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Decision

Matter of: Arcticom LLC

File: B-421756; B-421756.2

Date: September 14, 2023

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Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's past performance is dismissed where the protester received the highest possible rating under the past performance factor.
 2. Protest challenging the agency's evaluation of the awardee's proposal is dismissed where the protester failed to timely challenge the evaluation of the intervening offeror that was next in line for award.
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DECISION

Arcticom LLC, a small business of Anchorage, Alaska, protests the award of a contract to GSD Services, LLC, a small business of Rockville, Maryland, by the Department of the Navy, Naval Facilities Engineering Command, under request for proposals (RFP) No. N6247322R3618, for the performance of base operations support services for the Marine Corps Air Ground Combat Center and Naval Hospital in Twentynine Palms, California. The protester contends that the agency unreasonably evaluated its proposal and the awardee's proposal, which resulted in an unreasonable source selection decision.

We dismiss the protest.

BACKGROUND

On January 18, 2023, the agency issued the RFP as a small business set-aside in accordance with the procedures of Federal Acquisition Regulation (FAR) part 15.¹ Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3-4; RFP at 1, 87. The RFP contemplated the issuance of a fixed-price indefinite-delivery, indefinite-quantity contract with a base period of 12 months, seven 1-year option periods, and one 6-month option to extend services. RFP at 2-3; COS/MOL at 3. The due date for proposals, as amended, was February 21, 2023. AR, exh. 1, RFP amend. 0005 at 123.

The RFP provided for the submission of proposals in two volumes: price and non-price. RFP at 75-78. For the non-price volume, the RFP provided that the agency would evaluate the following factors: corporate experience, management approach, technical approach, safety, and past performance.² *Id.* at 78-84. For corporate experience, offerors were required to submit up to four examples of recent and relevant projects where the offeror served as the prime contractor.³ *Id.* at 78. In evaluating this factor, the agency would consider the offeror's depth of experience, management of subcontractors, and coordination with stakeholders. *Id.* at 92.

For management approach, offerors were to demonstrate their approach for controlling and managing the project, including the interface between the major functional areas and sub-annexes, and the offeror's general management and administration structure. *Id.* at 80. In evaluating this factor, the agency would consider the extent to which the proposal demonstrated a clear understanding of the requirements of the project and the

¹ The RFP provided that the subject solicitation consolidated the requirements for five existing contracts/task orders into one procurement. Agency Report (AR), exh. 1, RFP at 4-5.

² Proposals could receive a combined technical/risk rating of "outstanding," "good," "acceptable," "marginal," or "unacceptable" under the corporate experience, management approach, technical approach, and safety factors. AR, exh. 2, Source Selection Plan (SSP) at 25. As relevant here, a rating of outstanding indicated that the proposal had "an exceptional approach and understanding of the requirements," "multiple strengths and/or at least one significant strength," and the "risk of unsuccessful performance [was] low." *Id.* A rating of good indicated "a thorough approach and understanding of the requirements," "at least one strength or significant strength, and risk of unsuccessful performance [was] low to moderate." *Id.* A rating of acceptable indicated that the proposal "[met the] requirements," had "an adequate approach and understanding of the requirements, and risk of unsuccessful performance [was] no worse than moderate." *Id.*

³ The solicitation defined offeror to include "partnerships, joint ventures, teaming arrangements (e.g. small business first-tier subcontractor), [and] parent company/subsidiary/affiliate, or sister companies." RFP at 78.

likelihood that the work will be performed in accordance with the requirements. *Id.* at 93.

For technical approach, offerors were to provide a staffing plan, narrative, and risk mitigation strategy that demonstrated, among other things, the offeror's approach and methodology for accomplishing the requirements. *Id.* at 81-82. The agency would then evaluate the extent to which the staffing plan demonstrated adequate staffing levels, and a reasonable understanding of the requirements, labor quantities, and required skills. *Id.* at 94. Additionally, the agency would evaluate whether the narrative presented an effective approach to achieve performance of the agency's objectives and standards, and whether the offeror provided a detailed risk mitigation strategy. *Id.*

For the safety factor, offerors were required to submit safety data and a narrative for the proposed safety plan. *Id.* at 82-83. In evaluating this factor, the agency would determine whether the offeror demonstrated commitment to safety and how the offeror planned to properly manage and implement safety procedures. *Id.* at 95. For past performance, offerors were required to ensure that the contractor performance assessment reporting system evaluations submitted under the corporate experience factor were also submitted under this factor.⁴ *Id.* at 84. The agency would then evaluate the recency, relevancy, and quality of the submitted projects. *Id.* at 89.

The RFP provided for award on a best-value tradeoff basis where corporate experience, management approach, technical approach, and safety were of equal importance and, when combined, were equal in importance to past performance. *Id.* at 90-91. The non-price factors, when combined, were approximately equal to price. *Id.* at 90.

The agency received timely proposals from four offerors, including Arcticom and GSD. AR, exh. 3, SSEB Report at 2-3. The source selection evaluation board (SSEB) convened on February 22 to evaluate technical proposals and complete the price analysis. *Id.* at 2. After the initial evaluation, the agency entered into discussions with all offerors, and set the due date for revised proposals for April 11. *Id.* The SSEB reconvened on April 11 to evaluate revised technical and price proposals. *Id.* at 2-3. Following the evaluation of revised proposals, the agency then requested final proposal revisions, which were due May 2. *Id.* at 3. The final evaluation results were as follows:

⁴ Under the past performance factor, proposals could receive a rating of "satisfactory confidence," "neutral confidence," "limited confidence," or "no confidence." AR, exh. 2, SSP at 30. As relevant here, a rating of satisfactory confidence indicated that the agency had "a reasonable expectation that the offeror will successfully perform the required effort." *Id.* A rating of neutral confidence indicated that "[n]o recent/relevant performance record [was] available or the offeror's performance record [was] so sparse that no meaningful confidence assessment rating can be reasonably assigned." *Id.* A proposal that received a past performance rating of neutral confidence could not be evaluated favorably or unfavorably under this factor. *Id.*

	Arcticom	GSD	Offeror T	Offeror C
Corporate Experience	Good	Outstanding	Outstanding	Outstanding
Management Approach	Outstanding	Outstanding	Outstanding	Outstanding
Technical Approach	Good	Outstanding	Outstanding	Outstanding
Safety	Outstanding	Outstanding	Outstanding	Acceptable
Overall Technical Rating	Outstanding	Outstanding	Outstanding	Outstanding
Past Performance	Satisfactory Confidence	Satisfactory Confidence	Satisfactory Confidence	Satisfactory Confidence
Price	\$110,501,521	\$102,925,254	\$113,802,560	\$119,025,544

AR, exh. 3, SSEB Report at 60. In conducting the tradeoff, the SSEB concluded that GSD’s proposal presented the best value to the agency. *Id.* at 62. Although every offeror received an overall technical rating of “outstanding” with a past performance rating of “satisfactory confidence,” the SSEB explained that GSD’s technical approach was superior as it had the most significant strengths.⁵ *Id.* at 61. Moreover, GSD’s proposal received thirteen combined strengths and significant strengths, which was more than any other offeror. *Id.* Under the past performance factor, the SSEB concluded that GSD’s proposal contained “the most relevant projects submitted . . . with the greatest depth and breadth of experience” and demonstrated “a more substantial history of satisfactory or better ratings compared to all other [o]fferors.” *Id.* In light of these findings, as well as GSD’s submission of the lowest total evaluated price, the SSEB recommended GSD’s proposal for award. *Id.* at 62.

The SSEB also ranked the remaining offerors, with Offeror T ranked at second, Arcticom ranked at third, and Offeror C ranked at fourth. *Id.* at 62-63. With respect to the comparison of Offeror T’s proposal and Arcticom’s proposal, the SSEB explained that Offeror T’s proposal was ranked higher because it received three significant strengths and nine strengths whereas Arcticom’s proposal received only two significant strengths and seven strengths. *Id.* at 62. Offeror T also received a rating of “outstanding” in all factors whereas Arcticom did not. *Id.* The SSEB concluded that the

⁵ The SSP defined a significant strength as “[a]n aspect of an [o]fferor’s proposal with appreciable merit” or an area that “will exceed specified performance of capability requirements to the considerable advantage of the [g]overnment during contract performance.” AR, exh. 2, SSP at 27. A strength was defined as “[a]n 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 [g]overnment during contract performance.” *Id.*

value of Offeror T's technical proposal indicated "a strong approach and understanding of the requirements" and its "risk of unsuccessful performance is lower than that of Arcticom." *Id.* Although Offeror T submitted a higher price than Arcticom, the SSEB explained that the overall strength of Offeror T's proposal demonstrated "a greater understanding of the work to be performed" that outweighed the difference in price. *Id.*

The source selection authority concurred with the SSEB's evaluation and recommendation of award to GSD. AR, exh. 5, Source Selection Decision Document (SSDD) at 2. On May 31, the agency sent an unsuccessful offeror notice to Arcticom, informing it of the award to GSD and its right to request a debriefing. AR, exh. 6, Unsuccessful Offeror Notice at 1. Arcticom requested a debriefing that same day, which the agency provided on June 8. Protest at 14. In accordance with the agency's enhanced debriefing procedures, Arcticom submitted a follow-up question on June 9, to which the agency responded on June 13.⁶ *Id.* This protest followed.

DISCUSSION

Arcticom challenges the agency's evaluation of its proposal under the past performance factor. Protest at 19. Arcticom also challenges the agency's evaluation of GSD's proposal under the corporate experience, management approach, technical approach, safety, and past performance factors. Protest at 14-19. For reasons discussed below, we dismiss the protest.

Our Bid Protest Regulations require protesters to present protest grounds that are factually and legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f); see *Xenith Grp., LLC*, B-420706, July 14, 2022, 2022 CPD ¶ 184 at 3. If a protest ground is based on speculation, factual inaccuracies, or flawed legal assumptions, we will summarily dismiss that argument. *Xenith Grp., LLC, supra.*

Here, Arcticom argues that the agency unreasonably assigned its proposal a rating of "satisfactory confidence" instead of "substantial confidence" under the past performance factor. Protest at 19. As the agency points out, however, a rating of "satisfactory confidence" was the highest rating available under the adjectival rating scale used by the agency in evaluating past performance. COS/MOL at 17; AR, exh. 2, SSP at 30. In other words, it was not possible for a proposal to receive a past performance rating of "substantial confidence." Because this argument is based on a factual inaccuracy, it is dismissed. See *Charles F. Day & Assocs., LLC*, B-411164, June 2, 2015, 2015 CPD ¶ 173 at 6 (dismissing a challenge to the protester's past performance evaluation for failing to state a valid basis of protest where protester already received the highest possible past performance rating).

⁶ Under the Department of Defense's enhanced debriefing procedures, an unsuccessful offeror may submit additional questions to the agency within two business days after receiving a debriefing. *State Women Corp.*, B-416510, July 12, 2018, 2018 CPD ¶ 240 at 3. The agency must respond to the questions within five business days. *Id.* The debriefing is not closed until the agency responds to the unsuccessful offeror. *Id.*

Arcticom also raises several challenges to the evaluation of GSD's proposal under the non-price evaluation factors. See Protest at 14-19. We do not address these arguments because Arcticom failed to raise a timely challenge to the evaluation of an intervening offeror's proposal that was next in line for award. Therefore, Arcticom is not an interested party to challenge the evaluation of GSD's proposal.

Under our Bid Protest Regulations, a protester must be an interested party to pursue protest allegations before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *NCS Techs., Inc.*, B-416936, Jan. 11, 2019, 2019 CPD ¶ 56 at 3. In this regard, where there is an intervening offeror that would be in line for the award even if the protester's challenges were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify it as an interested party. *Id.*

Here, the agency ranked proposals and placed Offeror T in line for award after GSD because Offeror T's proposal "provide[d] higher value than Arcticom and Offeror C's proposals." AR, exh. 3, SSEB Report at 61-63. Arcticom was notified of this evaluation and ranking when the agency filed its request for dismissal on July 6. See Req. for Dismissal, exh. 2, SSEB Report at 1. To qualify as an interested party to challenge the evaluation of GSD's proposal, Arcticom was required to timely challenge the agency's evaluation of Offeror T's proposal as well. Additionally, to be considered timely, Arcticom needed to file that challenge within 10 calendar days of when it knew, or should have known, its basis for that protest ground. See 4 C.F.R. § 21.2(a)(2). Arcticom first challenged the evaluation of Offeror T's proposal, however, on August 4, nearly one month after it knew of should have known its basis to challenge the agency's evaluation of Offeror T. See Comments and Supp. Protest at 19; see *generally* Resp. to Req. for Dismissal. Because Arcticom raised this argument after the 10-day period, this protest ground is dismissed.

The protest is dismissed.

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General Counsel