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Decision

Matter of: By Light Professional IT Services, LLC

File: B-417191.3

Date: December 4, 2019

Damien C. Specht, Esq., James Tucker, Esq., and Alissandra Young, Esq., Morrison & Foerster LLP, for the protester.

Andrew Shipley, Esq., Chanda L. Brown, Esq., and Philip Beshara, Esq., Wilmer Cutler Pickering Hale and Dorr LLP, for NES Associates, LLC, the intervenor.

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Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency failed to acknowledge numerous strengths in protester's proposal is denied when the agency's evaluation was reasonable and consistent with the solicitation requirements.
 2. Protest alleging that a best-value tradeoff was inadequately documented is denied when the record reflects that the agency considered the underlying features of the proposals and did not mechanically compare adjectival ratings.
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DECISION

By Light Professional IT Services, LLC, of Arlington, Virginia, protests the issuance of a task order to NES Associates, LLC, by the Defense Information Systems Agency (DISA) under request for proposals (RFP) No. GSMET100035.00, issued under DISA's Global Information Grid Services Management Engineering, Transition, and Architecture multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract to acquire consolidated implementation support services for the Department of Defense information network. The protester alleges that the agency failed to recognize numerous strengths in the protester's proposal, and that the agency failed to adequately document its best-value tradeoff decision.

BACKGROUND

The agency issued the RFP on May 4, 2018. Memorandum of Law (MOL) at 4. The RFP established two evaluation factors: (1) technical/management approach; and (2) cost. Agency Report (AR), Tab 1, RFP, at 4. The RFP divided the technical/management approach factor into three equally-weighted subfactors. Id. at 4-5. Under these subfactors the agency would evaluate the extent to which an offeror demonstrated: (1) a comprehensive approach to analyzing government furnished information (GFI)¹ related to a particular implementation requirement or activity at the designated implementation site to develop an implementation request (IR); (2) a plan to execute the actions identified in the telecommunications site implementation plan to accomplish the tasks required to bring installed equipment into operational readiness; and (3) a comprehensive management approach that provides the minimally acceptable mix of labor categories and labor hours to meet the requirements of the performance work statement. Id.

The RFP advised offerors that each technical subfactor would be evaluated individually and assigned one of the following adjectival ratings: (1) blue/outstanding; (2) purple/good; (3) green/acceptable; (4) yellow/marginal; or (5) red/unacceptable. AR, Tab 1F, Evaluation Tables. Relevant to this protest, the RFP provided that, in order to be rated as purple/good the relevant portion of the proposal must, among other things, contain at least one strength, and in order to be rated as blue/outstanding the relevant section of the proposal must contain multiple strengths.² Id. The RFP contemplated that award would be made on the basis of a tradeoff between technical/management approach and cost, with technical/management approach being more important than cost. RFP at 4.

The agency received proposals from three offerors, including By Light and NES, and following discussions made award to NES on December 6, 2018. Protest at 3. On December 17, By Light filed a protest with our Office alleging, among other things, that the agency erred by failing to assign its proposal any strengths and that NES's total evaluated cost was unrealistically low. Id. On December 28, 2018, the agency advised our Office that it planned to take corrective action, indicating that it would reevaluate proposals, open discussions if necessary, and make a new award decision. We dismissed the protest as academic. By Light Professional IT Services, LLC, B-417191, Jan. 2, 2019 (unpublished decision). On February 26, 2019, the agency again selected

¹ The performance work statement (PWS) indicated that relevant GFI would include detailed architecture designs, telecommunication service orders, major bills of materials, configuration standards, wavelength plans, site build lists, and site survey reports. AR, Tab 1A, PWS at 5.

² The RFP defines a strength as an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the government during contract performance. AR, Tab 1F, Evaluation Tables.

NES for award, and, on March 4, By Light again filed a protest with our Office on a substantially similar basis to its first protest. Protest at 3. The agency again indicated that it would again take corrective action, and we dismissed the protest as academic on March 26. By Light Professional IT Services, LLC, B-417191.2, Mar. 26, 2019 (unpublished decision).

On June 26, the agency amended the solicitation to remove certain tasks from the PWS, and, on July 19, requested final proposal revisions (FPRs) which both NES and By Light submitted. Protest at 4. The agency evaluated By Light's and NES's proposals as follows:

	By Light	NES
Technical/Management		
Subfactor 1	Green/Acceptable	Green/Acceptable
Subfactor 2	Purple/Good	Purple/Good
Subfactor 3	Green/Acceptable	Green/Acceptable
Cost	\$39,176,869	\$38,981,524

AR, Tab 4, Source Recommendation Document at 1.

In its best-value tradeoff decision, the agency concluded that both proposals were technically equal, and made award to NES on the basis of its slightly lower proposed cost. AR, Tab 4, Source Recommendation Document at 16. On August 22, the agency notified By Light that the task order had again been awarded to NES, and this protest followed.³

DISCUSSION

The protester alleges that the agency erred in its evaluation of proposals as well as in its conduct of the best-value tradeoff. Protester's Comments at 2-11. In this regard, the protester alleges that the agency failed acknowledge a significant number of objective strengths in its proposal.⁴ Id. at 2-8. The protester also argues that the agency's best-value tradeoff was flawed because it was inadequately documented. Id. at 8-11.

³ Our Office has jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts issued under the authority of Title 10, if the task order is valued in excess of \$25 million. See 10 U.S.C. § 2304c(e)(1)(B).

⁴ In its initial protest the protester alleged that the agency overlooked 17 distinct strengths in its proposal, and the agency responded to each of the 17 allegations. Protest at 6-12; MOL at 11-45. The protester's comments, however, only substantively responded to 5 of the 17 allegations. Protester's Comments at 2-11. Where an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we
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Unacknowledged Strengths

The protester alleges that several elements of its proposal exceeded the solicitation requirements in ways beneficial to the government, but were not recognized by the agency as strengths.⁵ Protester's Comments at 2-8. The protester contends that this is particularly significant because the assignment of even one additional strength would have likely changed its adjectival ratings under the rating scheme outlined in the RFP, and resulted in a different best-value tradeoff decision. Id. at 8.

As an example, the protester alleges that the agency failed to acknowledge that the protester proposed a "turnkey" solution involving pre-approved IR processes, reducing the level of government involvement required to manage those processes. Id. at 2-3. The protester also notes that it was uniquely positioned as the incumbent to offer such pre-approved processes, which should have been a discriminator between its proposal and the awardee's proposal. Id. at 3.

As another example, the protester alleges that the agency failed to credit its proposal with a strength for proposing to follow various best practices or standards (such as various NIST, ISO, and ANSI standards) in its management plan. Protester's Comments at 5-6. The protester contends that, because those standards are vetted and certified by third parties, and the protester is certified with respect to those standards, its proposal reduced the risk of unsuccessful contract performance in a way that exceeded the solicitation's requirements and was advantageous to the agency.⁶ Id.

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deem the initially-raised arguments abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. Accordingly, we consider the protester to have abandoned the challenges concerning the remaining 12 alleged strengths.

⁵ As an aside, the protester calls attention to the fact that the agency's arguments in response to its protest grounds concerning various alleged strengths rely on post hoc explanations, and are not reflected in the evaluation record. See Protester's Comments at 2. However, an agency is not required to document all "determinations of adequacy" or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. Allied Tech. Group, Inc., B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13. Accordingly, because the agency's offered explanations are not otherwise inconsistent with the contemporaneous evaluation record, they are unobjectionable in this context.

⁶ The protester challenged several additional unacknowledged strengths not addressed in this decision. See Protester's Comments at 2-8. We have reviewed the other arguments and conclude that none of them provide a basis on which to sustain the protest.

In reviewing a protest against an agency's evaluation of proposals, our Office will not substitute our (or the protester's) judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In this regard, the evaluation of an offeror's proposal is a matter within an agency's broad discretion, since the agency is responsible for defining its needs and the best method for accommodating them. Id. A protester's disagreement without more, does not form the basis for us to conclude that an evaluation was unreasonable. See DynCorp International, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8.

Here, the agency did not view the protester's alleged strengths as having merit or exceeding the requirements of the solicitation in a way that would benefit the agency. With respect to the protester's alleged strength involving pre-approved IR processes, the agency notes that the solicitation required offerors to propose a comprehensive approach for analyzing GFI and the development of IRs. MOL at 23-25. In this regard, the PWS provided that offerors would be responsible for coordinating with program offices, design engineers, pre-engineering, and order writers in order to aggregate all applicable project GFI, which ultimately would be used to develop the IR. Id. The agency's evaluation concluded that the protester's proposed process addressed these requirements, but the agency does not view the fact that the protester had used the same process under the incumbent contract as having merit or meaningfully exceeding the solicitation requirements in a way that was advantageous to the government. Id.

In response, By Light contends that the fact that its processes were pre-approved would unquestionably be beneficial to the agency because it would reduce or eliminate any need for agency personnel to review and approve a new coordination process. Protester's Comments at 2-3. However, while this feature of the protester's proposal may be of some benefit to the agency, the record does not establish how significant or meaningful that hypothetical benefit would be. In the absence of evidence suggesting that the agency erred, we see no basis to conclude that the agency's judgement in this regard was unreasonable or otherwise inconsistent with the terms of the solicitation.

Similarly, we find the protester's argument, that its proposal merited a strength because it proposed specific certification standards in its management plan, to be meritless. The agency notes that the RFP required offerors to propose a comprehensive management approach that provides the minimally acceptable mix of labor categories and labor hours to meet the requirements of the PWS. MOL at 40-41. Further, the PWS required that implementations should be in accordance with Defense Information Systems Network implementation standards, but that commercial practices should also be utilized so long as they do not conflict with the agency's standards. PWS at 8. In this case, the agency notes that By Light's proposal addressed this requirement by identifying appropriate commercial standards on which it proposed to rely. MOL at 40-41. However, the agency viewed the identification and proposal of commercial standards as simply a part of By Light's approach to addressing the requirements of the RFP, and accordingly did

not view this aspect of By Light's proposal as exceeding the solicitation's requirements. Id.

In response, By Light contends that the fact it selected specific commercial standards for which it held certifications exceeds the solicitation's requirements in a way that is beneficial to the agency. Protester's Comments at 5-6. While the solicitation did not specifically require certifications, we are not convinced that the fact that the protester held certifications in the specific commercial standards it proposed meaningfully exceeded the solicitation requirements in this regard. The PWS did not require that offerors propose any particular commercial standards, but it clearly required offerors to employ commercial standards as part of establishing their comprehensive management approach. PWS at 8. In that context, proposing standards with which one has experience or certification is simply one way to demonstrate a comprehensive management approach with respect to the use of commercial standards. Even assuming, for the sake of argument, that this aspect of the proposal exceeded the requirements of the solicitation, the record does not establish the nature of the benefit that this feature of the protester's proposal would provide to the agency. In the absence of evidence suggesting that the agency erred, we see no basis to conclude that the agency's judgement in this regard was unreasonable or otherwise inconsistent with the terms of the solicitation.

In sum, the protester simply disagrees with the agency as to the merit of its proposed approach, and as to the appropriate rating or characterization of its proposal. Such disagreement, without more, does not provide a basis for us to conclude that the evaluation here was unreasonable. See DynCorp International, LLC, supra.

Best-Value Tradeoff

The protester contends that the agency erred because the agency's best-value tradeoff was inadequately documented.⁷ Protester's Comments at 8-11. Specifically, the protester argues that the agency's analysis merely mechanically counted strengths and unreasonably considered the proposals to be technically equal on that basis. Id. (citing Apogee Eng'g, LLC, B-414829.2; B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 11)

Our decisions have concluded that an agency's source selection decision is reasonable where it rests on a qualitative assessment of the underlying technical differences among competing offerors, rather than a mechanical comparison of the offerors' technical scores or ratings. See Chapman Law Firm, LPA, B-293105.6 et al., Nov. 15, 2004, 2004 CPD ¶ 233 at 5; The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8. However, an agency is not obligated to extensively document every consideration made

⁷ The protester also alleged that the best-value tradeoff was improper because it relied on a flawed technical evaluation. Protester's Comments at 8-11. Because we conclude above that the agency did not err in the conduct of its technical evaluation, this protest ground is likewise without merit.

in its tradeoff decision, it is simply required to adequately explain and document the basis for its source selection determination. VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 at 11.

While the agency's best-value tradeoff decision in this case was brief, the record reflects that the agency did not merely mechanically find that the two proposals were technically equal on the basis of adjectival ratings. For example, the agency discussed the specific nature of the strengths assigned to each proposal underlying the adjectival rating, and noted that they provided different benefits to the government. AR, Tab 4, Source Recommendation Document at 15. The agency, however, concluded that those strengths provided an approximately equal amount of benefit to the government. Id. More significantly, the agency also noted that the benefit offered by the protester's strength was contingent on other third party factors, and therefore did not outweigh the cost savings offered by the awardee's proposal. Id. at 16-17. Specifically, the agency noted that By Light's strength involved a proposed reduction in installation timelines, but that By Light's approach was dependent on third party vendors, other government personnel, and shipment and delivery of equipment and commercial circuits, which could affect the schedule savings. Id. at 15.

On this record, it is clear that the agency did not mechanically rely on adjectival ratings; rather, it meaningfully considered the differences between the protester's and awardee's proposals. Accordingly, we have no reason to question the agency's best-value tradeoff decision.

The protest is denied.

Thomas H. Armstrong
General Counsel