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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Analytical Innovative Solutions, LLC

File: B-408727

Date: November 6, 2013

Steven O'Malley, Analytical Innovative Solutions, LLC, for the protester.
Anna T. Katselas, Esq., U.S. Trade and Development Agency, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest alleging that the agency did not follow the evaluation criteria set forth in the solicitation is denied where the agency's evaluation was reasonable and in accordance with the stated evaluation criteria.

DECISION

Analytical Innovative Solutions LLC (AIS), of Kennesaw, Georgia, protests the award of a contract to HEP Transportation Consulting, of Charleston, South Carolina, by the U.S. Trade and Development Agency (USTDA) under request for quotations (RFQ) No. RFQ-CO201351242 for advisory and assistance services in support of the agency's maritime transportation sector projects definitional mission in the Republic of Panama. AIS alleges that USTDA did not follow the selection criteria contained within the RFQ in evaluating and awarding a contract to HEP.

We deny the protest.

The USDTA issued the RFQ on July 18, 2013 as a combined synopsis and solicitation seeking commercially available services in support of the agency's maritime transportation sector projects in Panama. RFQ, Scope of Work, at 1. The RFQ was issued as a competitive total small business set-aside utilizing procedures set forth in Federal Acquisition Regulation (FAR) Subparts 12.6 and 13.1. RFQ at 1. Received quotations were to be evaluated based on price, technical and past performance factors. When combined, the non-price factors were significantly more important than price. *Id.* at 4. The technical evaluation factor was further separated into five subfactors, listed in descending order of importance: (1) technical experience and industry knowledge, (2) work plan, (3) experience evaluating and

developing international projects, (4) regional and/or country knowledge, and (5) quality of the proposal. Id. A fixed-price contract was to be awarded to the firm whose proposal represented the best value to the government. RFQ at 4-5.

Four quotations were received by the due date of August 2, including those from HEP and AIS. With respect to those firms, the evaluation results were as follows:

	HEP	AIS
Technical Overall	Excellent	Good
Subfactor 1	Excellent	Excellent
Subfactor 2	Excellent	Good
Subfactor 3	Excellent	Fair
Subfactor 4	Excellent	Excellent
Subfactor 5	Excellent	Good
Past Performance	Excellent	Good
Price	\$59,556	\$60,000

AR, Exh. 7, Technical and Past Performance Evaluation Summary, HEP and AIS Worksheets; AR, Exh. 6, Price Evaluation.

HEP's technical rating was supported by various strengths and no weaknesses. While AIS' technical rating was supported with various strengths, the agency also assessed at least three weaknesses.¹ AR, Exh. 7, Technical and Past Performance Evaluation Summary, HEP and AIS Worksheets. In its source selection decision, the agency decided to make award to HEP based on its finding that the firm offered the best value to the government as a result of its technical superiority and low price. AR, Exh. 8, Source Selection Decision Memorandum, at 4. This protest followed.

AIS' sole ground of protest is that the USDTA did not follow the selection criteria contained within the RFQ. Protest at 1. AIS asserts that its review of publicly-available information regarding HEP does not indicate any direct maritime or seaport experience. Id. at 3. AIS also notes that one of the project assessments to be conducted under the scope of work was of a maritime liquid natural gas reception terminal. According to AIS, experience with maritime liquid natural gas reception terminals is fairly rare because of the limited number of these terminals worldwide. Id. at 4. Although not explicit, AIS presumably raises this contention to suggest that such rare experience is not possessed by HEP.

¹ No protective order was issued here, but the USDTA provided AIS copies of the relevant evaluation documents. Our Office reviewed the entire agency report "in camera."

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Halfaker and Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 5. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id.

The agency responds that HEP does have such experience and cites to its proposal in support of this fact. The agency also refers to its technical evaluation of HEP, particularly under subfactor 1, evidencing that the agency reviewed, considered, and reasonably evaluated MEP's proposal in this regard.² Agency Memorandum of Law at 3. The record supports the agency's position.

Our review of HEP's proposal shows that its team, including its consultants, had extensive experience in the area of maritime transportation, and listed over two pages of projects including various maritime and port projects. AR, Exh. 3, HEP's Technical Proposal, at 1-6. Based on this review, we conclude it was reasonable for the agency to assign HEP an adjectival rating of "excellent" for this subfactor, and we find support in the record for the agency's conclusion that "HEP's proposal demonstrates a strong knowledge of the maritime transportation industry [HEP] possesses relevant experience in evaluating and developing international projects for USTDA, strong experience working on maritime transportation projects in Panama and other countries . . . and demonstrates a strong understanding of Panama's maritime transportation sector." AR, Exh. 7, Technical and Past Performance Evaluation Summary, HEP Worksheet.

AIS's remaining challenges are untimely and will not be considered. First, our Bid Protest Regulations provide that protests of other than alleged solicitation improprieties shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2013). In its comments on the agency report, AIS, for the first time, challenged the evaluation of its own proposal by questioning whether it should have been assigned a weakness because it lacked a proposed meeting agenda. Comments at 1. The record shows that AIS was on notice of this weakness no later than its August 28 debriefing, AR, Exh. 18, Debriefing Minutes at 4, but failed to raise the matter until

² Subfactor 1 called for the evaluation of "[r]elevant technical experience, knowledge of industry and sector contracts." RFQ at 4. AIS does not specify under which subfactor the agency allegedly miscalculated HEP's maritime and seaport experience. The record supports the agency's contention that subfactor 1 would reasonably encompass the experience at issue. CISGj, B-407101, Nov. 6, 2012, 2012 CPD ¶ 315 at 3 (determining evaluation reasonably encompassed within stated evaluation factor).

September 18, more than 10 days later. Second, our Bid Protest Regulations also provide that protests of alleged apparent solicitation improprieties must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). AIS' challenge to the propriety of one of the RFQ's evaluation subfactors was not filed prior to the time set for receipt of initial proposals, but was instead first raised in its comments on the agency report.

The protest is denied.

Susan A. Poling
General Counsel