an agency's evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits; rather, we will examine the record to determine whether the evaluation was reasonable and consistent with the stated evaluation factors and applicable statutes and regulations. Smart Innovative

⁴ Tricons are a different vestibule/foyer that Sea Box manufactures with the dimensions of 8' long x 6'5-1/2" wide x 8' high, which the protester contends would have meet the PWS's minimum specifications. Protester's Comments (Nov. 18, 2013), at 8.

Solutions, B-400323.3, Nov. 19, 2008, 2008 CPD ¶ 220 at 3; Foster-Miller, Inc., B-296194.4, B-296194.5, Aug. 31, 2005, 2005 CPD ¶ 171 at 6. Contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly-rated. Federal Acquisition Regulation (FAR) § 15.306(c)(1); General Atomics Aeronautical Sys., Inc., B-311004, B-311004.2, Mar. 28, 2008, 2008 CPD ¶ 105 at 5. It is well settled that a technically unacceptable proposal cannot be considered for award, and thus properly may be excluded from the competitive range. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 4.

Although Sea Box contends that the deficiency in its proposal was “readily correctable,” the Army contends, and the record reflects, that a change to Sea Box’s proposed vestibule/foyer would not be a minor matter, and would have an impact on, among other things, Sea Box’s drawings/specifications, lighting/switching, seismic/wind load requirements, and shipping costs. See AR at 5. For example, the Army’s technical lead explains that a change in the size of Sea Box’s proposed vestibule/foyer would likely require changes to the electrical plan for the vestibule lighting and switching as required in PWS 3.3.7.1, as well as require additional analysis regarding seismic and wind load requirements in accordance with PWS 3.3.2.4. Decl. of Army Logistics Management Specialist (Nov. 13, 2013) ¶ 5. There are also other portions of Sea Box’s proposal that would apparently need to be revised. For example, under “Shipping Container Lease Cost,” Sea Box’s proposal states: “For a One-story shelter, the cost would be significantly less. The Quadcon Vestibules of a One-story Shelter double as dry storage shipping containers and lock together to form a [twenty-foot equivalent unit].” AR, Tab H, Sea Box Tech. Proposal, at 34.

The record also reflects that the agency compared the evaluations of all twelve proposals submitted in response to the solicitation, including the evaluation of Sea Box’s proposal, in making its competitive range determination. AR, Tab C, Competitive Range Determination, at 2, 8. Of the twelve proposals, three were determined to be among the most highly-rated and included in the competitive range. Id. at 2. The agency stated that Sea Box’s proposal was not among the most highly-rated because of its unacceptable rating under subfactor 1, shelter structure and design flexibility, which was based on the failure of Sea Box’s proposed vestibule/foyer design for one-story shelters to meet the PWS requirement. Id. at 7-8. In our view, the record supports the reasonableness of the agency’s determination that Sea Box’s proposal was not among the most highly-rated proposals, and the decision to exclude the protester’s proposal from the competitive range.

The protest is denied.

Susan A. Poling
General Counsel