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Decision

Matter of: Torres Advanced Enterprise Solutions, LLC

File: B-415930; B-415930.2

Date: April 23, 2018

Jonathan T. Williams, Esq., Julia Di Vito, Esq., Matthew E. Feinberg, Esq., Samuel S. Finnerty, Esq., Piliero Mazza PLLC, for the protester.
John W. Cox, Esq., Department of State, for the agency.
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation is denied where the agency reasonably determined that the protester's proposal was unacceptable.

DECISION

Torres Advanced Enterprise Solutions, LLC (Torres), of Falls Church, Virginia, the incumbent, protests the award of a contract to G4S Secure Integration LLC (G4S), of Omaha, Nebraska, by the Department of State (DoS), under request for proposals No. SAQMMA17R0396 for local guard services at the U.S. Embassy in Amman, Jordan. Torres contends that the agency improperly evaluated its proposal.

We deny the protest.

BACKGROUND

On June 1, 2017, the agency issued the RFP as a hybrid time-and-materials, fixed-price, and cost-reimbursement contract.¹ RFP at B.3. The agency sought a contractor to provide organizational structure, management, and qualified staff to meet the agency's requirement for local guard service at 69 guard posts at the U.S. Embassy in

¹ On June 26, the agency issued amendment No. A002 to update the RFP. Agency Report (AR), Tab 4, RFP, Amend. No. A002 at 1. Citations to the RFP in our decision are to this amended version.

Amman, Jordan, for a base year and four 1-year option periods. RFP, Performance Work Statement (PWS) at C.1, F.1; RFP, Exh. A, Guard Posts and Schedule of Guard Coverage (Guard Posts and Coverage), at 8. The local guard service would not only protect U.S. government personnel, property, and facilities, but also serve as an early warning signal to the embassy against criminal and terrorist attacks. RFP, PWS at C.3.

The RFP required personnel to perform certain standard services, which were identified by post, location, labor category,² guard post function, and required English language proficiency level.³ RFP at B.7.1, C.4.1; RFP, Exh. A, Guard Posts and Coverage, at 1. For example, at Post E-43, located at the Consular Lobby of the Embassy Compound, a guard would be required to provide visitor control services from Sunday to Thursday between 0700 to 1700 hours using a radio, and to communicate at Level 1 English proficiency. RFP, Exh. A, Guard Posts and Coverage, at 4.

Award was to be made using a lowest-priced, technically-acceptable (LPTA) source selection process, with technical acceptability evaluated under the following three non-price factors: management plan, past performance and experience, and preliminary transition plan. RFP at L.11.2, M.3. The first two factors were equally important and, when combined, were of greater importance than the third factor. Id. at M.2.

The management plan consisted of eight subfactors listed in descending order of importance, including, as relevant here, the offeror's staffing plan and the training program.⁴ Id. at L.11.2, M.2. The staffing plan and the training program were the second and the sixth most important subfactors, respectively. Id. at M.2.

As also relevant here, the RFP required a detailed staffing plan that explained how the offeror would motivate and foster recruitment and retention of employees throughout the life of the contract. Id. at L.11.2.1.3.A. The RFP stated that an offeror should consider that the prior contract, but not the instant solicitation, required the contractor to pay a

² As relevant here, labor categories for contract line item numbers 0001-0006, for standard services at the embassy, were to include guard force commander, shift supervisor, supervisor, senior guard, guard/driver, and guard. RFP at B.7.1.

³ The RFP advised that staff at certain guard posts must possess a specified level of English language proficiency in addition to the ability to converse in Arabic, the host-government language. Id. at H.4. The 48 guard and 4 guard/driver posts required the lowest English language proficiency of Level 1, elementary proficiency; the 10 senior guard posts required a Level 2, limited working proficiency; and the 4 supervisor, 1 shift supervisor, and 2 guard force commander posts required a Level 3, general professional proficiency. RFP, Exh. A, Guard Posts and Coverage, at 1-8; Exh. H, Speaking and Reading Skill Level Proficiency, at 1-2.

⁴ The six other subfactors were organization and management, property management, key personnel, guard electronic monitoring system, contingency plan, and quality control plan. RFP at L.11.2.

supplemental wage allowance (SWA) of \$100, or approximately 71 Jordanian Dinar (JOD), a month to each employee, in addition to basic wages and other benefits. Id. at B.3, L.11.2.1.3.K. The RFP further advised offerors to consider how this information would affect retention and morale of the incumbent guards, as well the transition to a new contract, when developing compensation⁵ and pay plans. Id. at L.11.2.1.3.K. As relevant here, offerors were required to explain whether the proposal included the value of the SWA, the impact on retention rates of incumbent guards offered the right of first refusal,⁶ the approach to maintaining adequate staffing levels, and how potential guard morale issues would be addressed and managed. Id. Proposals would be evaluated with regard to whether the offeror adequately addressed requirements by providing a complete, clear response that demonstrated a thorough understanding of the requirements and the ability to successfully perform the contract. Id. at M.2.2.1.3

The RFP stated that proposals would be evaluated on an acceptable/unacceptable basis. Id. at M.2.2. The RFP advised that an unacceptable rating for any subfactor could render the entire technical proposal unacceptable. Id.

The agency received four proposals by the closing date, including Torres's and G4S's. CO Statement at 3.

With regard to Torres's initial proposal, in addressing the SWA and retention rates, Torres noted that it elected to eliminate the SWA. AR, Tab 6, Torres Initial Proposal, at 18.⁷ The proposal also stated that "to offset the negative impact of elimination of the SWA," Torres proposed to introduce a new pay allowance for [DELETED] to "keep

⁵ The RFP required offerors to submit a compensation plan as part of its price proposal. RFP at L.11.1.4. The RFP advised that to the extent recompetition of service contracts resulted in lowering of compensation paid or furnished to employees, the lowering could be detrimental in obtaining personnel needed for adequate contract performance. Id. The RFP required offerors to provide a complete and clear description of how the compensation was devised by addressing a number of areas, including, for example, how proposed compensation corresponded to the responsibility and duties (skill level, language requirements, etc.) for each labor category, and the contractor's plan to retain guards for the length of the contract. Id. In evaluating the compensation plan, the agency would determine whether proposed compensation was reasonable and realistic for the work to be performed. Id. at M.2.1.5. The RFP also advised that the proposed compensation plan would be compared to the compensation arrangements in place with the incumbent guard force and that acceptable plans must fairly and adequately compensate employees to ensure successful recruitment and retention of qualified personnel throughout the life of the contract. Id.

⁶ The RFP required the successful contractor to offer incumbent guards, approved by the contracting officer (CO), a right of first refusal for employment openings for which a guard was qualified. Id. at C.7.

⁷ Our Office added consecutive numbers to the pages of Tab 6.

[DELETED] retention for [DELETED] personnel at manageable levels.”⁸ Id. at 21. The proposal further stated that in order to deal with turnover due to decreased retention rates, “it [would] be essential that the DoS expedite the vetting and approval process of new hires to keep the headcount from dropping to unacceptable levels.” Id. In addressing morale of security guards, the proposal stated that its compensation plan was designed to attract new candidates through [DELETED].⁹ Id. at 22.

In reviewing the initial proposal, the agency determined that the allowance for [DELETED] proposed by Torres did not include the guard position, and that the compensation plan would impact retention, the morale of incumbent guards, and the transition into the new contract.¹⁰ AR, Tab 12, Final Consensus Report, at 2.¹¹ The agency decided to engage in discussions with Torres and G4S and request revised proposals. CO Statement at 3.

As relevant here, the agency issued a notice advising Torres that the RFP did not require guards to have more than a Level 1 English language proficiency and asking “how . . . guards [would] be compensated since they may not be getting the [DELETED].” AR, Tab 9, Discussion Letter at 2. Additionally, in response to Torres’s statement about expediting the vetting and approval process, the agency asked the protester to explain what action would be taken to mitigate retention of staff in the guard category with the removal of the SWA. Id.

In responding to the agency’s discussion notices regarding the SWA and retention rates, Torres’s revised proposal stated that it would welcome reinstatement of the SWA if the government decided to make it mandatory, as eliminating the SWA would substantially reduce wages, especially for guards. AR, Tab 11, Torres’s Revised

⁸ Additionally, the proposal stated that the guard labor category would likely be most impacted by the elimination of the SWA and that Torres expected guards’ retention rates to decrease from approximately 90 percent to 65 percent in the first year, and then to stabilize around 80 percent after the first year. AR, Tab 6, Torres Initial Proposal, at 21.

⁹ Additionally, the proposal stated that it would pay its employees [DELETED] if it were possible, but since the contract would be awarded on an LPTA basis, the methodology focused on all other aspects of employee experience. Id. The proposal also stated that security guards are consistently paid lower wages, and are the employee group with the lowest morale and least job satisfaction. Id. at 22.

¹⁰In this regard, the [DELETED] allowance for the guard force commander, supervisors, and shift supervisors positions ([DELETED] JOD) was equivalent to the SWA while the [DELETED] allowance for senior guards and guard/driver positions ([DELETED] JOD) was equivalent to about [DELETED] of the SWA. AR, Tab 12, Final Consensus Report, at 2.

¹¹ Our Office added consecutive numbers to the pages of Tab 12.

Proposal, at 27.¹² To address the morale of guards, Torres added two [DELETED] allowances to supplement wages, *i.e.*, a [DELETED] allowance and a [DELETED] for [DELETED]. *Id.* at 28. The proposal stated that with the [DELETED] allowance and [DELETED], guard pay would be approximately [DELETED] percent above minimum wage even without the SWA and that Torres did not foresee any significant difficulties in recruiting new guards.¹³ *Id.*

In evaluating Torres's revised proposal, the agency determined that the [DELETED] allowance ([DELETED] JOD) and [DELETED] ([DELETED] JOD) would be less than the amount that would have been provided by the SWA. AR, Tab 12, Final Consensus Report, at 2. Additionally, the agency concluded that the [DELETED]--driven by paying staff commensurate with knowledge, skills, and abilities of each labor category--should already have been factored into the labor category hourly rates, and should not be considered an added benefit. *Id.*

The agency also included a detailed explanation of its concerns that guards would be paid less on this contract because Torres's proposed compensation would be "too little" to retain and recruit guards and that "the mechanism [would] not work." *Id.* at 2. The agency calculated that, in addition to monthly wages, guards would receive [DELETED] JOD a month, while all other individuals would receive between [DELETED] and [DELETED] JOD a month.¹⁴ *Id.* In this regard, the agency reasoned that the reduced compensation would result in "tremendous losses in staffing" and that Torres would be unable to adequately staff the requirement, which could lead to unmanned posts. *Id.* The agency concluded that while the inclusion or exclusion of the SWA was an independent business decision for Torres, the overall proposed compensation would negatively impact the retention and morale of the incumbent guards in a requirement where the majority of the workforce was comprised of guards.¹⁵ *Id.* at 3.

¹² Our Office added consecutive numbers to the pages of this tab.

¹³ Torres did not change its statement regarding expediting vetting and approval. AR, Tab 12, Final Consensus Report, at 3.

¹⁴ The guard force commander, supervisor, and shift supervisor positions would receive a [DELETED] JOD [DELETED] allowance, a [DELETED] JOD [DELETED], and a [DELETED] JOD [DELETED] allowance, while senior guards and guard/driver positions would receive the same [DELETED] allowance and [DELETED] amount, and a [DELETED] JOD [DELETED] allowance. *Id.* at 2.

¹⁵ Regarding expediting vetting and approval, the TEP stated, "Torres is relying on DOS' assistance in maintaining guards by efficiently vetting and clearing guards. However, quick and efficient vetting and COR [contracting officer's representative] approval does not aid in retaining qualified guards or impact the morale of the guard force." *Id.*

After evaluating Torres's revised proposals, the TEP concluded that Torres's proposal was technically unacceptable under the staffing plan and training program subfactors¹⁶ for the following reasons:

- 1) Under the [s]taffing [p]lan, Torres proposed a compensation plan that cumulatively [would] not assist in retaining and increasing the morale of the incumbent guards.
- 2) Torres [did] not provide further details regarding the training program and [stated] that the original proposal adequately addressed the key elements and methods of training. Without a robust training program, the guards will not be able to perform their duties.

Id. at 1, 3-4.

The agency determined that G4S's proposal was technically acceptable and offered a fair and reasonable price. AR, Tab 13, Award Decision, at 4. On January 9, 2018, DoS awarded the contract to G4S for an estimated ceiling price of \$13,101,111. Id. Torres's final evaluated price was \$11,705,776. Id. at 3. After receiving notification of award, and requesting and receiving a debriefing, Torres protested to our Office.

DISCUSSION

Torres challenges the agency's evaluation of the staffing plan and training program subfactors under the management plan factor and alleges that the agency erred in finding its proposal unacceptable.¹⁷ Protest at 5, 8. Although our decision does not

¹⁶ Additionally, the award determination document indicates that Torres was also found unacceptable under the contingency plan subfactor. AR, Tab 13, Award Decision, at 2. Based on our review of the record, we conclude that the reference to an unacceptable rating for the contingency plan was a clerical error. The protester did not challenge this discrepancy and we do not discuss it further.

¹⁷ The protester contends that the agency raises, for the first time in its Memorandum of Law (MOL), criticisms regarding the staffing plan and training program subfactors that are post-hoc and unsupported by the contemporaneous evaluation record. See Comments at 4, 8. For example, the protester cites the agency's contention that a statement in the protester's proposal regarding expediting the vetting and approval process provided an additional basis upon which to find the protester's proposal unacceptable under the staffing subfactor. Id. (citing MOL at 6). We agree with the protester. Our Office accords little or no weight to new evaluation conclusions reached by an agency after a protest has been filed; that is, in the heat of litigation. Procentrix, Inc., B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 5 n.9; cf., Readiness Mgmt. Support, L.C., B-413207, B-413207.2, Sept. 7, 2016, 2016 CPD ¶ 271 at 7 n.8 (post-protest explanations that provide a detailed rationale for contemporaneous

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specifically discuss all of Torres's arguments, we have considered them all and find that they are without merit.¹⁸

In reviewing protests challenging an agency's evaluation of proposals, our 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. Franzosini Sud S.R.L., B-415009, Oct. 27, 2017, 2017 CPD ¶ 327 at 3. A protester's disagreement with an agency's judgment, by itself, is insufficient to establish that the agency acted unreasonably. VSE Corp., B-414057.2, Jan. 30, 2017, 2017 CPD ¶ 44 at 8.

Torres contends that its proposal was penalized for not providing the optional SWA, and that the agency erred in concluding that Torres would be unable to staff the contract. See Protest at 7; Comments at 3. The agency responds that the TEP reasonably found that the estimated losses to incumbent guards, the most numerous labor category, due to reduced pay posed a serious risk to contract performance. MOL at 5.

We find no basis to sustain the protest. The RFP indicates that the government was concerned with recruitment, retention, and compensation, particularly at the guard level, and specifically focused on the impact that removal or inclusion of the SWA would have on retention of incumbent guards and the morale of guards. RFP at L.11.2.1.3.K, M.2.2.1.3, M.2.1.5. Additionally, the RFP advised that proposed compensation would be compared to arrangements for the incumbent guard force and that lowering of compensation could be detrimental in obtaining adequate personnel. Id. at L.11.1.4.

Here, the record shows that the agency reviewed Torres's staffing plan and proposed compensation, including the travel allowance and position differential, and had concerns that the amount would be inadequate to retain and recruit guards. Additionally, the agency determined that the staffing plan under the current contract would provide incumbent guards with compensation that was lower not only in comparison to the prior contract, but also in comparison to pay that other staff would receive on the current contract. Based on the concern about reduced pay to guards, the agency concluded Torres would suffer "tremendous losses in staffing," which negatively affect both

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conclusions or simply fill in previously unrecorded details are generally considered where those explanations are credible and consistent with the contemporaneous record). Accordingly, our conclusions are based on our review of the contemporaneous record, which clearly documented the basis for the agency's conclusions.

¹⁸ The protester raises other collateral arguments, such as a challenge to the agency's conduct of discussions, which are not discussed in this decision.

recruitment and retention and could result in an inability to adequately staff the contract. On this record, we conclude that the agency's evaluation was reasonable.¹⁹

We deny the protest.

Thomas H. Armstrong
General Counsel

¹⁹ The RFP advised that an unacceptable rating for any subfactor could render the entire technical proposal unacceptable. RFP at M.2.2. Given that we find that the agency reasonably found the protester's proposal unacceptable under the staffing plan subfactor, we need not address Torres's challenge to the evaluation of the training program subfactor.