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Decision

Matter of: Laurels Medical Services, d/b/a Chariot

File: B-413047; B-413047.2; B-413047.3

Date: August 8, 2016

Kevin J. Maynard, Esq., and Gary S. Ward, Esq., Wiley Rein LLP, for the protester.
Jonathan T. Williams, Esq., and Patrick T. Rothwell, Esq., PilieroMazza PLLC, for Navarre Corporation, the intervenor.

Kate Gorney, Esq., Department of Veterans Affairs, for the agency.

Peter D. Verchinski, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated awardee's proposal as technically acceptable is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Laurels Medical Services, d/b/a Chariot, a small business of Carmichael, California, protests the award of a contract to Navarre Corporation, of Navarre, Florida, under request for proposals (RFP) No. VA261-16-R-0082, issued by the Department of Veterans Affairs (VA), for transportation services. Chariot primarily challenges the agency's evaluation of Navarre's proposal.

We deny the protest.

BACKGROUND

The RFP was issued as a small business set-aside on January 25, 2016, for special needs ground transportation services for the VA Palo Alto health care system in California. The solicitation sought proposals for the transportation of veterans to and from a variety of locations, including medical centers, community based outpatient clinics, residences, and airports. RFP at 17. The solicitation included a performance work statement (PWS) that detailed numerous aspects of the services being solicited, such as hours of operation (365 days a year, 24 hours a day),

contractor personnel requirements, and contractor vehicle requirements (including a requirement for “two-way” radios), among other things. Id. at 17-28.

The RFP anticipated the award of a fixed-price indefinite-delivery, indefinite-quantity contract on a lowest-priced, technically acceptable basis for a base year and four 1-year option periods. Id. at 17-18, 34. The solicitation identified three evaluation factors: technical capability, past performance, and price. Id. at 34. The technical capability factor was composed of four subfactors: performance plan, quality control plan, vehicles and equipment, and staffing. Id. at 34-35.

Under the vehicles and equipment evaluation subfactor, the solicitation required offerors to describe the vehicles and equipment that would be used to transport the passengers. In addition, offerors were to provide evidence of the equipment specified in the PWS. Id. at 35. Under the staffing subfactor, the solicitation required offerors to provide resumes of the staff that would be assigned to the project. Id. The RFP stated that “[r]esumes should include staff’s skills, levels of knowledge in providing transportation services, experience in driving the various types of vehicles, customer service history, and experience in handling different types of patients.” Id.

The agency received three proposals, including Chariot’s (the incumbent contractor) and Navarre’s, by the February 19, 2016, closing date. Contracting Officer’s (CO) Statement, May 31, 2016, at 1. With regard to the PWS’s two-way radio requirement, Navarre’s proposal stated:

Communication is key for a contract such as this one. Navarre no longer utilizes radio dispatching systems as they have grown outdated and are proven to be inefficient. All Navarre drivers are equipped with a reliable and advanced smartphone. Navarre utilizes CellControl, an application that not only prevents the driver from being distracted, but is proven to save lives. With CellControl, Navarre dispatchers are able to send information to a driver via text, but the driver knows that he/she cannot check that information until that vehicle is no longer in motion. This is how CellControl works. It is not safe for drivers to be on radios or talking on their cell phone while driving. At Navarre we believe that any situation can wait until the vehicle has stopped moving to be dealt with. We keep multiple back-up cell phones in our office for situations where someone has had their cell phones broken, stolen or lost.

Agency Report (AR), exh. 7, Navarre’s Proposal, at 16. With regard to resumes, Navarre’s proposal provided biographical sketches of several of its employees, including its chief executive officer, chief financial officer, chief operations officer, human resources director, and regional manager. Id. at 25. Navarre’s proposal

also included a chart identifying 38 drivers, and their license numbers, expiration dates, CPR first aid dates, and dates for “[d]efensive [d]riving.” Id. at 26.

After an initial review of proposals, the agency engaged in oral exchanges with Navarre. AR, exh. 4, Source Selection Decision Document (SSDD), at 7. Specifically, the VA asked Navarre to confirm that it proposed to provide transportation services 24 hours a day, and to confirm the functionality of the CellControl technology. Id. The record states that Navarre confirmed that its proposal provided 24-hour service, and that its CellControl system required the vehicle to be stopped for the cellular phone to be used. Id.

Ultimately, the agency evaluated Navarre’s and Chariot’s proposals as acceptable under all factors and subfactors. AR, exh. 9, Source Selection Team (SST) Consensus Report, at 1. In rating Navarre’s proposal as acceptable, the SST found that the firm’s proposal sufficiently addressed every factor and subfactor. AR, exh. 10, Technical Evaluation Worksheets, at 9-12, 17-20, 33-36. While the SST noted “a few minor concerns” relating to Navarre’s technical capability, the SST concluded that the concerns were not material to warrant an unacceptable rating. AR, exh. 4, SSDD, at 3-4. For instance, with regard to 24-hour service, the agency noted that Navarre had language in its proposal indicating 24-hour coverage, and that the agency received confirmation of 24-hour services from the firm. Id. at 3. With regard to Navarre’s proposed two-way radio equipment, the agency stated:

[Navarre’s] technical proposal made reference to [a] system called CellControl, which is used by the drivers and replaces a traditional radio or cell phone as a form of communication. The CellControl system can only be used while the vehicle is stationary and is intended to reduce accidents from drivers trying to communicate (talk or text) while driving. It was initially a concern of the SST because it was unknown how the driver would be able to communicate with their dispatch in the event of an emergency. After further discussion it was agreed that in an emergency the driver would likely need to stop the vehicle to address the situation (such as a patient going into cardiac arrest). This concern was not a material weakness and did not result in an unacceptable rating for any of the sub-factors for technical capability.

Id.

The contracting officer, who was the source selection authority, concurred with the SST, and concluded that Navarre’s \$10,825,740 proposal was the lowest-priced,

technically acceptable offer.¹ Id. at 6, 8. Thereafter, the agency made award to Navarre, and this protest followed.

DISCUSSION

The protester alleges that the agency improperly found Navarre's proposal to be technically acceptable. Specifically, the protester alleges that the awardee's proposal failed to: (1) offer two-way radios that met the RFP's requirements; (2) state that Navarre would provide 24-hour service; (3) include resumes; (4) demonstrate that Navarre had vehicles available to perform the requirements; and (5) adequately demonstrate that Navarre had the ability to perform the contract. We have considered each of these allegations, and find that none provides a basis to sustain the protest. We address three of Navarre's arguments below.

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 but, 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. See Concepts & Strategies, Inc., B-405930, Jan. 12, 2012, 2012 CPD ¶ 47 at 5. In this regard, the evaluation of an offeror's proposal is a matter within the agency's discretion, U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2, and a protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

First, Chariot challenges the awardee's technical acceptability on the grounds that the awardee failed to propose two-way radios that would be "fully operational at all times during contract performance," as required by the solicitation. See RFP at 24. Chariot argues that Navarre's proposal failed this requirement because the awardee's CellControl system disables communications either to or from the dispatcher while the vehicle is in motion. Protester's Comments at 10.

The agency responds that it considered the awardee's CellControl system and found it met the solicitation's requirements. In support of this, the agency points to its source selection decision, which acknowledged that the awardee's system required a vehicle to be stopped for direct communication between the driver and the dispatcher. AR, exh. 4, SSDD, at 3. The agency concluded that this was not a material weakness because in any emergency situation the driver would have to stop the vehicle to attend to the emergency. In fact, the agency viewed Navarre's system as an "innovative approach to safety" that exceeded the minimum communication requirements of the RFP. CO Statement, June 20, 2016, at 2.

¹ Chariot proposed to perform the services for \$11,790,210, which was the second lowest price proposed. AR, exh. 4, SSDD, at 6.

We find that the agency reasonably concluded that Navarre's proposal met the solicitation's communications requirement. Here, the record shows that the agency recognized that the awardee's proposed system was not a traditional two-way radio, but rather a more modern cellular phone system with enhanced safety features.² Indeed the SSA highlighted that the CellControl system reduced the chances of a driver being distracted from talking/texting while driving. AR, exh.4, SSDD, at 7. Moreover, the agency fully considered that a driver would need to pull over in the event of an emergency, thereby having full functionality of the cellular phone. Id. at 3. In instances where a dispatcher would need to contact a driver, the agency explains that the dispatcher would send a notification to the driver, who would receive the notification on his or her phone, and the driver would then know to stop the vehicle in order to receive the message.³ Agency Supp. Response at 4. Furthermore, nothing in the record suggests that Navarre's proposed communication system would be inoperable at any point during performance; the cellular phones with CellControl would be accessible at all times during performance. On this record, where the agency recognized the unique system proposed, considered how safety features would impact communications, and reasonably determined that Navarre's system met the PWS requirements, we have no basis to sustain the protest.

Next, the protester asserts that the agency should have deemed Navarre's proposal technically unacceptable because Navarre allegedly failed to offer 24-hour, 7-day a week, transportation services, as required by the RFP. See RFP at 17. In this

² As noted by the intervenor, the solicitation included Federal Acquisition Regulation clause 52.223-18, Encouraging Contractor Policies to Ban Text Messages While Driving, which provides that contractors are encouraged to adopt and enforce policies that ban text messaging while driving.

³ To the extent the protester objects to GAO's consideration of this information--that is, the agency's explanation for how a dispatcher would communicate with a driver--on the basis that the agency is engaging in a post hoc attempt to reevaluate the acceptability of Navarre's communication system, such objection is unavailing. In this regard, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties' arguments and explanations. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions where, as here, those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

regard, the protester highlights that Navarre proposed a 24-hour phone line for complaints, and proposed to provide a backup wheelchair van and driver at the VA hospital “during business hours,” but did not expressly commit to providing full service 24 hours a day. Protester’s Comments at 9-10. Given this proposal, Chariot maintains that it was unreasonable for the agency to conclude that Navarre complied with the PWS’s hours of operation.⁴ We disagree.

Here, despite Chariot’s contention, the RFP did not require offerors to expressly confirm that they would comply with the PWS’s 24-hour service requirement.⁵ Indeed, compliance with the requirement was not an aspect of the evaluation factors or subfactors. Rather, the RFP’s technical evaluation factor provided for an assessment of an offeror’s performance plan, quality control plan, the vehicles and equipment to be used, and proposed staffing. See RFP at 34-35. Demonstrated compliance with the PWS’s hours of operation was not an evaluation consideration for technical acceptability.⁶ Given that Navarre’s proposal did not take exception to the PWS’s expected hours of operation, and in light of the fact that the RFP did not provide for an evaluation of compliance with the 24-hour requirement, we find the protester’s allegation to be without merit.

In any event, the record reflects that the agency sought confirmation from Navarre that it intended to provide 24-hour service. See AR, exh. 4, SSDD, at 3. During an oral exchange, the awardee confirmed that its proposal was, in fact, for 24-hour service.⁷ CO Statement, June 20, 2016, at 2. On this record, we find no basis to sustain the protest.

⁴ The PWS provided as follows: “Work shall be provided as requested 365 days a year, 24 hours a day, regardless of distance.” RFP at 17.

⁵ Notably, the RFP warned offerors not to simply restate the PWS in their proposals. RFP at 33.

⁶ Whether Navarre ultimately provides services consistent with the hours of operation stated in the PWS is a matter of contract administration not for review by our Office. See 4 C.F.R. § 21.5(a).

⁷ To the extent the protester is asserting that the agency’s exchange with the awardee constituted improper discussions, we disagree. Here, the agency merely sought to have its understanding of Navarre’s proposal confirmed by Navarre. Such an exchange constitutes clarifications and not discussions. See Allied Tech. Grp., Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6; SRS Techs., B-291618.2, B-291618.3, Feb. 24, 2003, 2003 CPD ¶ 70 at 3 n.4 (communications that do not permit an offeror to modify or revise its proposal, but rather permit the offeror to explain or clarify what it has already proposed to do, are clarifications, not discussions). Regardless, even if we were to conclude that the agency’s exchanges here constituted discussions, the protester has not established that the discussions would have been improper or prejudicial. In this regard, nothing in the

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Finally, the protester challenges the awardee's technical acceptability on the grounds that Navarre allegedly failed to comply with the solicitation requirement to submit resumes of staff assigned to the contract. Chariot argues that the biographical sketches and driver roster submitted by Navarre did not constitute resumes or include the information outlined in the RFP. We disagree.

Here, contrary to Chariot's suggestion, the solicitation did not require offerors to provide resumes in any specific format, nor did it affirmatively require offerors to provide any specific information in the resumes. Instead, the RFP provided that offerors "should," rather than "must," submit certain information pertaining to its staff's skills, levels of knowledge, experience in driving various types of vehicles, customer service history, and experience in handling different types of patients. See RFP at 35. Consistent with this instruction, Navarre submitted biographical information about its management team, which included the staff's skills, knowledge, and experience in relevant fields. See AR, exh. 7, Navarre's Proposal, at 25. Navarre also submitted an employee roster identifying drivers currently working for the company, as well as a plan to hire additional drivers. See id. at 4, 6, 26.

The record reflects that the agency considered this information and reasonably concluded that Navarre's proposal was acceptable under the staffing subfactor. See AR at 7. Specifically, the agency determined that Navarre sufficiently demonstrated its management staff's skills, levels of knowledge, experience, and customer service history. CO Statement, May 31, 2016, at 2. In addition, the agency's evaluation recognized that hiring incumbent drivers was "a regular occurrence in this industry," and concluded that Navarre had provided "a detailed plan on how they would bring staff on board if they were awarded the contract." AR, exh. 4, SSDD, at 3. Given the permissive language of the solicitation regarding what information was to be submitted, the fact that Navarre provided biographical and other information pertaining to its personnel, and in light of the agency's

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RFP prohibited the agency from conducting discussions, and the protester's proposal was rated acceptable, thus rendering unnecessary the need for discussions with Chariot regarding its technical proposal.

reasonable conclusion that it was confident in Navarre's staffing plan, we see no basis to overturn the agency's technical evaluation judgements.

The protest is denied.

Susan A. Poling
General Counsel