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Decision

Matter of: AECOM Technical Services, Inc.

File: B-422030; B-422030.2

Date: January 2, 2024

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Patrick J. Madigan, Esq., Department of Homeland Security, for the agency.
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 corporate experience is dismissed as factually and legally insufficient where protester had no knowledge of the contents of the awardee's corporate experience quotation.
 2. Protest challenging the agency's evaluation of protester's key personnel is denied where evaluation was reasonable and in accordance with the terms of the solicitation.
 3. Protest alleging that agency used an unstated evaluation criterion is denied where the criterion was reasonably encompassed by the solicitation's evaluation criteria.
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DECISION

AECOM Technical Services, Inc., of Germantown, Maryland, protests the establishment of a blanket purchase agreement (BPA) with CDM Federal Programs Corporation, of Fairfax, Virginia, under request for quotation (RFQ) No. 70FA6023Q00000003, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), for program integration and support services. The protester contends that the agency unreasonably evaluated quotations, which resulted in an unreasonable source selection decision.

We dismiss the protest in part and deny it in part.

BACKGROUND

On May 4, 2023, the agency issued the solicitation on an unrestricted basis in accordance with Federal Acquisition Regulation (FAR) subpart 8.4. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab A.1, RFQ at 2. The solicitation contemplated the establishment of a BPA under the General Services Administration's multiple award schedule and sought a vendor to provide program integration and support services for FEMA's Hazard Mitigation Assistance (HMA) Division and respective grant programs. COS at 1. The period of performance was to include a 12-month base period and four, 12-month option periods. *Id.* The due date for quotations was May 22, 2023. RFQ at 1.

The solicitation provided for the evaluation of quotations based on three evaluation factors: corporate experience, oral presentation, and price.¹ *Id.* at 85. For corporate experience, the agency would evaluate the degree to which it had confidence that the vendor would successfully perform the requirements based on the vendor's response to the corporate experience prompts and questions.² *Id.* The agency also would evaluate the vendor's recent and relevant corporate experience in providing integration and support services similar to the integration and support requirements of the HMA division. AR, Tab A.5, RFQ amend. 0001 at 3.

For the oral presentation, the agency would evaluate whether the vendor would successfully perform the requirements based on the vendor's response to the following three elements: technical scenario, key personnel, and on-the-spot questions. RFQ at 86. For the technical scenario element, the agency would evaluate the benefits and risk of the technical, management, and staffing approach for completing the work. *Id.* For the key personnel element, the agency would evaluate the proposed program manager's qualifications and any additional positions designated by the vendor as key personnel.³ *Id.* at 86. For the on-

¹ The solicitation also advised vendors that the agency would conduct a two-phased advisory "down-selection" process where corporate experience would be evaluated during phase one and the remaining factors would be evaluated during phase two. *Id.* at 57. Following the completion of phase one evaluations, the agency would notify each vendor whether its quotation was among the most highly rated and if it was a viable competitor for the BPA. *Id.* at 56. Vendors that did not submit quotations among the most highly rated quotations would be informed that they were unlikely to receive the BPA but were still permitted to move forward to phase two. *Id.*

² The solicitation required vendors to respond to the following prompts under the corporate experience factor and describe the experience of the vendor, or its proposed subcontractor/teaming partner, in: (1) supporting large and complex contracts; (2) providing complex grant application development support for multiple projects; (3) supporting development, implementation, and monitoring of a grant program change management plan in a large organization, (4) building the capability of an organization or stakeholder group, and (5) developing and executing project management support to a large federal program. RFQ at 58-60.

³ The solicitation required offerors to submit a program manager as a key person, but provided that additional key personnel may be proposed. *Id.* at 7.

the-spot questions element, the agency would evaluate the vendor’s technical subject matter expertise and understanding of the work. *Id.*

For price, the agency would evaluate the vendor’s proposed price for reasonableness, completeness, and compliance with the vendor’s Federal Supply Schedule contract rates. *Id.* at 86-87. The solicitation provided that source selection would be on a best-value tradeoff basis where the corporate experience factor was more important than the oral presentation factor, the elements of the oral presentation factor were of equal importance, and the corporate experience and oral presentation factors, when combined, were more important than price. *Id.* at 84-85.

The agency received five timely quotations, including quotations from AECOM and CDM. COS at 17. The evaluation results for AECOM and CDM were as follows:

	AECOM	CDM
Corporate Experience	High Confidence	High Confidence
Oral Presentation	High Confidence	High Confidence
Price	\$107,359,726	\$106,622,749

AR, Tab C.2, Award Decision at 5.⁴ In conducting the tradeoff, the contracting officer concluded that CDM’s quotation represented the best value to the agency. *Id.* at 79. Although both CDM and AECOM received ratings of high confidence for both technical factors, the contracting officer concluded that CDM’s quotation had a “clear advantage” under the corporate experience and oral presentation factors. *Id.* at 6. Accordingly, the contracting officer concluded that the price premium associated with AECOM’s quotation was not justified. *Id.*

The agency issued an unsuccessful offeror notice to AECOM on September 22, 2023. COS at 21. A brief explanation of the award was provided on September 28. *Id.* This protest followed.

⁴ A rating of high confidence indicated that the agency had high confidence that the vendor understood the requirement, quoted a sound approach, and would be successful in performing the BPA with little to no intervention by the agency. AR, Tab C.1, Phase Two Oral Presentation Consensus Report at 5.

DISCUSSION

AECOM contends that the agency's evaluation of CDM's corporate experience and conclusion that CDM's corporate experience was more advantageous than its own were unreasonable. Protest at 21, 25. AECOM also argues that the agency failed to properly evaluate its key personnel. *Id.* at 27. In its supplemental protest, AECOM contends that the agency used unstated evaluation criteria when it penalized AECOM for its failure to provide a technical engineer as a key person. Comments and Supp. Protest at 12. For reasons discussed below, we dismiss the protest in part and deny it in part.⁵

Challenge to the Evaluation of Corporate Experience

AECOM first challenges the agency's evaluation of the quotations under the corporate experience factor. Protest at 21. In this regard, AECOM argues that "it is inconceivable that AECOM did not receive the highest possible evaluation rating for corporate experience, and reasonably had to be considered superior to any proposal that CDM Federal could have submitted." *Id.* at 24. The protester further argues that "even if CDM Federal has some arguably relevant experience, it would not be as relevant as AECOM's experience." *Id.* at 25 n.11. The agency requests dismissal of these arguments on the basis that AECOM's challenge to the evaluation of CDM's corporate experience and the protester's assertion that its own experience must be superior do not provide legally sufficient bases for protest. Req. for Dismissal at 7-8. For reasons discussed below, we agree with the agency.

Our Bid Protest Regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. *Saalex Sols., Inc.*, B-418729.3, July 23, 2021, 2021 CPD ¶ 298 at 5. Unsupported assertions that are mere speculation on the part of the protester do not provide an adequate basis for protest. *Id.*

Concerning the evaluation of CDM's corporate experience, we dismiss AECOM's argument for failure to state a valid basis for protest as it speculates as to the contents of CDM's proposal. As the agency points out, AECOM's argument is based entirely on its supposition as to what CDM's quotation might have included and how the agency might have considered it. Req. for Dismissal at 10. Such an argument is speculative on its face and fails to provide sufficient factual basis for protest.

Similarly, we disagree with AECOM's argument that its status as the incumbent contractor meant that its corporate experience must be better than other vendors'. In this regard, AECOM argues that "as the 14-year incumbent contractor . . . AECOM has significantly more corporate experience regarding this work scope than any other

⁵ Although we do not specifically address each argument raised by the protester, we have considered them all and find that none provides a basis to sustain the protest.

potential offeror.” Protest at 22. As our Office has explained, there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign or reserve the highest rating for the incumbent vendor. *LogiCore Corp.*, B-416629 *et al.*, Nov. 6, 2018, 2018 CPD ¶ 383 at 7-8. The record indicates that the agency considered AECOM’s corporate experience and assigned it the highest rating under the corporate experience factor. See AR, Tab C.2, Award Decision at 5. AECOM’s argument that no other vendor could have submitted experience warranting an evaluation rating of high confidence is speculative and, in effect, is an attempt by AECOM to seek extra credit for its status as the incumbent contractor. As mentioned above, such an argument does not provide a basis to sustain the protest. Accordingly, this argument is dismissed.

Challenge to the Evaluation of Key Personnel

AECOM next argues that the agency failed to reasonably consider its key personnel. Protest at 27. Specifically, AECOM contends that although the solicitation required the submission of only a program manager, it submitted eleven additional key personnel that the agency should have given “great weight.” *Id.* at 30. The agency responds that it fully considered and documented its evaluation of AECOM’s key personnel. Memorandum of Law (MOL) at 6-7. For reasons discussed below, we deny this protest ground.

The evaluation of quotations is a matter within the discretion of the procuring agency. *Deloitte Consulting, LLP*, B-418485.2, Oct. 26, 2020, 2020 CPD ¶ 375 at 3. In reviewing a protest of an agency’s evaluation of quotations, it is not our role to reevaluate quotations; rather, our Office will examine the record to determine whether the agency’s judgment was reasonable and consistent with the solicitation criteria. *Id.* A vendor’s disagreement with an agency’s evaluation judgments, without more, does not render the evaluation unreasonable. *Id.*

Here, the record reflects that the agency considered AECOM’s key personnel in both the evaluation and the tradeoff decision. Specifically, the evaluators stated that AECOM’s key personnel demonstrated a “cohesive team” that would benefit the agency by requiring “less government oversight to complete the task” and would produce “higher quality work because of the level of education.” AR, Tab C.1, Phase Two Evaluation 7-8. In the award decision document, the agency again acknowledged that AECOM’s key personnel demonstrated its “understanding of the importance of each of the [Performance Work Statement (PWS)] task” areas. AR, Tab C.2, Award Decision at 69-70. Ultimately, the agency assigned AECOM’s quotation a rating of high confidence under the oral presentation factor, which was the highest possible rating. *Id.* at 60. AECOM’s contention that the agency failed to consider its key personnel is not supported by the record. This protest ground is denied.

Challenge to Alleged Use of Unstated Evaluation Criteria

In its supplemental protest, AECOM argues that the agency applied unstated evaluation criteria when evaluating its key personnel. Comments and Supp. Protest at 12. Specifically, the protester challenges the evaluators' finding that AECOM's failure to provide a technical engineer as a key person lowered the agency's confidence of AECOM's successful performance because there was a possibility that reviews would not be accurate and timely due to a lack of knowledge. AR, Tab C.1, Phase Two Evaluation at 8. AECOM contends that this finding was unreasonable because the solicitation did not require vendors to submit a technical engineer. *Id.* In response, the agency argues that even though the submission of a technical engineer was not expressly required by the solicitation, it was reasonably and logically encompassed within the stated evaluation criteria. Supp. MOL at 5-6. We agree with the agency.

While agencies are not permitted to use unstated evaluation factors in evaluating quotations, an agency properly may consider specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. *ARC Relocation, LLC*, B-416035.2, B-416035.3, Nov. 22, 2019, 2019 CPD ¶ 407 at 6.

Here, the solicitation provided that vendors were not limited to proposing only the key personnel listed in the solicitation and that the agency would evaluate the benefits and risks identified in the vendor's response to the key personnel requirement. RFQ at 63, 86. Furthermore, task area 4.7 of the PWS required vendors to conduct reviews in support of the annual HMA review process, which included providing engineering feasibility and other technical assistance during various HMA technical review phases, including the National Technical Review (NTR).⁶ AR, Tab A.2, PWS at 10. As the agency explains, the PWS outlined technical engineering tasks and therefore, it was not unreasonable for the agency to conclude that AECOM's failure to provide a technical engineer lowered the agency's expectation of successful performance. Supp. MOL at 6. We have no basis to object to the agency's conclusion here as providing a technical engineer was logically encompassed in the requirement to provide technical engineering tasks.

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez
General Counsel

⁶ The PWS provided that HMA's programs involved, among other things, an NTR component. AR, Tab A.2, PWS at 4. The NTR process involved "FEMA and contractor subject matter experts in benefit cost analysis and engineering review [of] the highest-ranked [grant] sub-applications for cost-effectiveness and technical feasibility." *Id.*