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Decision

Matter of: United Support Services, LLC

File: B-417384; B-417384.3

Date: June 18, 2019

Craig S. King, Esq., Richard J. Webber, Esq., and Abram J. Pafford, Esq., Arent Fox LLP, for the protester.

Roshan D. Shah, Esq., and Kevin Foltmer, Esq., Scarinci & Hollenbeck, LLC, for the intervenor.

Peter S. Kozlowski, Jr., Esq., Michael G. Skennion, Esq., and Debra J. Talley, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably assigned a deficiency to protester's proposal is denied where proposal did not clearly demonstrate that the protester would provide airborne sensor operators for specific systems, as required by the solicitation.

2. Protest that agency treated protester and awardee disparately is denied where agency considered that both intended to have teammates provide airborne sensor operators (ASO), but awardee's proposal showed that teammates had ASOs that worked with specific sensors, while the protester's teammate did not.

3. Defense Federal Acquisition Regulation § 215.306, which provides that an agency should hold discussions where procurement is valued at more than \$100 million, is not applicable to procurements conducted under Federal Acquisition Regulation part 16.

DECISION

United Support Services, LLC (USS), of Chantilly, Virginia, protests the issuance of a task order to AASKI Technologies, Inc., of Tinton Falls, New Jersey, under request for proposals (RFP) No. RS3-18-0013, issued by the Department of the Army for technology support services. USS asserts that the agency unreasonably evaluated its proposal, treated USS and AASKI disparately in the evaluation, and improperly failed to hold discussions.

We deny the protest.

BACKGROUND

The RFP, for sensor technology, operations and readiness maintenance (STORM), was issued on August 23, 2018, to holders of the Army's Responsive Strategic Sourcing for Services (RS3) multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract using the procedures of Federal Acquisition (FAR) part 16. Agency Report (AR), Tab 8, Email to RS3 Prime Contractors, at 1; AR, Tab 36, RFP, at 22.¹ The solicitation sought technology insertion, system integration/installation, fabrication/prototyping, testing/certification, studies/analyses, contractor logistics support, maintenance, operations, training, and engineering support for product manager, medium altitude reconnaissance and surveillance systems (PdM MARSS). AR, Tab 33, Performance Work Statement (PWS), at 1. These services will support the overall mission of PdM MARSS of providing tactically relevant manned aerial intelligence, surveillance and reconnaissance in support of both persistent missions and current, and emerging, overseas contingency operations. Id.

The solicitation contemplated issuance of a cost-plus-fixed-fee/cost-no-fee task order using a best-value tradeoff based on cost/price, and the following non cost/price factors: technical, contractor support capabilities, and small business participation plan. RFP at 1,18. The technical factor was comprised of two subfactors: (1) task order execution, with three parts: key performance areas, transition plan, and basis of estimate; and (2) technical approaches, which described three situations designated as technical approach 1, technical approach 2, and technical approach 3, for each of which the offeror was required to provide a solution. Id. at 7, 18.

The technical and contractor support capabilities factors were assigned an adjectival rating of outstanding, good, acceptable, or unacceptable based on an assessment of deficiencies, strengths, and weaknesses.² Id. at 20. A technical factor or subfactor was unacceptable if it was assigned one or more deficiencies. Id. at 19, 20. A rating of unacceptable under any technical factor or subfactor made the proposal ineligible for award. Id. at 18. The solicitation advised offerors that the agency intended to evaluate proposals and award a task order "without any discussions, questions, or clarifications." Id. at 18-19.

¹ Citations are to amendment 5 of the RFP.

² A deficiency was defined as a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increased the risk of unsuccessful performance to an unacceptable level. RFP at 20. A weakness was defined as a flaw in the proposal that increased the risk of unsuccessful performance. Id. A significant weakness was defined as a flaw that appreciably increased the risk of unsuccessful performance. Id.

The agency received five proposals, including proposals from USS and the awardee. AR, Tab 90, Task Order Decision Document (TODD), at 22. The agency rated four of the proposals, including USS's proposal, as unacceptable under the technical factor, and eliminated the proposals from consideration for award. AR, Tab 90, TODD, at 22, 27.

With respect to USS, under the task order execution subfactor, the agency assigned the proposal one weakness and one deficiency under key performance areas, and three weaknesses and one significant weakness under basis of estimate. AR, Tab 77, USS Evaluation, at 7, 9, 10. Under the technical approaches subfactor, the agency assigned USS's proposal one strength, one weakness, and three significant weaknesses under technical approach 1; one strength, one weakness, and one significant weakness under technical approach 2; and one strength and one weakness under technical approach 3. Id. at 14, 16, 18. The four significant weaknesses, in combination, resulted in the assignment of a deficiency under the technical approaches subfactor. Id. at 19. As a result of the deficiencies, USS was rated unacceptable under the technical factor. Id. The final ratings for USS and the awardee were as follows:

| | USS | AASKI |
|------------------------------------------|---------------|---------------|
| Technical | Unacceptable | Good |
| Contractor Support Capabilities | Acceptable | Acceptable |
| Small Business Participation Plan | Acceptable | Acceptable |
| Proposed Cost | \$423,442,247 | \$576,230,511 |

AR, Tab 90, TODD, at 6. The agency concluded that AASKI's proposed price was fair and reasonable. Id. at 28. The agency also concluded that AASKI, with the only acceptable proposal, represented the best value to the government. Id. After a debriefing, USS filed this protest.³

DISCUSSION

USS argues that the agency unreasonably evaluated its proposal, treated USS and AASKI disparately in the evaluation, and improperly failed to hold discussions. USS's initial and supplemental protests raise additional allegations. While our decision here does not specifically discuss each and every argument and/or variation of the arguments, we have considered all of USS's assertions and find no basis to sustain the protest.

³ This procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple award IDIQ contracts, since the awarded value of the task order at issue exceeds \$25 million. 10 U.S.C. § 2304c(e)(1)(B).

Technical Evaluation

USS challenges the evaluation of its technical proposal, arguing that the agency unreasonably assigned a deficiency to its proposal under the task order execution subfactor for key performance areas, and a significant weakness under basis of estimate. USS also challenges the assignment of three significant weaknesses under technical approach 1, and one significant weakness under technical approach 2 of the technical approach subfactor. We find that the agency reasonably assigned USS's proposal a deficiency for key performance areas, and as a result, USS was ineligible to be issued the task order. We therefore do not address the other challenges to the technical evaluation.

As relevant to this protest, with respect to the key performance areas of the task order execution subfactor, offerors were instructed to "address the requirements of each of the performance areas located in the Performance Work Statement (PWS) . . . [including section] 3.1.1.1. . . . The offeror must specifically describe its methods and technical approach/solution [to the requirement]." RFP at 7. With respect to PWS § 3.1.1.1, the solicitation stated:

For all systems listed in Appendix A where [airborne sensor operator (ASO)] support is indicated, the Contractor shall provide qualified ASOs to support operations of each sensor system during continuing operations and when necessary, operational testing support.

PWS at 16. Appendix A listed three systems for which ASO support is indicated: EMARSS-V, EMARSS-G, and MARSS. PWS, Appendix A, at i. These three systems utilize six sensors: AWAPSS; MX-15; VADER; Pennantrace; TACOP; and APG. Id. at ii. The AWAPSS and TACOP sensors are associated with the EMARSS-G system. Id.

The agency assigned USS's proposal a deficiency under a key performance area of the task order execution subfactor for how the firm planned to provide ASOs. Specifically, the agency found that USS proposed the use of a teammate to provide qualified ASOs, senior ASOs to perform at least three check lifts alongside newly deployed ASOs to reinforce training, and one check flight for re-deploying ASOs to update them and verify suitability to support the mission. AR, Tab 77, Technical Evaluation, at 3; Tab 90, TODD, at 15-16. The agency concluded that while this approach demonstrated USS's ability to sustain the level of expertise required, it did not address how USS would ensure that qualified ASOs for the TACOP and AWAPSS sensors would be provided upon award, during transition, and throughout performance, as required by the solicitation. Id. at 15. The agency concluded that ASOs are a crucial labor category since they provide real time on board sensor aircraft operations that directly affect whether a mission is successful in support of combatant commanders. AR, Tab 90, TODD, at 24. Therefore, the agency assessed USS a deficiency since, without qualified ASOs, operational readiness would be drastically reduced and loss of mission time could occur. Id.

USS asserts that the evaluation was unreasonable. In this regard, USS argues that it devoted five paragraphs to outlining its comprehensive approach under which ASOs are an integral part of the intelligence collection chain. Protest at 14. USS further reports that its approach proposed the manner in which ASOs would be utilized in each phase of mission planning and mission execution. Id. USS also points out that in its proposal it noted that a team member would be the lead provider of ASOs because of its proven ability to provide qualified ASOs for STORM systems. Id. USS also notes that in its proposal, it specifically stated that it would provide at least one senior ASO per site for each specialized, non-Electro-Optical/Infra-Red sensor, which includes the TACOP and AWAPSS sensors. Id.

The Army agrees that USS's proposal contains a statement that it would provide a senior ASO per site for each sensor. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 16; see AR, Tab 53, USS Task Order Execution, at 3. However, the Army argues that this is not a description of its approach to providing ASOs for the sensors. COS/MOL at 17. As the Army explains, USS detailed its strategy to provide ASOs for three of the six sensors, and for a fourth sensor proposed to partner with the original equipment manufacturer supplier of the system to support that sensor. Id. The Army concluded that USS did not provide any details with respect to providing ASOs for the remaining two sensors--the TACOP and AWAPSS sensors. Id. at 17. The Army further explains that while in its proposal USS stated that its team member would take the lead in providing ASOs, that team member has not provided ASOs for the AWAPSS and TACOP sensors in the past and does not have experience with those sensors. Id. Thus, the Army did not find that USS's strategy of proposing a teammate that lacked experience on two sensors was sufficient. Id.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Id.

Here, we find that the agency reasonably assigned a deficiency to USS's proposal for failing to adequately demonstrate the approach to providing ASOs for the TACOP and AWAPSS sensors. In this regard, USS's proposal generally relied on its teammate "as the lead provider for ASOs because of [its] proven ability to provide qualified ASOs for STORM systems." AR, Tab 53, USS Task Order Execution, at 3. The agency explains that this approach was insufficient because USS's teammate has not provided ASOs for the AWAPSS and TACOP sensors. In addition, USS relies on a blanket statement in its proposal that it would provide an ASO for each sensor. We find reasonable the agency's conclusion that this statement fails to explain how USS would provide ASOs for the AWAPSS and TACOP sensors. Accordingly, we find the agency's evaluation reasonable.

Finally, USS asserts that in addressing the contractor support capabilities factor, it provided specific resumes and teaming agreements which identified the subject matter experts that would lead the ASO for each specific sensor and system required to be addressed in the contractor support capabilities volume. Protest at 14. USS asserts that this information was included for the AWAPSS sensor specifically, and the EMARSS-G surveillance system which utilizes the TACOP sensor. Id.

As the agency explains, for key performance areas, the solicitation instructed offerors to specifically describe the methods and technical approach/solution to the requirement, as it related to PWS § 3.1.1.1, ASO support. RFP at 7. This means that the agency intended offerors to provide an approach and plan for providing qualified ASO individuals. Agency Response to GAO Questions, May 8, 2019, at 1.

In comparison, the contractor support capabilities factor was intended to evaluate the offerors' ability to operate and maintain the system or sensor. RFP at 11. The agency explains that this includes the proposed approach to providing maintenance and repair support to the specific systems and sensors. Agency Response to GAO Questions, May 8, 2019, at 1. In addressing the contractor support capabilities factor, USS did describe its approach to providing maintenance and repair support to the AWAPSS sensor and the EMARSS-G sensor, and how its subject matter expert would manage these services and the ASOs. AR, Tab 47, Contractor Support Capabilities, at 1, 1-R-1 (AWAPSS sensor subject matter expert), 11, 9-R-1. USS, however, did not describe its approach or plan to provide ASOs for the AWAPSS and TACOP sensors. Id. USS's assertion that the information it included in responding to the contractor support capabilities factor demonstrated that it would provide ASOs for the AWAPSS and TACOP sensors does not provide a basis to question the agency's evaluation.

We therefore agree that the protester did not provide a clear strategy for providing ASOs for the AWAPSS and TACOP sensors, and, consequently, that the agency reasonably assigned a deficiency to the proposal.

Unequal Treatment

USS also argues that in evaluating proposals with respect to the ASO requirement, the agency treated USS unequally. Specifically, USS argues that the agency did not assign AASKI a deficiency for this factor even though AASKI did not discuss ASO support for the TACOP and AWAPSS sensors in its proposal. Comments at 15-17.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

As the agency reports, AASKI's proposal does not specifically state the sensor name TACOP. Agency Response to GAO Questions, May 8, 2019, at 3. However, AASKI proposed to leverage two teammates⁴ to provide the qualified ASOs for all sensor systems. Id.; AR, Tab 85, AASKI Task Order Execution, at 6 (discussing teammates' current ASO staff and retention rate and use for this award). One of these teammates has operator staff and experience supporting the EMARSS-V and MARSS systems. AR, Tab 85, AASKI Task Order Execution, at 6, 8. This same teammate supports the current contract and provides qualified ASOs for the AWAPSS and TACOP sensors. Id. at 8; see also Agency Response to GAO Questions, May 8, 2019, at 3. The second has operator staff and experience with AWAPSS and the EMARSS-G system, which includes the AWAPSS and TACOP sensors. AASKI Task Order Execution at 6, 8. AASKI also discussed recruiting, hiring, training and multi-tasking of ASOs. Id. at 6-8. As a result, the agency concluded that AASKI met the solicitation requirements. AR, Tab 87, AASKI Technical Evaluation, at 3.

In comparison, the agency also considered whether USS's proposed teammate provided ASO support for the TACOP and AWAPSS sensors. AR, Tab 77, USS Technical Evaluation, at 3 ("The Offeror proposes the use of a teammate to provide qualified ASOs"). However, USS's proposal did not show that its teammate had current staff with experience with the EMARSS-G system, or the AWAPSS or TACOP sensors. As a result, the record demonstrates that the teammates that AASKI and USS proposed had different levels of experience providing ASO support. Based on this record, we do not find evidence of disparate treatment.

Discussions

Finally, the proposals received in response to this solicitation were priced at significantly more than \$100 million. See AR, Tab 90, TODD, at 6. USS argues that the agency should have engaged in discussions in accordance with the policy enunciated by Defense Acquisition Regulation Supplement (DFARS) § 215.306. Protester at 23-24. That provision provides that an agency should engage in discussions when the value of the acquisition equals or exceeds \$100 million. DFARS § 215.306. USS asserts that given the magnitude of the procurement, and the fact that the Army received only one acceptable offer, it was unreasonable for the agency not to engage in discussions. Protest at 23-24; Comments at 33-34.

We find no merit to the protester's argument. The RFP specifically stated: "This is a FAR 16.505 procurement. The competition requirements of FAR Part 6 and the policies and procedures of FAR Subpart 15.3 shall not apply to this task order, except as referenced in FAR 16.505." RFP at 22. Where, as here, a procurement is conducted

⁴ AASKI and USS proposed different teammates for this purpose.

under FAR part 16, the provisions of DFARS § 215.306 are not applicable. CACI Technologies, Inc., B-411282, June 18, 2015, 2015 CPD ¶ 185 at 4.⁵

The protest is denied.

Thomas H. Armstrong
General Counsel

⁵ In addition, even where there is only one acceptable offeror, an agency is not required to hold discussions with an offeror whose proposal is reasonably evaluated as unacceptable. Telestar Corp., B-275855, April 4, 1997, 97-1 CPD ¶ 150 at 4. Thus, even if the agency held discussions, it would not be required to hold discussions with USS.