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Decision

Matter of: Biswas Information Technology Solutions, Inc.

File: B-413104.35; B-413104.38

Date: April 18, 2019

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DIGEST

Protest that agency misevaluated protester's proposal as unacceptable and engaged in disparate evaluation treatment is denied where proposals were evaluated reasonably and consistently with solicitation criteria, and where evaluation was evenhanded and did not reflect disparate evaluation treatment.

DECISION

Biswas Information Technology Solutions, Inc. (BITS), of Herndon, Virginia, a small business, protests the Department of Health and Human Services, National Institutes of Health's (NIH) exclusion of its proposal from further consideration under request for proposals (RFP) No. NIHJT2016015, for information technology (IT) supplies and services under a governmentwide acquisition contract (GWAC). BITS argues that NIH misevaluated its proposal as unacceptable and evaluated proposals unequally.

We deny the protest.

BACKGROUND

Pursuant to Section 5112(e) of the Clinger-Cohen Act of 1996, 40 U.S.C. § 11302(e), the Office of Management and Budget has designated NIH as an executive agent for government-wide IT acquisitions. RFP at B-1.¹ The RFP, issued on March 14, 2016,

¹ The solicitation was amended four times. All RFP citations are to the conformed RFP.

contemplated award of up to 35 additional indefinite-delivery, indefinite-quantity (IDIQ) contracts for NIH's existing Chief Information Officer-Solutions and Partners small business (CIO-SP3 SB) GWAC, a 10-year IDIQ contract for IT solutions and services.² Id. at B-1, L-6. The RFP anticipated the issuance of fixed-price, time-and-material, or cost-reimbursement task orders during the remaining period of performance, which corresponds with the current GWAC contracts and will end in 2022. Id. at F-1. The maximum order amount established for the contracts was \$20 billion with a minimum guarantee of \$250 per awardee. Id. at B-2.

The agency was to evaluate proposals in two phases. Id. at M-1. In phase 1, the NIH would evaluate proposals based on four "Go/No-Go" requirements. Id. at M-1, M-3. Proposals found unacceptable under any of these requirements would be ineligible for award and would not be further evaluated. Id. at M-4. The four requirements evaluated in phase 1 were:

- Submission of a "compliant proposal" that contained all required documents;
- Evidence that the offeror (and any contractor teaming arrangement members) had verification of an adequate accounting system;
- "During the [p]hase 2 assessment," showing an acceptable technical capability and understanding; and
- "During the [p]hase 2 assessment,"³ showing an acceptable "inherent domain-specific capability in a health-related mission."

RFP at M-3 to M-4.

The evaluation of technical capability and understanding (referred to in the third requirement above) was comprised of ten subfactors which corresponded to ten task areas set forth in an accompanying statement of work (SOW).⁴ Id. at M-4. The solicitation limited offerors to three pages to respond to each task area, and advised

² The solicitation further provided that the government would establish "[c]ontractor [g]roups" (historically underutilized business zone, service-disabled veteran-owned small business, section 8(a), and small business), and projected the number of anticipated awards for each group. See RFP at M-2, M-3.

³ A prospective vendor asked whether the references to the phase 2 assessment meant that it was part of both the third and fourth requirements in phase 1. NIH responded that "[t]he wording is correct." RFP amend. 2 at 37 (Answer to Offeror Question No. 11); see also id. (Answer to Offeror Question No. 14).

⁴ The task areas included IT services for biomedical research and healthcare, chief information officer support, imaging, outsourcing, IT operations and maintenance, integration services, critical infrastructure protection and information assurance, digital government, and enterprise resource planning. Id. at C-2 to C-9, M-4.

that the technical factor and subfactors would be rated using the following adjectival ratings: highly acceptable, very acceptable, acceptable, and unacceptable.⁵ Id. at M-5. The RFP provided differing requirements for each small business grouping and, for the evaluation of offerors participating in the Small Business Administration's (SBA) 8(a) program, required each offeror to demonstrate the ability to perform in task area 1 and a minimum of five other task areas. Id. at M-6. The proposal was to address each applicable task area separately. Id.

The agency received 552 proposals, of which 167 were from participants in the 8(a) program, including BITS, which submitted a response for all ten task areas. Contracting Officer's Statement (COS) at 1; Agency Report (AR) Tabs 4.1 to 4.10, BITS Technical Proposal for Task Areas 1-10. The scope of task area 1 was to provide information technology support services for biomedical research, health sciences, and healthcare by

performing studies and analyses and providing operations, technical, and maintenance services for the systems, subsystems, and equipment, some of which interface with, and are extensions to, information systems throughout the Federal Government.

RFP at C-3.

The section of BITS's proposal addressing task area 1 consisted of descriptions of its experience. The narrative began by stating that the firm had successfully performed multiple relevant projects and that it "brings to the table a robust technical and managerial solution in varied fields like IT management, enterprise data management, [etc.]" AR Tab 4.1, BITS Task Area 1 Technical Proposal, at 1. The proposal proceeded to identify and briefly describe individual projects:

BITS successfully implemented a solution . . . promoting [DELETED] and preventing [DELETED], thus promoting a primary goal of [the agency], and BITS assisted [the agency] achieve this mission objective. In the [second agency] project BITS has developed an algorithm based on [data] that helped [the second agency] and [DELETED]. In the [third agency] project, BITS is responsible for multiple [DELETED]. In NIH, BITS has developed a state-of-the-art [DELETED] . . . which is to provide [DELETED].

Id.

⁵ Acceptable was defined as "[t]he proposal meets the [g]overnment's requirements and exhibits a probability of success," while unacceptable was defined as "[t]he proposal fails to recognize, address, or consider the [g]overnment's requirements." RFP at M-5.

The NIH evaluators determined that BITS complied with the first and second of the four phase 1 requirements, and showed that it had an acceptable accounting system. AR Tab 5.1, Phase 1 Go/No-Go Assessment, at 5 (rating summary chart), 40 (BITS rating comments). However, with respect to the third requirement, the NIH evaluators concluded that BITS's proposal failed to "recognize, address, or consider" the government's requirements to demonstrate the offeror's overall technical approach and the specific methodology. AR Tab 5.2, Phase 1 Go/No-Go Assessment for Task Area 1, at 11. The evaluators also judged that the proposal did not demonstrate a "level of knowledge and expertise warranting further assessment," and did not "adequately discuss or describe" its methodology and technical approach for Task Area 1. Id. With respect to the experience discussed in the proposal narrative, the evaluators characterized BITS's descriptions as high-level and "lack[ing] any detail on how they intend to address future requirement[s] for this Task Area." Id. The agency concluded that the proposal failed to demonstrate its overall technical approach and specific methodology for performing, and rated the proposal unacceptable. Id.

As a result of the unacceptable rating in the phase 1 evaluation, NIH did not evaluate BITS's proposal for phase 2. On December 20, 2018, NIH notified BITS that its proposal had been evaluated as unacceptable for Phase 1, and was not considered for award. Protest at 3; COS at 2. The agency awarded contracts to 102 of the SBA's 8(a) offerors. Memorandum of Law (MOL) at 4. Following a debriefing, BITS filed this protest.

PROTEST

The protester primarily argues that NIH miscalculated its proposal as unacceptable under the phase 1 evaluation, and that the evaluation of certain awardees' proposals demonstrates unequal evaluation treatment. Protest at 13-25; Comments & Supp. Protest at 9-17. As discussed below, our review of the record shows that NIH reasonably evaluated BITS's proposal as failing to demonstrate an adequate technical approach to task area 1, reasonably rated the proposal unacceptable, and reasonably distinguished BITS's proposal from those submitted by the awardees.

Notification of Rejection

As an initial matter, BITS argues that NIH failed to comply with an RFP provision that stated that an offeror eliminated from the competition in phase 1 would be notified. The RFP stated that where an offeror's proposal was found unacceptable in phase 1 under the technical capability and understanding criterion, "the Government will consider the[] proposal to be Unacceptable, notify th[e] Offeror[] of the assessment, and not evaluate th[e] proposal[] any further." RFP at M-4. BITS contends that, contrary to the RFP statement, NIH failed to notify BITS that its proposal had been found unacceptable; instead, NIH notified BITS of the results of its phase 1 evaluation only after the agency had completed the phase 2 evaluations and announced awards. Protest at 13.

NIH argues that the RFP did not establish a time by which offerors had to be notified of the elimination of their proposals in phase 1, that the phase 1 evaluation did not establish a competitive range so regulations governing notice were inapplicable, and that, in any event, BITS has failed to show that the timing of the notice had any prejudicial effect on the firm. MOL at 8.

We agree with NIH that BITS has failed to show that the timing of the notice was prejudicial. Competitive prejudice is an essential element of every viable protest. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving an award. CSI Aviation, Inc., B-415631 et al., Feb. 7, 2018, 2018 CPD ¶ 68 at 7. As a result, we will not sustain a protest alleging that an agency failed to provide timely notice that the protester's proposal had been eliminated from the competition where the protester cannot demonstrate that the timing resulted in competitive prejudice. See World Access, Inc., B-245571.4, May 8, 1992, 92-1 CPD ¶ 428 at 2-3 (where notification was required at "earliest practicable time," protester did not show that late notification of exclusion from competitive range was prejudicial). BITS has not shown that but for the delay in notification, it would be likely that BITS would have been awarded a contract. Accordingly, we deny this ground of protest.

Evaluation

BITS contends that its proposal was not reasonably evaluated as unacceptable. BITS argues that the RFP provided no specific work under task area 1 to which offerors could provide a specific approach, therefore it properly provided examples of how it had addressed issues in these work areas in the past. Protest at 14. BITS also notes that the RFP stated that, beyond "demonstrat[ing] the Offeror's overall Technical Approach and the specific Methodology" for each task area, offerors were specifically told that:

[p]roposals providing examples of experience and/or qualifications addressing the specific Task Areas that demonstrate the Offeror's increased competence, increased merit and/or increased probability of successful contract performance, may be evaluated more favorably.

Protest at 14-15 (quoting RFP at L-18).

Given the statement above, and the lack of any specific work for task area 1 in the RFP, BITS argues that it was proper for its proposal to use an "example-based approach to outlining its technical approach," and it was unreasonable for NIH to evaluate its examples-based proposal as unacceptable. Id. at 15.

NIH counters that its evaluation of BITS's technical approach to task area 1 was reasonable and consistent with the criteria in the RFP. NIH states that the RFP instructed offerors to "demonstrate the Offeror's overall Technical Approach and specific Methodology" to each task area. MOL at 9 (quoting RFP at L-18). The agency argues

that the evaluators fairly reviewed BITS's proposal and recognized that while it described a technical approach and methodology "in small parts," it nevertheless failed to do more than identifying experience by using descriptions that lacked detail, and as a whole, did not describe a technical approach or methodology. AR at 10, 12. NIH maintains that while the RFP encouraged offerors to provide examples of experience and qualifications, it did not permit an offeror to use experience as a substitute for a technical approach and methodology for performance.

In a protest challenging an agency's evaluation of proposals, our Office's role is not to reevaluate proposals; rather, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. An offeror is responsible for submitting a well-written proposal with adequately detailed information that allows for meaningful review by the procuring agency. Abacus Tech. Corp.; SMS Data Prods. Group, Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 19.

Our review of the record supports the evaluation of BITS's proposal as unacceptable. As reflected in the excerpt from the firm's task area 1 response quoted above, BITS's technical approach and methodology was largely a description of multiple past efforts. Each of these past efforts was depicted in only a few words, and without a further explanation of the approach taken in those examples or its relevance to the requirements. Since the proposal provided only brief summaries of the firm's experience, and not an actual technical approach and methodology, the evaluators reasonably concluded that BITS's task area 1 approach was unacceptable. See AR Tab 5.2, Phase 1 Go/No-Go Assessment for Task Area 1, at 11. Consistent with the RFP provision that a proposal that failed any of the four phase 1 requirements would not be evaluated further, the agency properly did not evaluate it further. Id.

BITS next argues that the evaluation and rejection of its proposal reflects disparate treatment compared to two other firms' proposals. The protester contends that those two offerors submitted proposals that were not qualitatively different from its proposal, but that NIH nevertheless evaluated those two proposals as acceptable in phase 1, and ultimately awarded contracts to the offerors.

NIH responds that each of the acceptable offerors submitted a specific technical approach and methodologies, which made their proposals fundamentally different from BITS's. While BITS challenges one offeror's proposal as lacking a methodology for addressing the task areas, NIH argues that the offeror's proposal expressly identified a "sample of the methodologies" from which the firm would select, and the proposal explained that the firm would select the best methodology for a particular task based on the firm's experience. In contrast, NIH argues that BITS's proposal did not identify any methodology. Supp. MOL at 4-5.

BITS raises a similar challenge to the evaluation of a second awardee's proposal. BITS argues that this firm's proposal also relied on describing the firm's experience just as BITS had done, but, unlike BITS, the firm was not faulted for failing to present a

technical approach or methodology. Comments & Supp. Protest at 13-17. BITS contends that if the agency found this firm's proposal acceptable, it also should have found BITS's proposal acceptable. Id. In response, NIH argues that this proposal differed materially from BITS's proposal, specifically because the second firm's proposal directly set forth elements of a technical approach, described the firm's experience in ways that illustrated techniques that it could use to perform task area 1, and affirmatively agreed to use that approach during performance under the CIO-SP3 contract. Supp. MOL at 7-8.

A contracting agency must treat all competitors equally and evaluate their offers evenhandedly against the solicitation's requirements and evaluation criteria. Will Tech., Inc.; Paragon TEC, Inc., B-413139.4 et al., June 11, 2018, 2018 CPD ¶ 209 at 15. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

Our review of the record shows that BITS's arguments lack a factual basis. The awardees' proposals exhibit differences from BITS's proposal that justify a different assessment. The challenged proposals also both included reasonably clear statements that identified a technical approach and methodology, while BITS's proposal did not. In contrast to BITS's description of its experience, our review confirms the agency's contention that the first offeror's proposal used a table to provide a "sample of the methodologies" that its team would use to perform CIO-SP3 task orders, and provided separate responses to each element of task area 1. For example, the first offeror proposed staff with experience in specific areas to use its "[DELETED] software;" it proposed using real-time transaction data and experience in the use of analytical tools and techniques; and it proposed to continuously refresh the means and methods of its [DELETED] and [DELETED], which would reduce errors and false positives in monitored transactions. AR Tab 6.1, First Offeror Task Area 1 Proposal, at 1.

Also in contrast to BITS's proposal, the second offeror's proposal described its approach as including [DELETED]. In describing its experience, this firm's proposal explained its approach in a particular effort as including a [DELETED] methodology, and specifically affirmed that it would "implement the same approach for systems development and enhancement for Federal customers." AR Tab 6.7, Second Offeror Task Area 1 Proposal, at 1. Our review thus confirms that NIH reasonably evaluated BITS's proposal differently because its proposal lacked a similar statement of its approach and methodology that both of the awardees provided.

BITS also argues that the record shows that NIH evaluated inconsistently by rejecting the protester's proposal while, at the same time, favorably evaluating, and then awarding contracts to, at least three other offerors whose technical proposals were

essentially identical copies of the same template proposal.⁶ BITS argues that using a template proposal did not show the offeror's technical approach or methodology. Instead, those offerors merely submitted "filler text masquerading as a technical approach." Protester's Supp. Comments at 15. BITS also points to language in the RFP that specifically stated that an offeror's use of a template proposal "may demonstrate a lack of understanding." See RFP at C-11. Therefore, in BITS's view, when NIH found the template proposals to be acceptable, it also should have considered BITS's proposal acceptable. Id. at 11.

NIH counters that it reasonably evaluated the template proposals as acceptable because they met the solicitation criteria of demonstrating an acceptable technical approach and methodology. Supp. MOL at 10. NIH also notes that the evaluators recognized that a template proposal had been used, assessed a weakness, and expressly questioned whether the proposed approach in these proposals would meet the RFP requirements. Id. at 10-11. Further, NIH argues, the contracting officer used reasonable judgment in deciding to include those offerors among the awardees in the 8(a) participant group, while appropriately recognizing their use of a template proposal and assessing a technical weakness.

The record shows that each template proposal provided a technical approach and methodology in response to task area 1, in contrast to BITS's proposal. Despite their use of essentially identical language and graphics, the template proposals provided a technical approach that featured the firms' reliance on a pool of experienced personnel with skills in specific areas relevant to performing tasks. E.g., AR Tabs 6.2, 6.4, 6.6, Technical Proposals at 1. The proposals also committed the firms to using a technical approach that was depicted in an accompanying graphic, with five main elements of the approach that ranged from planning through maintenance, and further identified sub-elements within each of those five main elements. Id. The proposals also described each firm's commitment to staffing task orders with qualified personnel working under a dedicated task order project manager, and the firms' use of regular project management meetings to ensure progress toward task completion. Id.

Procuring officials and user activities are responsible for determining their minimum needs and whether an offeror will satisfy those needs, since the agency will suffer the consequences of problems encountered during performance. 3M Co., B-231810, B-231811, July 8, 1988, 88-2 CPD ¶ 32 at 2. In our view, the RFP did not require NIH to reject template proposals, and the template proposals at issue provide a reasonable basis for NIH's evaluators to conclude that the approach and methodology provided in them was acceptable. Accordingly, NIH had the discretion to award contracts to the template offerors, even though the agency recognized that the use of the template also posed a risk and raised questions about these firms' ability to fulfill the contract

⁶ A review of the proposals shows that they were essentially identical to each other in text and graphics, except for the name of each offeror and, in some cases, slight changes to the text formatting and minor changes in wording.

requirements, NIH also had the discretion to find that BITS's proposal was unacceptable because it lacked a technical approach and methodology. The record thus does not support BITS's argument that the evaluation reflects disparate treatment, and we therefore deny BITS's challenges to the technical evaluations and award decisions.

The protest is denied.

Thomas H. Armstrong
General Counsel