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Decision

Matter of: Vertical Jobs, Inc.

File: B-415891.2; B-415891.4

Date: April 19, 2018

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Michael Kiffney, Esq., and Christopher J. Reames, Esq., Department of Homeland Security, for the agency.

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DIGEST

1. Protest allegations are dismissed as untimely where protester failed to raise them within 10 days of when it knew or should have known of the bases for its allegations.
2. Protest that the agency misevaluated protester's technical proposal is denied where the record shows that the agency's evaluation was consistent with the terms of the solicitation and applicable statutes and regulations.
3. Protester is not an interested party to challenge agency's evaluation of awardee's proposal, the agency's responsibility determination, or the agency's source selection decision where protester would not be in line for award if its protest were sustained.

DECISION

Vertical Jobs, Inc. (VJ), of Oakton, Virginia, protests the award of a contract to NARCORPS Specialties, LLC (Narcorps), of Ship Bottom, New Jersey, under request for proposals (RFP) No. HSTS01-17-R-OTD327, issued by the Department of Homeland Security, Transportation Security Administration (TSA), for role player support services. The protester alleges that the agency failed to hold meaningful discussions, misevaluated proposals, improperly conducted its responsibility determination, and unreasonably made its selection decision.

We deny the protest.

BACKGROUND

TSA issued the RFP on August 16, 2017, as a small business set-aside, for role player support services to be used during training exercises at locations in New Jersey and Texas. RFP at 1, 4. The RFP contemplated the award, on a best-value tradeoff basis, of a hybrid contract with both time-and-materials and fixed-price contract line items to be performed over a 1-year base period and four 1-year option periods. Id. at 3, 61. Proposals were to be evaluated based on four factors, listed in descending order of importance as follows: management and staffing approach, prior experience, past performance, and price. Id. at 61. The solicitation advised that the non-price factors in combination were significantly more important than price, but also advised that, as evaluation results under the non-price factors became more equal, the importance of the price factor would increase. Id.

The agency received proposals from twelve offerors, including VJ and Narcorps, by the closing date of September 8. The final evaluation results were as follows:

	Management and Staffing Approach	Prior Experience	Past Performance	Price
Offeror A	Acceptable	Acceptable	Acceptable	\$35,877,593.00
VJ	Acceptable	Acceptable	Acceptable	\$35,958,614.32
Narcorps	Outstanding	Good	Acceptable	\$39,964,683.00

Agency Report (AR), Tab 18, Source Selection Decision Memorandum (SSDM) at BATES 422-423.¹ On the basis of its evaluation, the agency concluded that Narcorps offered the best value to the government. Id. at BATES 431. TSA reasoned that Narcorps offered the best value because it offered the highest-rated technical capability and submitted competitive pricing. Id. After receiving its debriefing from the agency, VJ filed the instant protest with our Office.

DISCUSSION

VJ raises various challenges to the agency's conduct of discussions, evaluation, responsibility determination, and source selection decision. We have considered all of the allegations raised and find no basis to sustain the protest for any of the reasons advanced by the protester. We discuss VJ's principal allegations below, but note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our

¹ The agency assigned sequential BATES numbers to the documents submitted with its report. Citations to documents other than the RFP are to the applicable BATES page number.

Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. SaxmanOne, LLC, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 3.

Untimely Allegations

The protester alleges that the agency failed to conduct meaningful discussions or clarifications with the firm. By way of background, the solicitation required offerors to submit their technical proposals as a series of presentation slides, and required them to provide the agency with an oral presentation of those slides. RFP at 56-57. The RFP further advised that the agency could ask clarification questions during these presentations. Id. VJ's oral presentation slides stated that it had a [DELETED] for its role player staff. AR, Tab 9, VJ Proposal at BATES 116. The agency did not ask any clarification questions regarding that figure. AR, Tab 11, VJ Clarification Questions at BATES 328-330. In its debriefing held on January 11, 2018, TSA informed VJ that it had assigned VJ a weakness for having only a [DELETED] fill rate. Protest, attach. A, VJ Debriefing Slides, at 11. VJ alleges that the agency erred in failing to advise it of this concern with its proposal.

As an initial matter, although VJ characterizes this aspect of its protest as a challenge to the agency's alleged failure to engage in meaningful discussions, the record shows that the agency did not engage in discussions and the offerors were never afforded an opportunity to submit proposal revisions. Although VJ suggests that the agency's actions during oral presentations "met the test" for discussions as defined in the Federal Acquisition Regulation, the protester does not explain how that is the case. As noted, offerors were not afforded an opportunity to revise their proposals, which is an essential requisite for the conduct of discussions. Archer Western Federal JV, B-410168.2, B-410168.3, Nov. 12, 2014, 2014 CPD ¶ 351 at 5-6.

In any event, VJ was informed of the [DELETED] fill rate weakness in its debriefing. To the extent that VJ thought the agency should have engaged in discussions--or otherwise should have brought up the issue of its [DELETED] fill rate during oral presentations--it was obligated to make that argument within 10 days of its debriefing. 4 C.F.R. § 21.2(a)(2). However, VJ did not raise this allegation until it filed its supplemental protest on February 26, more than 10 days after it was apprised of the agency's finding. We therefore dismiss this aspect of VJ's protest as untimely.

VJ also alleged for the first time in its supplemental protest that the agency unreasonably failed to assign a strength to its proposal for its management plan because its plan identified the number of personnel at each site. The record shows that the agency identified all strengths assigned to the VJ proposal for its management and staffing approach during its debriefing. Protest, attach. A, VJ Debriefing Slides, at 11. Since VJ was, or should have been, aware of the fact that the agency did not assign its proposal a strength for this aspect of its proposal at the time it received its debriefing, it

was required to advance this argument within 10 days of receiving its debriefing. Since it failed to timely raise this allegation, we dismiss it without further consideration.²

VJ's Technical Evaluation

The protester alleges that the agency misevaluated its proposal under the management and staffing approach factor. Under this factor, offerors were evaluated on their ability to provide project management and adequate labor resources to perform the contract successfully. RFP at 61-62. For project management, offerors were expected to propose key personnel, which included a project manager and six role player supervisors. Id. at 5. Among other duties, key personnel would be expected to execute work plans, identify resources needed and individual responsibilities, track all hours worked, manage client interaction, serve as immediate supervisors, schedule role players, review status reports, hold regular status meetings, and provide effective leadership. Id. at 5-7.

For labor resources, offerors were expected to provide enough role playing personnel to fully staff the training exercises. The solicitation specified that the historical requirement of role playing personnel was 245 personnel, but noted that the staffing requirement could fluctuate depending on the agency's training needs. RFP at 10. To this end, offerors were instructed to present their staffing plans, which were required to explain each offeror's approach to providing and maintaining an adequate supply of role playing personnel. Id. at 57. Offerors were instructed further to provide information about their recruitment and retention approaches, also in order to demonstrate that they had sufficient staff. Id. at 57-58.

VJ asserts that the agency unreasonably evaluated its proposal as containing a weakness. The agency evaluated VJ's staffing plan as containing a weakness because its proposal stated that it had a [DELETED]. AR, Tab 13, Consensus Technical Evaluation Team (TET) Report at BATES 343. The agency determined that this representation in VJ's proposal led to uncertainty concerning whether VJ would be able to ensure that the government has the requisite number of role playing personnel for every training exercise. Id. VJ asserts that this weakness was unreasonably assigned

² VJ suggests that it challenged the agency's evaluation of this aspect of its proposal in its original protest. However, the original protest allegation was that the agency unreasonably assigned a weakness and a risk to this aspect of its proposal, not that the agency should have assigned a strength for this aspect of its proposal. Thus, to the extent that the protester raised what amounts to a secondary--new--aspect of its challenge to the agency's evaluation of its proposal under the management and staffing approach factor, this new assertion constitutes improper piecemeal presentation of a protest allegation. Vigor Shipyards, Inc., B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5.

because the [DELETED] figure referred to employee retention, rather than its past success in staffing the agency's requirements. VJ points out that the statistic was presented on a slide titled "Retaining Valued Personnel" and located below a statistical graphic which detailed employee tenure information.

An offeror has the responsibility to submit a well-written proposal which clearly demonstrates compliance with the solicitation requirements and allows meaningful review by the procuring agency. Bryan Constr., Inc., B-409135, Jan. 14, 2014, 2014 CPD ¶ 51 at 6. An offeror that does not affirmatively demonstrate the merits of its proposal assumes the risk that its proposal will be evaluated unfavorably. Id. at 7.

We have no basis to object to the agency's assignment of this weakness to the VJ proposal. Here, as noted, VJ's proposal unequivocally states as follows: [DELETED]. AR, Tab 9, VJ Proposal, at BATES 116. Although VJ asserts that the location of this representation in its proposal shows that it relates to employee retention rather than its proposed prospective staffing approach, it offers no explanation for how the [DELETED] figure reflects its retention rate. In this latter connection, the [DELETED] figure appears in a chart adjacent to another chart on the same slide that expresses the firm's past retention rates for the preceding three calendar years, showing that its retention rates were, respectively, [DELETED] for 2014, [DELETED] for 2015 and [DELETED] for 2016.³ Id.

Simply stated, the protester's proposal does not explain the interrelationship of the [DELETED] figure with the other information relating to its historic retention rate appearing on the same slide, nor has the protester offered an explanation during the protest regarding the interrelationship of these figures. Moreover, even assuming that the [DELETED] figure somehow relates to the protester's past retention rate experience, the statement plainly means that VJ has only satisfied its staffing obligations in [DELETED] of its prior jobs. Either way, the agency reasonably assigned a weakness to the VJ proposal because of a concern relating to the firm's ability to fully staff the contract requirements.

The record shows that the agency also assigned a risk to VJ's proposal under the management and staffing approach factor for two reasons. The agency's first reason for assessing the risk was that VJ's proposal did not clearly identify role player staff currently employed by VJ versus prospective candidates for role player positions. AR, Tab 13, Consensus TET Report at BATES 343-344. The agency determined that this introduced a risk to the VJ approach because it showed that VJ lacked adequate on-board staff and the ability to adjust to changing staffing requirements. Id. VJ asserts that the agency's evaluation was unreasonable because its proposal demonstrated its ability to hire large numbers of employees nationwide and shows that it has a database of over 1,600 candidates.

³ The RFP instructed offerors to provide information about their retention rates for calendar years 2014, 2015 and 2016. RFP at 58.

We have no basis to object to this aspect of the agency's evaluation. VJ's proposal shows that its labor strategy was entirely reliant on hiring individuals not currently in its employ to work as role players but did not show that it had an existing labor supply to draw from. Its strategy consisted, first, of attempting to hire the incumbent role player staff, and second, of using its pool of "sourced" candidates from advertisements, recruiters, and company networks to backfill any vacancies. AR, Tab 9, VJ Proposal at BATES 109. If neither of those measures supplied enough labor, then VJ proposed to use a database of 1,600 vetted role players that were not current employees of the firm. Id. at 109-110.

We conclude that the agency reasonably assigned this risk to the VJ proposal because its approach is based on the protester's assumption that it can hire incumbent staff, and relies on a contingency of its being able to hire other identified job candidates that also are not currently employees of the company. In other words, there is nothing in the VJ proposal that shows that the firm has current employees that it proposed to use on the contract, and instead relies entirely on individuals not currently in the firm's employ accepting jobs with VJ. Accordingly, we find this aspect of the agency's evaluation reasonable.

The agency's second reason for assessing the risk was that VJ proposed to use key personnel with limited or no experience working for VJ. AR, Tab 9, VJ's Proposal at BATES 133-154; AR, Tab 13, Consensus TET Report at BATES 343. The agency determined that those employees' unfamiliarity with VJ "increases the learning curve for the company culture and expectations for both the role player employees and seamless contract transition if awarded." AR, Tab 13, Consensus TET Report at BATES 343. VJ asserts that the agency's rationale was unreasonable because VJ has a track record of integrating new employees on contracts and its project manager has a long history of employment with other government agencies. Protest at 7-8. VJ also asserts that the solicitation did not state that offerors would be evaluated negatively based on using contingent hires. Id. at 7.

We find that the agency's assignment of this risk was reasonable. The evaluation scheme focused on assessing offerors' ability to timely perform the specific project management responsibilities contained in the statement of work (SOW). RFP at 61. VJ does not dispute that all of its proposed key employees were either individuals not currently employed by VJ, or, in the case of its proposed project manager, a VJ employee for a period of just one month.⁴ In light of these facts, we find reasonable the agency's assignment of a risk to the VJ proposal because its proposed key employees' limited experience with VJ cast doubt on whether VJ could provide effective project management in the initial stages of contract performance. While VJ asserts that it has a

⁴ One of its six proposed role player supervisors was employed by one of VJ's subcontractors--but not VJ--for a period of 10 months. AR, Tab 9, VJ Proposal at BATES 146.

track record of successfully integrating new employees, its proposal did not discuss the firm's claimed accomplishments in this area. Accordingly, we find that the agency reasonably evaluated VJ's proposal as demonstrating a risk.

Disparate Treatment

VJ alleges that the agency evaluated its and Narcorps' proposals unequally. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences in the proposals. IPKeys Techs., LLC, B-414890, B-414890.2, Oct. 4, 2017, 2017 CPD ¶ 311 at 9. We find that VJ's allegations fail to meet this threshold showing.

First, VJ alleges that TSA evaluated the offerors' staffing proposals unequally because TSA assigned a strength to Narcorps' proposal for including conditional hires. As set forth above, TSA assigned a risk to VJ's staffing plan because its proposal showed that the firm was relying entirely on using individuals that were not currently employed by VJ. In contrast, the agency assigned Narcorps proposal a significant strength based on its staffing plan. The record shows that Narcorps' has [DELETED] for all manager, supervisor, and role player positions, [DELETED] available who are currently undergoing security vetting, and [DELETED] with employment intentions. AR, Tab 10, Narcorps Proposal at BATES 211. The record also shows that Narcorps plans to staff the contract completely with its current employees. Id. The agency evaluated Narcorps' staffing plan as a significant strength because its labor supply clearly exceeded the historical staffing requirements of 245 employees. Tab 13, Consensus TET Report at BATES 337.

Thus, Narcorps and VJ had fundamentally different staffing plans. Whereas VJ's strategy relied entirely on conditional hires, Narcorps relied on its current employees to staff the historical requirement, and then planned to use conditional hires on an as-needed basis. The record therefore shows that both staffing plans intended to utilize conditional hires, but not in the same manner. In light of these circumstances, we have no basis to conclude that the agency evaluated this aspect of the proposals disparately.

Second, VJ alleges that the agency evaluated proposals unequally because TSA assigned its proposal a risk based on the fact that its project manager was a recent hire. VJ contends that the TSA should have assigned Narcorps' proposal a risk as well because Narcorps' project manager had only been employed with his firm for thirteen months.

Although VJ focuses on a superficial similarity between the project managers' tenures, the record shows that there is a reasonable basis for distinguishing the proposals. Contrary to VJ's assertion, the agency did not assign VJ's proposal a risk merely because its project manager had limited experience; rather, as noted above, it assigned the risk because it determined that VJ's key personnel may not perform effectively in the initial stages of contract performance given their collective unfamiliarity with VJ's operations. AR, Tab 13, Consensus TET Report at BATES 343. Furthermore, as noted

above, the record confirms that VJ's key personnel had limited or no employment history working for VJ. AR, Tab 9, VJ's Proposal at BATES 133-154. In contrast, the record shows that Narcorps' key personnel were all presently employed by Narcorps and had been since 2017. AR, Tab 10, Narcorps' Proposal at BATES 269-283. Thus, TSA had a reasonable basis to differentiate between the proposals because Narcorps' key personnel would not have to adapt to a new company culture, whereas VJ's key personnel would. Accordingly, TSA did not evaluate proposals disparately because the agency's concerns with VJ's potential performance were not present in Narcorps' proposal.

Challenges to the Evaluation of the Narcorps Proposal

VJ raised numerous additional allegations, including that TSA miscalculated Narcorps' proposal, improperly conducted its responsibility determination, and unreasonably made its source selection decision. We dismiss these remaining allegations because VJ is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest 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 not an interested party if it would not be next in line for award if its protest were sustained. Sotera Defense Solutions, Inc., B-414056 et al., Jan. 31, 2017, 2017 CPD ¶ 46 at 8.

We find that VJ is not an interested party to maintain these remaining allegations because it would not be in line for award in the event we sustained any of them. The record shows that there was an intervening offeror, Offeror A, with a lower proposed price and equivalent technical ratings to the ratings assigned to the VJ proposal. AR, Tab 18, SSDM at BATES 422-423. VJ did not challenge the evaluation of Offeror A. Consequently, even if we found that any of VJ's remaining allegations had merit, Offeror A, rather than VJ, would be in line for award. Centerra Group, LLC, B-414768, B-414768.2, Sept. 11, 2017, 2017 CPD ¶ 284 at 10. Accordingly, we dismiss protester's remaining allegations.

The protest is denied.

Thomas H. Armstrong
General Counsel