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Decision

Matter of: IntelliDyne, LLC
File: B-409107; B-409107.2; B-409107.3
Date: January 16, 2014

John J. O'Brien, Esq., and Gabriel E. Kennon, Esq., Cohen Mohr LLP, for the protester.
Peter A. Deliso, Esq., and Nelson Blitz, Esq., Executive Counsel PLC, for DHA Group, Inc., the intervenor.
Joni Gibson, Esq., Department of Justice, United States Marshals Service, 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 that the agency failed to evaluate proposals in accordance with the stated evaluation criteria is denied where the record shows the agency reasonably evaluated proposals in accordance with the terms of the solicitation.

DECISION

IntelliDyne, LLC, of Falls Church, Virginia, protests the award of a delivery order to DHA Group, Inc., of Washington, D.C., by the Department of Justice, United States Marshals Service (USMS), under solicitation No. DJM-13-A41-R-0044, for information technology development and sustainment services. IntelliDyne argues that USMS' evaluation of its proposal was not in accordance with the stated evaluation criteria.

We deny the protest.

BACKGROUND

The solicitation, issued on July 3, 2013, sought proposals from vendors holding Federal Supply Schedule (FSS) contracts under Schedule No. 70, to provide agile information technology development and sustainment services to the USMS.

Solicitation, Performance Work Statement (PWS) at § 1.0. The solicitation contemplated use of an agile approach¹ for the design, development and sustainment of new and existing capabilities within the framework of systems described in the PWS.² PWS at §1.3.

The solicitation contemplated award based on a best-value tradeoff, price and non-price factors considered. Solicitation, Evaluation – Commercial Items, at 1. The non-price factors were technical approach, key personnel qualifications, and past performance. Id. When combined, the non-price factors were significantly more important than price. Id. The solicitation informed offerors that the best-value tradeoff determination would entail an assessment by the agency of whether differences in the technical merit between proposals outweighed differences in the price. Id. However, offerors were cautioned that the agency would not make an award at a significantly higher cost to gain slightly superior technical features. Id.

Eight proposals were received by the proposal due date, including proposals from IntelliDyne and DHA. AR, Exh. 10, Award Decision, at 1. The relevant results of the technical evaluation were as follows:

	IntelliDyne	DHA
Technical Approach	Acceptable	Good
Key Personnel Qualifications	Good	Acceptable
Overall	Acceptable	Acceptable
Past Performance	Low Risk	Low Risk
Price	\$16,533,394.20	\$15,583,044.48

Id. at 8-10. The agency conducted a tradeoff analysis between IntelliDyne and DHA, the two highest-rated offerors. The source selection authority (SSA) determined that neither technical proposal was markedly better than the other, and

¹ The agency explains that an agile approach permits projects to be accomplished incrementally, so that at various points throughout the process checks can be conducted to ensure compliance and correct errors early. Agency Report (AR), Exh. 1, Statement of Facts, at 5; see also PWS at § 1.4 (requiring design so that subsequent projects and capabilities are added incrementally and as funding is available, and requiring agile development of subsequent increments to refine and improve upon the initial capability as outlined in the PWS).

² The contemplated systems include SharePoint, Rapid Application Development, Marshals Workforce Information/System Exchange, Decision Support Systems and Business Intelligence and Enterprise Reporting. PWS at §§ 1.2.1-1.2.4. These systems, previously managed under five contracts, were to be consolidated into a single performance-based agile services contract in order to reduce redundancies in overhead, process and procedures. AR, Exh. 9, Acquisition Plan, at 1.

that DHA's proposal provided the best overall value based on its submitted lower price. Id. at 12. Notice of the award decision was sent to IntelliDyne on October 3. This protest followed.

DISCUSSION

IntelliDyne argues that the agency's evaluation of proposals was not in accord with the solicitation's stated evaluation criteria. Protester's Comments at 1. IntelliDyne asserts that the agency improperly evaluated background and security requirements under the key personnel qualifications factor instead of under the technical approach factor, resulting in an improperly low rating for its proposal under the technical approach factor. Id. at 3. Further, IntelliDyne alleges that the agency improperly failed to evaluate several PWS requirements that were specifically called out under the technical approach factor, which prejudiced the protester because it focused its proposal on those factors. Id. at 7-8.³

Where, as here, an agency issues a solicitation to FSS contractors under Federal Acquisition Regulation subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. The evaluation of an offeror's proposal is a matter within the agency's discretion. MVM, Inc., B- 407779, B- 407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 5. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. Id. In reviewing a protest that challenges an agency's evaluation of proposals, our Office will not reevaluate the proposals, but will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Id. at 5-6.

³ The protest grounds addressed in this decision were first raised by IntelliDyne in its comments to the AR, and are separate and distinct grounds of protest from the issues raised in its original and first supplemental protests. The agency responded fully to IntelliDyne's original and first supplemental protests, which essentially argued that, based on the stated evaluation criteria, and the perceived technical merits of its proposal, a proper evaluation would have resulted in its proposal being technically superior to DHA under all three non-price factors. However, IntelliDyne failed to rebut or otherwise substantively address the agency's arguments in its comments. Instead, the protester advanced new arguments based on information disclosed in the AR, which we address in this decision. We conclude that IntelliDyne abandoned its original and supplemental protests and those arguments will not be considered further. IntegriGuard, LLC d/b/a HMS Federal--Protest and Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 4.

Key Personnel Qualifications Factor

IntelliDyne incorrectly asserts that the agency improperly evaluated background and security requirements under the key personnel qualifications factor. Protester's Comments at 3-4. The key personnel qualifications factor required offerors to submit resumes and qualifications of proposed key personnel, including a summary of experience relevant to the PWS. Solicitation, Evaluation – Commercial Items, at 1. As relevant here, section 1.6.11 of the PWS discussed qualifications of specified key personnel, including favorably adjudicated background investigation requirements for these personnel. Further, the adjectival ratings to be assigned here contemplated the degree to which a proposal met or exceeded the solicitation's requirements.⁴ Id. Consequently, a reasonable interpretation of this evaluation criterion, read in conjunction with the PWS requirements, is that the agency was required to consider whether proposed key personnel met the requirement of having a favorably adjudicated background investigation.

IntelliDyne's proposal was rated good for the key personnel qualifications factor based, at least in part, on the agency evaluating all of its key personnel having favorably adjudicated background investigations. AR, Exh. 5, Consensus Evaluation Reports; Exh. 10, Award Decision, at 7. DHA's proposal received a lower rating of acceptable based on an evaluated weakness that two of its proposed key personnel did not have completed background investigations. AR, Exh. 5, Consensus Evaluation Reports; Exh. 10, Award Decision, at 5. Given our conclusion that the solicitation reasonably anticipated consideration of whether proposed key personnel had a favorably adjudicated background investigation, IntelliDyne has given us no reason to question the agency's evaluation, including the adjectival ratings for this evaluation factor.

Technical Approach Factor

IntelliDyne next challenges the agency's evaluation of proposals under the technical approach factor. In this regard, the protester argues that the agency improperly failed to consider background and security requirements under this factor. Protester's Comments at 3. Had the agency done so, IntelliDyne asserts that it would have received a higher rating under this evaluation factor, whereas DHA would have received a lower evaluated rating. Protester's Comments at 3-6.

Under the technical approach factor, offerors were required to describe their approach to accomplish the PWS. Solicitation, Evaluation – Commercial Items, at 1. Offerors were also instructed to address specific matters in their proposals,

⁴ For the technical factors, proposals could be assigned an adjectival rating of outstanding, good, acceptable, or unacceptable.

including practices in place to recruit and retain key personnel, approach to managing risks, specific management approach, and identification of subcontractors and processes for retaining subcontractors. Additionally, each offeror was required to provide a discussion of its recruitment process, including meeting background and security requirements stated in the PWS. Id.

IntelliDyne first argues that the agency's failure to consider background and security requirements under this factor resulted in an improperly low rating of its proposal, as it had a clear advantage over DHA in this area. Protester's Comments at 3. However, USMS assigned IntelliDyne's proposal a strength under the technical approach factor for including staff with appropriately adjudicated background investigations. AR, Exh. 5, Consensus Evaluation Reports. As a result, the record shows that the technical evaluation board did consider background and security requirements under this factor.⁵

IntelliDyne next asserts that the agency improperly failed to assign a weakness to DHA's proposal under the technical approach factor for having two key personnel that do not currently "meet the MBI or higher background investigation requirement." Protester's Comments at 6. In making this argument, the protester appears to conflate the technical approach factor requirement for an offeror to describe how it would meet background and security requirements as a function of the recruitment process, and the qualification requirements of key personnel under the key personnel qualifications factor.

In this regard, the technical approach factor focused on the process for meeting background and security requirements, whereas the key personnel qualifications factor focused on the qualifications of proposed key personnel. As noted above, we conclude that USMS reasonably considered the background investigation requirements for key personnel under the key personnel qualifications factor. We further conclude that the agency reasonably did not consider the same key

⁵ Unlike under the key personnel qualifications factor, it appears that the assigned strength was based on consideration of IntelliDyne's entire proposed staff, which included non-key personnel with favorably adjudicated background investigations. However, even if we were to conclude that USMS did not consider offerors' proposed approaches for meeting background and security requirements as a function of the recruitment process under this factor, we nonetheless deny this protest ground as no prejudice has been shown. Bannum, Inc., B- 408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (prejudice is an element of every viable protest). Both IntelliDyne and DHA proposed similar processes for meeting background and security requirements during the recruitment process. AR, Exh. 3, IntelliDyne Proposal, Volume I, at 54-55; Exh. 4, DHA Proposal, Volume I, at 12. Thus, even if the agency did not evaluate this aspect of the proposals, IntelliDyne has not shown that it was prejudiced by any such error.

personnel qualification requirement under the technical approach factor, as this factor focuses on the process for meeting such requirements, and not key personnel qualifications. As a result of these conclusions, we have no basis to question the agency's evaluation of DHA's proposal here.⁶

Source Selection Decision

IntelliDyne next challenges the agency's best-value tradeoff, arguing that the SSA failed to consider the specific matters detailed above in making his award decision. In fashioning its argument, protester points to the source selection decision and notes that the discussion of DHA's technical approach is missing "any discussion of recruiting and retaining key personnel, a 'management approach' for 'stability of work force,' 'verifiable examples of how your company has recruited and retained contractor support,' or 'details of your recruitment process including meeting background and security requirements.'" Protester's Comments at 8. Likewise, IntelliDyne asserts that the agency's evaluation of its own technical approach was similarly lacking in the same regard.

Source selection decisions must be documented, but there is no need for extensive documentation of every consideration factored into a tradeoff decision. Shaw Environmental & Infrastructure, Inc., B- 408502, Sept. 30, 2013, 2013 CPD ¶ 240 at 9. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Id.

The record shows that the technical evaluation board considered the various specific matters detailed in the technical approach factor and documented its findings in both individual and consensus evaluation reports.⁷ AR, Exh. 5,

⁶ IntelliDyne's supplemental comments raise for the first time various additional arguments related to the technical approach evaluation factor. For example, the protester argues that the agency improperly assigned its proposal a weakness for failing to provide examples of other agile projects, and challenges its decision to assign DHA's proposal a strength for specifying a number of agile development projects with other federal agencies. Protester's Supp. Comments at 5. Protests based on other than alleged improprieties in a solicitation shall be filed not later than 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (2013). These allegations are untimely as they are based on facts apparent from the AR, which was provided to the parties on November 19, 2013. As such, protester was required to raise any protest of these grounds no later than November 29, 2013; it did not do so.

⁷ For example, the consensus evaluation report for IntelliDyne highlighted aspects of its proposal detailing recruitment and retention of key personnel, its risk management process, and the sufficiency of its background investigations. Id. The
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Consensus Evaluation Reports. The consensus evaluation reports are further supported by detailed individual evaluation reports, which discussed various aspects of each proposal. Id. The record also shows that the SSA relied on these findings of the technical evaluation board in reaching his award decision. AR, Exh. 10, Award Decision, at 12. Thus, contrary to the protester's assertions, the record shows that the SSA considered the various specific matters delineated in the technical approach factor. The fact that the SSA did not discuss all of these matters does not render his source selection decision unreasonable.

Further, it is apparent that source selection decision focused on the discriminators for each factor, and not each and every aspect of the underlying evaluation. For instance, under the technical approach factor, the SSA, like the technical evaluation board, concluded that DHA's agile approach was superior to that of IntelliDyne's. AR, Exh. 5, Consensus Evaluation Reports; Exh. 10, at 4-7, 11-12. In reaching his decision, the SSA clearly favored DHA's approach to moving from the current environment to an agile environment, going as far as to describe IntelliDyne's proposed approach in this regard as "pedestrian." AR, Exh. 10, at 12.

Since IntelliDyne does not challenge the agency's assessment of its proposed agile approach as "pedestrian," but instead argues that proposing an agile approach was an unstated evaluation criterion, we have no basis to question the agency's conclusion in this regard.⁸ As we conclude that USMS did consider the specific matters delineated in the technical approach factor, there is no basis for us to question the agency's evaluation of a qualitative difference between IntelliDyne's and DHA's technical approach.

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consensus evaluation report for DHA highlighted, for example, its approach to managing risk and its teaming approach to retain subcontractors. Id.

⁸ IntelliDyne argues that the agency's focus on using agile development technology in its evaluation represents an unstated evaluation criterion. Protester's Supp. Comments at 4. This argument is without merit. It was clear from the technical approach factor that offerors were to be evaluated based on their approach to accomplish the PWS. Solicitation, Evaluation – Commercial Items, at 1. It is clear from the PWS that the entirety of the scope of work was to transition the agency's current systems using an agile approach. PWS at §§ 1.0-1.1, 1.3-1.4. For instance, the scope of work section of the PWS states, "[t]he scope of the Agile Information Technology Development and Sustainment services contract is for the USMS and Contractor to utilize a successful agile approach to define high-level requirements, and then continue to refine the USMS needs through an interactive process. . . ." Id. at § 1.4. It is therefore not reasonable to argue that considering the agility of a vendor's approach was an unstated evaluation criterion.

CONCLUSION

We conclude that the agency reasonably considered the background and security requirements of key personnel under the key personnel qualifications factor. As a result, we have no basis to find that the evaluation under this factor was unreasonable. Additionally, our review of the record in light of protester's arguments gives us no reason to question the agency's evaluation under the technical approach factor. Since we have no reason to question the agency's evaluation under these evaluation factors, we have no reason to conclude that the agency's award decision was improper.

The protest is denied.

Susan A. Poling
General Counsel