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Decision

Matter of: Swift & Staley, Inc.

File: B-408792

Date: December 6, 2013

David A. Rose, Esq., Rose Consulting Law Firm, for the protester.
Heather M. Self, Esq., Department of Agriculture, for the agency.
Louis A. Chiarella, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of awardee's technical and past performance proposals is denied where the record shows that the agency's evaluation was reasonable and consistent with the stated evaluation criteria.

DECISION

Swift & Staley, Inc., of Kevil, Kentucky, protests the award of a contract to EnviroSmart, Inc., of Charleston, South Carolina, under request for proposals (RFP) No. AG-4870-S-13-0002, issued by the Department of Agriculture (USDA), Forest Service, for various maintenance and repair services at the Land Between the Lakes National Recreation Area (LBL), in Golden Pond, Kentucky. Swift & Staley argues that the agency's evaluation of offerors' proposals was improper.

We deny the protest.

BACKGROUND

The RFP was issued on April 6, 2013, as a set-aside for small business concerns utilizing the streamlined procedures for commercial items and services set forth in Federal Acquisition Regulation (FAR) Subpart 12.6. The solicitation's performance work statement (PWS) initially contained six service areas: (1) facility maintenance and repair; (2) grounds maintenance; (3) roads and trail maintenance; (4) interior and exterior pest control services; (5) refuse removal; and (6) water/wastewater

services.¹ Offerors were permitted to propose on one or more (or all) service areas, and the RFP contemplated the award of one or more fixed-price contracts for a base year with four 1-year options. RFP at 1-2.

The RFP established that contract award(s) would be made on a “best value” basis, considering the following evaluation factors: past experience/performance; staffing; quality control and quality assurance plan; health and safety plan; technical approach; and price.² The nonprice factors were of equal importance to each other and, when combined, were approximately equal in importance to price. Id. at 25-26.

Nine offerors, including EnviroSmart and Swift & Staley, submitted proposals by the June 7 closing date.³ An agency technical evaluation board (TEB) evaluated proposals using an adjectival rating system as follows: exceptional, acceptable, marginal, unacceptable, and with regard to past performance, neutral/unknown. On June 19, following the TEB’s initial evaluation, the contracting officer made a competitive range determination which included the EnviroSmart and Swift & Staley proposals. Contracting Officer’s Statement, Sept. 25, 2013, at 7. The agency then conducted discussions with each offeror within the competitive range, followed by the receipt of final proposal revisions (FPR) by the July 8 closing date. Id. at 7-8.

The final evaluation ratings and prices of the EnviroSmart and Swift & Staley FPRs were as follows:

	EnviroSmart	Swift & Staley
Past Experience/Performance	Acceptable	Exceptional
Staffing	Acceptable	Exceptional
Quality Control and Quality Assurance Plan	Acceptable	Acceptable
Health and Safety Plan	Exceptional	Acceptable
Technical Approach	Acceptable	Acceptable
Overall	Acceptable	Acceptable
Price	\$8,571,717	\$14,164,947

AR, Tab 25, TEB Report, at 1-4; Tab 26, Price Evaluation, at 2.

¹ The USDA subsequently removed the pest control services requirement from the solicitation, prior to the receipt of offerors’ final proposals.

² The RFP included a total estimated price range for all service areas of \$7-9 million. RFP at 24.

³ Both EnviroSmart and incumbent Swift & Staley proposed on all service areas.

Additionally, the TEB's adjectival ratings were supported by a narrative report and evaluation worksheets detailing the proposals' respective strengths, weaknesses, risks, and deficiencies. AR, Tab 25, TEB Report, at 1-4; Tab 23, Swift & Staley Final Evaluation Worksheets, at 1-8; Tab 24, EnviroSmart Final Evaluation Worksheets, at 1-9.

The USDA contracting officer, as source selection authority (SSA), subsequently determined that EnviroSmart's proposal represented the best value to the government for all service areas. AR, Tab 27, Source Selection Decision, at 1-5. The SSA considered the strengths and weaknesses in each proposal and concluded that the technical solutions proposed by EnviroSmart and Swift & Staley were substantially the same. Id. at 3-4. Additionally, the SSA recognized that the two firms were both rated acceptable for overall technical merit, and found nothing in Swift & Staley's proposal that would justify paying its associated \$5.593 million (or 65%) price premium. Id. at 4-5; see also Contracting Officer's Statement, Sept. 25, 2013, at 10.

On August 20, USDA notified Swift & Staley that it had awarded the contract to EnviroSmart. AR, Tab 29, Award Notice, Aug. 20, 2013. The agency provided Swift & Staley with a debriefing, and this protest followed.

DISCUSSION

Swift & Staley alleges that the agency's evaluation of EnviroSmart's technical approach and past performance was unreasonable.⁴ Swift & Staley argues that,

⁴ Swift & Staley also raised several arguments that we dismiss, as described below. The protester alleges that the government cost estimate included in the solicitation was unrealistic. Protest, Aug. 27, 2013, at 2. We find this challenge to be untimely. See 4 C.F.R. § 21.2(a)(1) (2013). Swift & Staley also argued that a conflict of interest existed because the contracting officer's husband was a member of the agency's evaluation team. Protest, Aug. 27, 2013, at 2. As the protester does not allege a violation of any procurement statute or regulation, or explain how this fact raises a conflict that affects either of these companies, we dismiss this allegation as failing to state a valid basis for protest. The protester also alleges that USDA's use of adjectival ratings as part its evaluation was improper, because it was not disclosed in the solicitation. Protest, Aug. 27, 2013, at 1. This also fails to state a valid basis of protest; although solicitations are required to describe the evaluation factors, there is no requirement that the solicitation describe the agency's rating scheme. See FAR §§ 12.602, 15.304(d). In addition, adjectival rating schemes are routinely used in government procurements. Finally, Swift & Staley also challenges the agency's evaluation of its proposal as acceptable (i.e., it received only an overall "acceptable" rating notwithstanding its excellent past performance). Protest, Aug. 27, 2013, at 2. We consider this argument abandoned, since USDA provided a

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had the agency conducted a proper evaluation, Swift & Staley would have been found to represent the “best value.” We have fully considered all of the protester’s issues and arguments regarding the agency’s evaluation and, although we do not address them all, we find no basis on which to sustain the protest.

Evaluation of EnviroSmart’s Technical Proposal

Swift & Staley challenges the USDA’s evaluation of EnviroSmart’s technical approach. The protester alleges the agency failed to reasonably assess the performance risk in EnviroSmart’s proposal resulting from the awardee’s plan to utilize a facility located at a significant distance from LBL rather than using available government facilities. In this regard, the protester contends the agency failed to reasonably consider EnviroSmart’s distance from the worksite, in the context of the 1-hour and 2-hour response times established by the RFP. Protester’s Comments at 2. Swift & Staley also states that EnviroSmart’s proposed reliance on subcontractors to support the awardee’s maintenance and management activities was not adequately considered in the agency’s assessment of risk. Id. at 4.

In reviewing a protest challenging the agency’s evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency’s discretion. J5 Sys., Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 6; Naiad Inflatables of Newport, B-405221, Sept. 19, 2011, 2012 CPD ¶ 37 at 6. 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. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror’s mere disagreement with an agency’s judgment is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

The PWS contained various “special response” requirements (i.e., unanticipated occurrences requiring immediate attention). For example, the facilities maintenance PWS included a “special response” requirement as follows: “[d]uring normal business hours the Contractor shall be at the work site and working in no more than one hour. After normal business hours the Contractor shall be at the work site and working in no more than two hours.” PWS (Facilities Maintenance) § C.20.

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detailed response to the protester’s assertions in its report (AR, Sept. 26, 2013, at 18-20), and Swift & Staley did not reply to the agency’s response in its comments. See Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

EnviroSmart's initial proposal stated that its program management office would be located less than 5 miles from LBL, in Cadiz, Kentucky, although it also proposed to maintain three satellite management offices located within LBL. AR, Tab 13, EnviroSmart Initial Proposal, at 79-81. EnviroSmart's proposal explained that

[t]he purpose of these areas [within the LBL confines] is to allocate dedicated teams of staff and meeting points each day to discuss project needs, hold safety briefings, and communicate workload coordination. We believe that having staff teams dedicated to specific areas will promote consistency and improved quality of performance.

Id. at 81.

The TEB questioned the reported distance of EnviroSmart's program management office, as well as how the distance would affect EnviroSmart's performance of the stated requirements. AR, Tab 15, EnviroSmart Initial Evaluation Worksheets, at 1, 4. These concerns were then raised in the agency's discussions. EnviroSmart responded that its program management office was in fact about 25 miles from LBL,⁵ and that while larger equipment would be kept at its program management office, it would utilize satellite offices and "functional area leads" to meet all performance and quality control requirements. AR, Tab 17, Discussions with EnviroSmart, at 3-4, 7-9; Tab 22, EnviroSmart FPR, at 4-5. The TEB considered this information in its final evaluation, found EnviroSmart had adequately addressed all agency concerns, and rated the offeror's proposal as technically acceptable. AR, Tab 25, TEB Report, at 2; Tab 24, EnviroSmart Final Evaluation Worksheets, at 4.

We find the agency's evaluation to be reasonable. As set forth above, the TEB was fully aware that EnviroSmart was planning to use a central program management office facility located about 25 miles from LBL. However, the evaluators also reasonably considered EnviroSmart's plan to make use of satellite management offices located in different parts of LBL to provide for day-to-day management and control of the contractor's work efforts. Moreover, nothing in EnviroSmart's proposal indicated the offeror could not or would not comply with all work requirements. While Swift & Staley alleges that USDA failed to "truly evaluate" EnviroSmart's proposal in light of the RFP's special response requirements, we find no basis for this contention.

Likewise, we find no merit in the protester's assertion that the agency failed to adequately consider, as part of its risk assessment, EnviroSmart's use of subcontractors to support maintenance and management activities. The TEB was

⁵ In its response, EnviroSmart explained that its initial proposal contained a typographical error when it represented that its program management office was 5 miles from the recreation area. AR, Tab 17, Discussions with EnviroSmart, at 3.

fully aware of EnviroSmart's planned use of subcontractors and considered the offeror's proposed measures to ensure performance quality to be acceptable. AR, Tab 25, TEB Final Report, at 2-3; Tab 33, Declaration of TEB Chairman, Nov. 26, 2013, at 1. Quite simply, the protester has not shown that the agency's acceptance of this aspect of EnviroSmart's approach was inconsistent with the RFP.

Evaluation of EnviroSmart's Past Performance

Swift & Staley also challenges the agency's evaluation of EnviroSmart's past experience/performance. The protester argues that the awardee lacks relevant past performance in all service areas, such that the assigned "acceptable" rating was improper. Among other things, Swift & Staley contends that virtually none of EnviroSmart's prior contracts had been completed--although most had been performed for more than a year--and therefore did not constitute "past performance." The protester argues that a reasonable evaluation would have identified a significant difference in the offerors' past experience/performance.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. LOGMET LLC, B-407061, Oct. 17, 2012, 2012 CPD ¶ 307 at 6; TPMC-EnergySolutions Envtl. Servs., LLC, B-406183, Mar. 2, 2012, 2012 CPD ¶ 135 at 11. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65. Our review of the record leads us to conclude that the agency's past performance evaluation was unobjectionable, as described in further detail below.

Regarding the evaluation of past experience/performance, the RFP stated that the agency would assess the offeror's "past experience on similar projects completed over the past five (5) years. Experience is relevant when the offeror has been confronted with the kinds of work or challenges that will be present under the contract contemplated." RFP at 25.

EnviroSmart's proposal listed its past experience/performance projects as follows:

- a facilities operations support services contract at the Federal Law Enforcement Training Center (FLETC), for \$2,206,584 annually, awarded in July 2012⁶

⁶ This reference included grounds maintenance, pest control, janitorial/cleaning, facilities maintenance, and environmental/health/safety services. AR, Tab 13, EnviroSmart Proposal, at 12.

- a wastewater treatment plant operations/sludge removal contract at Joint Base Charleston, for \$134,440 annually, awarded in October 2006
- a lagoon sludge removal contract at Fort Detrick, Maryland, for \$140,448 annually, awarded in October 2011
- an engineered soil cap construction contract at Camilla Wood Superfund Site, Georgia, for \$2,655,866, awarded in April 2013
- a solid waste/hazardous waste management contract at FLETC for \$3,620,795 total, awarded in January 2009
- a facilities construction contract at the Maritime Law Enforcement Academy, South Carolina, for \$91,184, awarded in September 2011
- a property management/grounds maintenance contract in Charleston, South Carolina for \$205,000, awarded in 2004
- a facilities maintenance/environmental services contract at Joint Base Charleston for \$394,034, awarded in May 2009
- a grounds maintenance contract in Beaufort, South Carolina for \$10,000, awarded in 2012
- a facilities maintenance and cleaning contract for the U.S. Secret Service for \$410,842 annually, awarded in April 2011

AR, Tab 13, EnviroSmart Proposal, at 12-21.

For each of its references, EnviroSmart also provided a summary of the work requirements, the relevance to the PWS service areas here, and similar contract challenges. Id. at 10-21. Further, EnviroSmart also described its subcontractors' experience in performing one or more of the PWS service areas. Id. at 27-30.

The TEB evaluated EnviroSmart's past experience/performance and found the offeror had demonstrated relevant experience in all PWS service areas other than roads and trail maintenance. AR, Tab 15, EnviroSmart Initial Evaluation Worksheets, at 1-2, 5, 8. The agency evaluators also found the overall quality of EnviroSmart's past performance--as evidenced by reference questionnaires and contractor performance assessment reports--to be excellent. Id. at 2-3.

The record shows that the agency raised the lack of roads and trail maintenance experience with EnviroSmart in discussions, and the offeror responded by describing the experience of its key corporate staff members in this service area. AR, Tab 17, USDA Discussions with EnviroSmart, at 10-11. Upon review of the response, the TEB found that EnviroSmart's roads and trail experience remained limited, but that overall, the offeror had acceptable past experience/performance. AR, Tab 25, TEB Report, at 2-3; Tab 24, EnviroSmart Final Evaluation Worksheets, at 1-9.

We find the agency's evaluation of EnviroSmart's past performance was reasonable. The contract here involved five different service areas and a price of approximately \$1.7 million annually. The record reflects that the TEB considered

the extent to which the offeror's references were similar to the PWS requirements. The evaluators reasonably found that EnviroSmart's references, including its \$2.2 million (annually) FLETC facilities operations support contract, demonstrated relevant experience in all service areas except roads and trail maintenance. Notwithstanding EnviroSmart's limited experience in this particular area, the TEB reasonably found the offeror's overall past experience/performance to be acceptable. We also find no merit in the protester's assertion that EnviroSmart's references (most of which had been performed for a year or more) could not be considered relevant because they involved ongoing, as opposed to completed, work. In sum, while USDA recognized that Swift & Staley's past experience/performance was superior to EnviroSmart's, the agency reasonably concluded that this advantage did not warrant the \$5.593 million (or 65%) price premium associated with the protester's proposal.

Lastly, Swift & Staley argues that USDA's evaluation of its technical proposal was unreasonable because one of the agency evaluators changed his individual rating without explanation between the initial and final proposal evaluations (excellent/low risk to good/low risk). Comments, Oct. 7, 2013, at 1-2. As a preliminary matter, the protester ignores the fact that the evaluator here analyzed only two of the PWS services areas in Swift and Staley's initial proposal, one of which (pest control) was ultimately removed from the requirements and from the offeror's final proposal. Compare AR, Tab 14, Swift & Staley Initial Evaluation Worksheets, at 7, with Tab 23, Swift & Staley Final Evaluation Worksheets, at 6. Further, competitive prejudice is an essential element of every viable protest, see Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14, and the protester has failed to demonstrate that it was prejudiced by the agency's action. In any event, we find a change in one evaluator's individual assessment--involving essentially different proposals--provides no basis on which to sustain the protest.⁷

The protest is denied.

Susan A. Poling
General Counsel

⁷ Similarly, Swift & Staley's allegation that the USDA's evaluation of EnviroSmart's proposal was improper because one of the evaluator's individual worksheets was incomplete (i.e., it lacked a risk rating) does not affect the validity of the agency's evaluation and award decision.