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Decision

Matter of: Thomas Solutions, Inc.

File: B-415311.7; B-415311.8

Date: December 10, 2018

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DIGEST

1. Protest challenging agency's evaluation of technical proposals is denied where the agency's evaluation was reasonable and equal.
 2. Protest challenging agency's evaluation of past performance is denied where the protester's proposal is unawardable and the protester has not demonstrated how any of the alleged improprieties would impact the ultimate award decision.
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DECISION

Thomas Solutions, Inc. (TSI), a service-disabled veteran-owned small business (SDVOSB), located in Springfield, Virginia, protests the award of a contract to SOLKOA Inc., a SDVOSB located in Colorado Springs, Colorado, issued by the Department of the Army pursuant to request for proposals (RFP) No. W9124G-17-R-0001 for full spectrum survival, evasion, resistance, and escape (SERE) level C instruction and instructional support services. The protester contends the agency improperly evaluated the offerors' technical approach and past performance factors and failed to follow its corrective action plan to mitigate potential conflict of interests.

We deny the protest.

BACKGROUND

On June 27, 2017, the Army issued the RFP as a SDVOSB set-aside pursuant to the procedures of Federal Acquisition Regulation part 15 for SERE level C full spectrum

training curriculum. RFP at 1, 92, 103. The curriculum consists of a 21 consecutive day training program, plus an in-processing day, that provides academic instruction, small group hands-on field training, practical application laboratory instruction, and operational performance exercise phases of training. Id. at 19. The solicited services consist of providing all personnel (instructors, role players, supervisory and support staff), supplies, and other items necessary to support the development, administration, execution, and instruction of U.S. military personnel and other students. Id.

The solicitation contemplated the award of a fixed-price contract on a best-value tradeoff basis considering the following evaluation factors: technical approach (management approach, staffing approach, and subject matter/technical expertise); past performance; and price. Id. at 21, 103-104. The solicitation provided that technical approach was significantly more important than past performance, and when combined the non-price factors were approximately equal in importance to the price factor. Id. at 104. Within the technical factor, the subfactors were of equal importance. Id.

Under the management approach subfactor, the RFP provided that the agency would evaluate an offeror's management approach plan to determine if it includes all the necessary personnel qualifications, processes, and plans in effect to ensure contract performance. Id. at 105. Offerors were instructed to provide resumes for key personnel with specific content, which included as relevant here: proposed labor category; experience; company and position; dates of employment (month/year to month/year or to present); brief description of duties and responsibilities, including supervisory experience; and number and type of personnel supervised. Id. at 98. The RFP stated that the agency's evaluation of each key resume would assess the proposed candidate's qualifications (i.e. degree, certifications, licenses, and relevant experience). Id. at 105.

Under the staffing approach subfactor, the RFP provided that the agency would evaluate an offeror's staffing, recruitment, and retention plans to determine if the proposed plan demonstrates the ability to maintain an efficient staff and recruit and retain qualified/trained personnel throughout the course of the contract. Id.

With respect to the past performance factor, the RFP stated that the agency would evaluate an offeror's recent and relevant past performance information to assess an offeror's, and partner's/subcontractor's, ability to successfully perform the solicitation requirements. Id. at 107. The agency's relevancy evaluation would consider whether the past performance reference was the same or similar in nature, size, and complexity based on whether the reference demonstrated: successful execution of SERE Level C training requirements; successful execution of administrative and logistical requirements in support of SERE Level C training; effective incorporation of emerging SERE tactics, techniques and procedures into SERE Level C course presentation; and effective program management support. Id. The agency would assign one of four relevancy ratings: very relevant, relevant, somewhat relevant, or not relevant. Id. at 108. The agency would also assign each offeror a past performance confidence rating based on how well an offeror has performed on the referenced contracts as follows: substantial,

satisfactory, limited, no, and unknown. Id. at 108-109. The solicitation advised that an offeror without a record of relevant past performance would not be evaluated favorably or unfavorably and would receive an unknown/neutral confidence rating. Id. at 108.

The solicitation provided that the price factor would not be scored or rated but would be evaluated for price reasonableness, balanced pricing, and mathematical accuracy. Id. at 109. The RFP did not contemplate the evaluation of price realism.

The agency received multiple proposals by the July 27 closing date, including proposals from TSI and SOLKOA. The agency evaluated the proposals and established a competitive range. On September 15, TSI received notice of its exclusion from the competitive range. Protest at 9. Thereafter, TSI filed a bid protest with our Office challenging its exclusion from the competitive range. Id. at 10.

On October 17, the agency informed our Office of its intent to take corrective action. Agency Report (AR), Tab 4, Corrective Action Notice, at 1. The agency's notice provided that the agency would investigate the allegations of personal and organizational conflicts of interest, and "[a]fter the conclusion of this investigation, [] re-visit the acquisition and the evaluation and decide if new evaluations or additional action is warranted[, which would include] revisiting which offerors will be allowed into the competitive range." AR, Tab 5, Contracting Officer Corrective Action Statement (Oct. 17, 2017), at 1. Our Office dismissed the protest as academic on October 20. Thomas Solutions, Inc., B-415311, Oct. 20, 2017 (unpublished decision).

On November 6, the agency sent letters to all offerors informing them of the conflict of interest investigation. See AR, Tab 6, Army Investigation, at 112. The letter asked all offerors to respond if any of their staff, or subcontractors received any sensitive source selection information such as the names of the evaluators, names of other offerors, or other sensitive information about other offerors or evaluations. Id. The letter also requested that the offerors certify whether or not they had actual or potential organizational conflicts of interest concerning the SERE procurement. Id. at 113. The contracting officer also requested an Army investigation regarding the potential conflict of interests. AR, Tab 8, Contracting Officer Conflict of Interest Memorandum, at 1. As part of the investigation, the investigative officer conducted interviews and received sworn statements from multiple agency officials, interviewed the offerors alleging conflicts of interest, reviewed social media websites and company flyers, and analyzed certain emails, nondisclosure agreements, and financial statements of the source selection evaluation board (SSEB) members. See AR, Tab 6, Army Investigation at 1-2.

The contracting officer received a copy of the Army investigation, and after analyzing the Army investigation and recommendations, the contracting officer found that the source selection information revealed to offerors--the SSEB member names--had become common knowledge among the offerors. AR, Tab 8, Contracting Officer Conflict of Interest Memorandum, at 2. The contracting officer concluded that she would take the following actions to mitigate any perceived conflicts: send a letter to all offerors containing the names of the SSEB members; nullify the competitive range

determination and exclusion of offerors; appoint a new technical evaluation board (TEB)¹, send all offerors (including those that were previously excluded) proposal extension letters to notify the offerors of the agency’s re-evaluation. See AR, Tab 7, Contracting Officer Letter to TSI (Mar. 7, 2018), at 1.

The TEB convened to reevaluate technical proposals. Contracting Officer’s Statement (COS) at 5. Thereafter, the contracting officer opened discussions with all offerors. Id. On June 20, evaluation notices were sent to all offerors. Id.; See AR, Tab 9, TSI Response to Evaluation Notices. Final proposal revisions were due by July 3. COS at 5. The new TEB reconvened to evaluate the revised technical proposals and evaluation notice responses. Id. The agency assigned the following ratings to TSI and SOLKOA:

	Technical Approach	Past Performance	Total Price	Evaluated Price
TSI	Unacceptable ²	Somewhat Relevant / Limited Confidence	\$58,227,352	\$64,917,275
SOLKOA	Outstanding	Very Relevant / Substantial Confidence	\$42,910,681	\$47,672,170

AR, Tab 16, Source Selection Decision (SSD), at 2.

The evaluators assessed four deficiencies and assigned an unacceptable rating to TSI’s technical approach due to issues with its key personnel resumes. Id. at 5. The first deficiency was assigned because TSI’s program manager’s resume failed to demonstrate a minimum of 10 years of successful program management experience of comparable size and scope of the requirements defined in the solicitation. AR, Tab 15, SSEB Consensus, at 57-58. The second deficiency was assigned because TSI’s deputy program manager’s resume failed to demonstrate a minimum of seven years of successful management experience in a Department of Defense (DOD) SERE-related program. Id. at 58. The third and fourth deficiencies were assigned because two of

¹ The record demonstrates that the initial SSEB members evaluated technical proposals. See AR, Tab 7, Contracting Officer Letter to TSI (Mar. 7, 2018), at 2. That evaluation was voided by the contracting officer. Id. The initial SSEB did not reevaluate technical proposals; rather a TEB was appointed for the purposes of reevaluating technical proposals. Id.

² As relevant here, the RFP defined an unacceptable rating as follows: “[p]roposal does not meet requirements of the solicitation, and thus, contains one of more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable.” RFP at 107.

TSI's lead instructors (survival and resistance) failed to demonstrate a minimum of five years' experience as a fully certified instructor/trainer in any SERE discipline. Id. at 58-59.

On August 21, the agency awarded the contract to SOLKOA. COS at 5. On the same day, the agency notified all offerors of its award decision and provided written debriefings. Id. On September 10, TSI filed this protest after receiving the agency's responses to its debriefing questions on August 31.

DISCUSSION

TSI challenges the agency's evaluation of TSI's and SOLKOA's proposals under the technical and past performance factors. TSI also alleges that the agency failed to follow its corrective action plan to mitigate the potential conflict of interests. While we do not address each of TSI's various allegations, we have reviewed them all and find the agency's evaluation unobjectionable.³

Technical Evaluation

TSI challenges the agency's evaluation of resumes for its proposed program manager, deputy program manager, and two lead instructors. The protester alleges that the agency's evaluation was unreasonable because its proposed key personnel's resumes met the minimum requirements provided in the RFP. TSI further argues that the agency's evaluation of key personnel resumes was unequal. The protester also challenges the agency's evaluation of the awardee's staffing approach. TSI argues that the agency failed to recognize that SOLKOA's proposed staffing cannot support the

³ For example, TSI's initial protest alleged the agency failed to mitigate potential conflicts of interest with respect to the awardee. TSI argued that the contracting officer's decision to remove the SSEB members, void the competitive range determination and exclusion of offerors, and appoint a new TEB to evaluate technical proposals, was insufficient to mitigate the unequal access and biased ground rules conflicts of interest that arose during the procurement. TSI based its allegations upon its belief that one of the three-member SSEB was married to a current employee of SOLKOA, who helped prepare the awardee's proposal. In response to TSI's protest, the agency provided the results of its Army investigation, which found that the evaluator was divorced and her ex-husband left the employment of SOLKOA in 2010. Moreover, the investigator also found that the evaluator has no financial interest in SOLKOA. The agency report also included the contracting officer's conclusion, based on the results of the Army investigation, that a conflict of interest did not exist with respect to SOLKOA. Thus, the agency argued that its removal of the SSEB members adequately mitigated any potential conflict of interest. TSI did not provide a response to the agency's arguments in its comments. Thus, we find TSI abandoned its initial conflict of interest arguments. McKissack-URS Partners, JV, B-406489.7, Jan. 9, 2013, 2013 CPD ¶ 25 at 4 n.2.

stated contract requirements, or alternatively, that SOLKOA's proposal is unsustainable at the proposed price.

The agency contends that it properly evaluated the protester's key personnel resumes and the awardee's staffing plan. On the record before us, we find that the agency's evaluation was reasonable, equal, and consistent with the RFP evaluation criteria.

In considering protests challenging an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the stated evaluation factors and applicable procurement laws and regulations. Korea Res. Env't Co., Ltd., B-409996, Oct. 3, 2014, 2014 CPD ¶ 298 at 3. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id.

TSI challenges the agency's evaluation of its key personnel resumes. The protester alleges that the agency's evaluation was unreasonable because its key personnel resumes met the minimum requirements of the solicitation. TSI also contends that both TSI and SOLKOA proposed the same individual for the position of survival lead instructor, yet the two offerors received unequal evaluations. In this regard, TSI received a deficiency for its survival lead instructor resume while SOLKOA's resume was found to meet the requirements for this same position. We find that the agency's evaluation was reasonable and equal. While we do not address the agency's evaluation of all four of these resumes, we have reviewed them all and find none provide a basis to sustain the protest.

The solicitation required a detailed management plan to demonstrate that the offeror has the necessary personnel qualifications, processes, and plans in effect to ensure contract performance. The RFP stated that the agency's evaluation of each key person's resume would assess the proposed candidate's qualifications. Offerors were instructed to provide resumes for key personnel with specific content, which included as relevant here: proposed labor category; experience; company and position; dates of employment (month/year to month/year or to present); brief description of duties and responsibilities, including supervisory experience; and number and type of personnel supervised. RFP at 98. The RFP also provided specific criteria for each key personnel position. As relevant here, the RFP requirement for the lead instructor position provided that the offeror shall designate a lead instructor for each of the four operational sections--survival, evasion, resistance training, and academics--and each lead instructor "shall have a minimum of five (5) years' experience as a fully certified instructor/training in any SERE discipline, with a minimum of two (2) years' experience in the associated discipline." Id. at 30.

During discussions the agency informed TSI of four deficiencies related to its key personnel (program manager, deputy program manager, survival lead instructor, and resistance lead instructor). The protester's final proposal revision included the following with respect to its survival lead instructor:

[DELETED]

AR, Tab 10, TSI's Final Proposal, at 58. The resume also provided the dates of employment and a brief description for the candidate's current position.

Based on the information provided, the SSEB found that TSI's proposed survival lead instructor's resume lacked the necessary qualifications for the position. The SSEB found that the proposed resume provided a general summary of each relevant position, and the number of years of experience and a brief description of the candidate's current position. AR, Tab 15, SSEB Consensus, at 59. However, for positions other than the current position, the resume failed to provide actual dates and sufficient details for each position held in order to demonstrate that the candidate met the minimum requirements. Id. In this regard, the agency concluded that it did not have sufficient information to validate the experience highlighted by TSI in its general summary (i.e. missing dates of employment and description of responsibilities/duties for each position). Id.; COS at 6.

On this record, we find the agency's evaluation was unobjectionable. The RFP required key personnel resumes with dates of employment and a brief explanation of duties and responsibilities. The record demonstrates that TSI failed to provide this information for positions other than its candidate's current position. Rather, the resume provided only a general statement of compliance with the five year minimum experience requirement, and overall highlights of the candidate's experience. Due to the general nature of the information, the agency was not able to verify if the candidate met the requirements. We have no basis to question the agency's evaluation. While the protester disagrees with the agency's assessment, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Korea Resources Env't Co., Ltd., supra. Accordingly, we find the agency's assignment of a deficiency was reasonable and in accordance with the stated evaluation criteria.

TSI also contends that the agency's evaluation of its survival lead instructor was unequal because it proposed the same individual as the awardee yet SOLKOA did not receive a deficiency. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the offeror's proposals. Camber Corp., B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 5. TSI has not made this showing.

The record demonstrates that unlike TSI's proposed survival lead instructor resume, the resume of SOLKOA's proposed survival lead instructor provided detailed information. AR, Tab 21, SOLKOA Final Proposal, Survival Lead Instructor Resume, at 14. In this regard, the resume provided the position title, dates of employment, duties and responsibilities, and number/type of personnel supervised for each of the candidate's positions for the past 10 years. Id. The agency's evaluation found that this candidate met the minimum requirement because the resume provided sufficient detail to demonstrate a minimum of five years' experience as a fully certified instructor/training in any SERE discipline, with a minimum of two years' experience in the associated discipline. AR, Tab 15 SSEB Consensus, at 43. We find no disparate treatment in the

evaluation of the resumes of TSI and SOLKOA because the difference in the agency's evaluation was based upon the level of detail provided in the resumes and not, as the protester alleges, a disparate evaluation. In sum, we find that the agency reasonably assessed a deficiency to the resume presented by TSI for its survival lead instructor, which rendered the proposal unawardable.

TSI also alleges that the agency failed to reasonably evaluate SOLKOA's staffing approach. TSI argues that the agency failed to recognize that SOLKOA's proposed staffing cannot support the stated contract requirements, or alternatively, that SOLKOA's proposal is unsustainable at the proposed price. In this regard, the protester contends that the incumbent contract utilized approximately 90 employees, was for a smaller scope of work, and was awarded for a total price of \$46.4 million. TSI states that due to new requirements for current SERE training, a contractor would have to employ more staff than was used for the incumbent contract. Thus, TSI argues that since SOLKOA's price is lower than that of the incumbent contract, despite the increased staffing requirements, there is an associated risk of performance failure. The protester contends that SOLKOA's proposal either decreased the staffing as compared to the incumbent or alternatively, proposed to pay instructors unsustainable salaries. In either case, TSI argues the agency's evaluation of SOLKOA's staffing was unreasonable. Based on our review of the record, we find the agency's evaluation unobjectionable.

With respect to an offeror's staffing approach, the RFP provided that the agency would evaluate whether the offeror would be fully staffed and operational by the start date, to include procedures that will be used to establish and retain a workforce sufficient to satisfy the requirements of the contract, over the entire period of performance. RFP at 106. The agency would also evaluate whether the offeror's approach provided for hiring, training, and replacement of personnel during performance, as well as personnel and schedule flexibility, mission coverage plans for all positions, and surge staffing. Id.

The agency's evaluation assigned SOLKOA's staffing approach subfactor two strengths and rated the subfactor outstanding. AR, Tab 15, SSEB, at 45. The evaluators found that SOLKOA's proposal provided: "an extremely detailed plan demonstrating how they will be fully staffed and ready to assume [the] mission by [the] start date;" "extensive detail on schedule flexibility and how they will support mission execution;" and "a very clear plan to ramp up to assume the mission, surge as required, and sustain the mission over the life of the contract." Id. The evaluators also found that SOLKOA exceeded the requirements because its instructors were all SERE-C or Wartime and Peacetime Governmental Detention/Hostage Detention graduates, and SOLKOA demonstrated a record of attaining a 90 percent retention rate on another DOD SERE school contract. Id. at 46.

We find that TSI's disagreement with the agency's evaluation of SOLKOA's staffing plan does not provide a basis to sustain the protest. Korea Res. Env't Co., Ltd., supra. The record demonstrates that the agency thoroughly evaluated SOLKOA's staffing and

found that it met, and in some instances, exceeded the requirement. We have no basis to question these determinations.

Alternatively, the protester alleges that the awardee will be unable to perform the contract at the awarded price. In the context of a fixed-price contract, where price realism is not contemplated, a claim that a competitor submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. An offeror may, in its business judgment, decide to submit a price that is extremely low. Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4. In such cases, the agency's conclusion that the contractor can perform the contract at the offered price is an affirmative determination of responsibility, which this Office will not review except in limited circumstances. Id. Accordingly, we find the agency's evaluation unobjectionable.

Past Performance

TSI raises several allegations relating to the evaluation of past performance. TSI argues that the agency's evaluation of its past performance was unreasonable because the agency improperly evaluated its incumbent contract to provide SERE training at Fort Bragg. The protester argues that the agency's past performance evaluation was unequal because it found TSI's experience not to be similar in size and complexity to the current effort yet found SOLKOA's experience on contracts of a lesser dollar value to be essentially the same as the current effort. TSI also contends that the agency's past performance evaluation was affected by its failure to follow its corrective action plan to mitigate potential conflicts of interest.

We need not consider TSI's remaining challenges to the agency's evaluation of past performance, including the agency's failure to follow its corrective action plan. Even if we were to agree with the protester that the agency improperly evaluated the past performance of TSI and SOLKOA for any of the bases alleged above, TSI would remain unawardable due to its unacceptable technical approach rating, and TSI has not demonstrated how any of the alleged errors would disturb the ultimate award decision (i.e. render SOLKOA unawardable).⁴

Best-Value Tradeoff

⁴ While the protester argues that "based on information and belief" SOLKOA was terminated for poor performance as a subcontractor on the incumbent effort, this speculative argument does not provide a valid basis of protest. In any event, the agency states that it evaluated all available information within the five year period of review established in the RFP, and did not detect any information related to the alleged termination due to poor performance. Supp. AR at 19; Supp. COS at 6. Moreover, even if SOLKOA was terminated as a subcontractor on the incumbent effort, the protester does not allege that this would render SOLKOA's proposal unawardable.

TSI contends that the agency's best-value tradeoff decision was improperly based on an erroneous evaluation. As described above, since the record does not support TSI's challenges to the agency's evaluation, we find no merit to TSI's objection to the agency's selection decision.

The protest is denied.

Thomas H. Armstrong
General Counsel