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Decision

Matter of: Buffalo Hospital Supply Co., Inc.

File: B-412405

Date: February 2, 2016

James S. DelSordo, Esq., Argus Legal, PLLC, for the protester.
Ashley D. Dennis Presley, Esq., Maura C. Brown, Esq., and Barbara J. Stuetzer, Esq., Department of Veterans Affairs, for the agency.
Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated protester's proposal is denied where record reflects evaluation was reasonable and consistent with solicitation's terms.

DECISION

Buffalo Hospital Supply Co., Inc. (BHS), of Buffalo, New York, protests the decision of the Department of Veterans Affairs (VA) to exclude its proposal from the competitive range under request for proposals (RFP) No. VA119-15-R-0025 for the maintenance and distribution of medical and surgical supplies. BHS alleges that the agency's evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The solicitation, issued on May 15, 2015, contemplated the award of multiple fixed-price, indefinite-delivery/indefinite-quantity contracts to support the agency's national medical/surgical prime vendor (MSPV) program. RFP at 1, 25-26, 121. Under this program, successful offerors would "maintain and distribute all required medical, surgical, dental, and laboratory . . . supplies and other contracted medical/surgical supplies used in a [VA] medical facility." *Id.* at 21. To establish the

contractors' responsibilities under the program, the solicitation included a statement of work (SOW) that set forth numerous specific requirements.¹ RFP at 21-50.

The awards were to be made on a best-value tradeoff basis considering price and the following three factors, listed in descending order of importance: technical/management; past performance; and socioeconomic. RFP at 121-22. The solicitation included descriptions of how the agency would evaluate proposals under each factor. Id. at 122-24. Additionally, under the technical/management factor, the solicitation listed three standalone evaluation criteria--understanding the requirements, feasibility of approach, and completeness--and described how the agency would evaluate proposals under these criteria. Id. at 122.

The agency received a number of proposals by the solicitation's closing date, including a proposal from BHS. A technical evaluation team (TET) evaluated the proposals under the technical/management factor, and documented strengths, weaknesses, and deficiencies. BHS's proposal was assigned 9 strengths, 13 weaknesses, and 7 deficiencies. Agency Report (AR), Tab 8, Technical Evaluation Rep. (BHS), at 1-7. The TET also assigned adjectival ratings under the technical/management factor.² BHS's proposal was assigned a rating of unacceptable. Id. at 13. The TET documented its evaluation with a detailed narrative to explain this rating. Id. at 9-13. Among other things, the TET highlighted its finding that BHS's proposal did not address approximately 42 percent of the approximately 160 requirements in the SOW. Id. at 11-13. Ultimately, the TET concluded as follows:

[BHS's] proposal lacks detail on their approach to meeting all the requirements. [BHS] does not demonstrate a clear understanding of the requirements. The [TET] identified major errors and omissions which creates a low level of confidence that BHS can carry out the contract with success. As is, the error and omissions cannot be corrected without a major rewrite or revision of the proposal.

Id. at 13.

The proposals also were evaluated and assigned ratings under the past performance factor³ and were evaluated and assessed credit--or no credit--under

¹ BHS is an incumbent MSPV contractor. See Protest at 1.

² The available adjectival ratings were outstanding, good, acceptable, susceptible to being made acceptable, and unacceptable. AR, Tab 12, Source Selection Evaluation Plan (SSEP), at 31.

³ The available ratings for the past performance factor were high risk, moderate risk, low risk, and unknown risk. AR, Tab 12, SSEP, at 32.

the socioeconomic factor. BHS's proposal was assigned a rating of low risk under the past performance factor and was assessed credit under the socioeconomic factor. AR, Tab 9, Past Performance Evaluation Rep., at 9; AR, Tab 11, Socioeconomic Evaluation Rep., at 3.

The contracting officer then established a competitive range consisting of the most highly-rated proposals. A number of proposals, included BHS's, were excluded from the competitive range. With regard to these proposals, the contracting officer documented the following determination:

These offerors['] proposals were found to be technically unacceptable as detailed [by the TET]. [These o]fferors would require a major rewrite of their proposals to become acceptable. In addition, there was no feature in any of the proposals which would make inclusion in the competitive range in the Government's best interest.

AR, Tab 3, Pre-Business Clearance Mem., at 234.

Following a debriefing, BHS filed a protest with our Office.

DISCUSSION

In its protest, BHS generally asserts that the agency's evaluation "misstates or misapplies" the solicitation's evaluation criteria and that the firm's proposal "properly addressed all of the areas required by the RFP." Protest at 16-17. BHS then provides a response to each weakness and deficiency assigned to its proposal. Id. at 17-31.

After receiving BHS's protest, the agency filed a report that addressed BHS's arguments in detail. See generally AR, Tab 4, TET Chair Decl., ¶¶ 6-53. For example, in the report, the TET chair refuted BHS's assertions by providing additional explanation regarding the weaknesses and deficiencies assigned to BHS's proposal and by showing how the weaknesses and deficiencies related to specific solicitation requirements. See id.

In its comments on the agency report, BHS did not meaningfully respond to the agency's explanations and statements. Instead, BHS merely repeated, verbatim, the assertions made in its protest. Compare Protest at 17-31, with Comments at 14-29.

Where an agency provides a detailed response to a protester's assertions and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issues in question is unreasonable or improper. See Gella LLC, B-409917.11, Jan. 6, 2016, 2016 CPD ¶ __ at 2; West

Constr., Inc., B-406511, June 15, 2012, 2012 CPD ¶ 184 at 5. In reviewing an agency's evaluation, we do not conduct a new evaluation or substitute our judgment for the agency's, but, instead, examine the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria. See Gella LLC, supra, at 2-3; West Constr., Inc., supra, at 4. A protester's disagreement with an agency's evaluation, without more, provides no basis to question the reasonableness of the evaluators' judgments. See Gella LLC, supra, at 3; West Constr., Inc., supra, at 5. Here, as explained by the following examples, we have reviewed the record and see no basis to question the agency's evaluation of BHS's proposal.

As previously stated, the TET documented 13 weaknesses and 7 deficiencies for BHS's proposal under the technical/management factor. AR, Tab 8, Technical Evaluation Rep. (BHS), at 1-7. As also previously stated, the technical/management factor included three standalone evaluation criteria, one of which was understanding the requirements. RFP at 122. Under this criterion, the solicitation stated that the agency would evaluate the degree to which a proposal "demonstrates a clear understanding of all features involved in resolving the requirements and meeting and/or exceeding the requirements." Id. As relevant here, the SOW included a section titled "Shelf Life" that established the minimum remaining shelf life that medical and surgical supplies must have upon their delivery to agency facilities. Id. at 39. In general, this section of the SOW provided that an item's expiration date must be at least six months beyond the date of delivery, or, for a product with a shelf life of less than six months, at least 75 percent of the item's shelf life must remain at the time of delivery. Id. Additionally, this section of the SOW stated: "The Offeror's product return policy and capability will be reviewed during the technical evaluation process." Id.

Under the understanding the requirements criterion, the TET assessed a deficiency to BHS's proposal based on the findings that BHS's proposal did not include the firm's product return policy and did not provide an adequate approach to meeting the SOW's shelf life requirement. AR, Tab 8, Technical Evaluation Rep. (BHS), at 3. BHS argues that these findings were unreasonable for two reasons. First, BHS asserts that its proposal included "key components" of its product return policy. Protest at 22-23; Comments at 19-20. Second, BHS asserts that its proposal discussed the management of product expiration. See Protest at 23-24; Comments at 20-21. We find BHS's assertions to be without merit.

First, although one section of BHS's proposal describes how the firm handles returns in certain scenarios, nowhere does the proposal present a clear, unified description of a return policy. See AR, Tab 5, BHS Proposal, at 16-17. Additionally, while the section of BHS's proposal in question may have described some "key components" of BHS's return policy (as BHS characterizes it), this section also included the statement that "[a] copy of the Return Goods Policy can be furnished upon request." Id. at 16. From this, the TET reasonably could infer that the

proposal did not fully describe BHS's return policy. As stated above, the SOW provided that “[t]he Offeror's product return policy and capability will be reviewed during the technical evaluation process.” RFP at 39. On this record, we find the TET's assessment of the deficiency to have been reasonable.

We similarly find reasonable the TET's finding that BHS's proposal did not present an adequate approach to meeting the SOW's shelf life requirement. As stated above, BHS asserts that its proposal discussed the management of product expiration. See Protest at 23-24; Comments at 20-21. However, the proposal text on which BHS relies does not discuss meeting the six-month or 75 percent shelf life thresholds set forth in the SOW. See AR, Tab 5, BHS Proposal, at 5, 7. In fact, other than a single instance that lacks any detail, BHS's proposal does not include the terms shelf life, expiration, or expire. As described above, the solicitation stated that the agency would evaluate the degree to which a proposal demonstrated a clear understanding of how the SOW requirements would be met, and the SOW included a section that established specific shelf life requirements for the medical and surgical supplies that were to be delivered under the contract. RFP at 39, 122. On this record, we see no merit in BHS's claim.

In sum, the agency defended BHS's protest by providing a detailed explanation of its evaluation. BHS, in turn, responded to the agency's explanation by repeating--essentially verbatim--the statements made in its initial protest. While this demonstrates BHS's continued disagreement with the agency's evaluation, it does not show the evaluation to have been unreasonable.⁴

The protest is denied.

Susan A. Poling
General Counsel

⁴ Essentially the only portion of BHS's comments that was not copied from the protest is an approximately two-page declaration made by BHS's chief executive officer (CEO) in response to a redacted version of the contracting officer's statement. See Comments at 4-5. None of the statements in the declaration furnish a basis on which to question the agency's evaluation. For example, in the declaration the CEO repeatedly argues that the agency's evaluation findings were unreasonable because they were subjective. Id. at 4. An agency's evaluation judgments are by their nature often subjective; nevertheless, the exercise of these judgments must be reasonable and must bear a rational relationship to the solicitation's evaluation criteria. Sci., Math & Eng'g, Inc., B-410509, Jan. 7, 2015, 2015 ¶ 31 at 5. As discussed herein, we find that the record shows the agency's evaluation findings were reasonable and consistent with the solicitation.