



Decision

Matter of: Avalon Contracting, Inc.

File: B-417845; B-417845.2

Date: November 19, 2019

Kevin Ingley, for the protester.

Bonnie Kirkland, Esq., and John Dulske, Esq., Dykema Gossett PLLC, for Facility Services Management, Inc., the intervenor.

Andrew Bramnick, Esq., Michael G. Anderson, Esq., and Elizabeth Urrutia, Esq., Department of Defense, Washington Headquarters Services, for the agency.

Andrew J. Smith, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's proposal is denied where the evaluation conclusions were reasonable, consistent with the solicitation, and did not employ unstated evaluation criteria.
2. Protest challenging the agency's evaluation of proposals under the past performance evaluation factor is denied where the agency's evaluation was reasonable.

DECISION

Avalon Contracting, Inc., a small business of Tacoma, Washington, protests the award of a contract to Facility Services Management, Inc. (FSI), of Clarksville, Tennessee, by the Department of Defense, Washington Headquarters Services under request for proposals (RFP) No. HQ0034-19-R-0008, for operations and maintenance services for the Pentagon Memorial dedicated to the victims of the September 11, 2001, attack on the Pentagon. The protester challenges the agency's evaluation and award decision.

We deny the protest.

BACKGROUND

On May 8, 2019, the Washington Headquarters Services issued the RFP pursuant to the commercial item procedures of Federal Acquisition Regulation part 12.¹ Agency Report (AR), Tab 4, RFP, at 1, 92. The RFP sought proposals to provide operations and maintenance services, including repairs when needed, of the Pentagon Memorial. Id. at 18. The Pentagon Memorial is an outdoor venue dedicated to the victims of the September 11 attack on the Pentagon and includes 184 memorial units dedicated to the victims of the attack. Id.

The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract, for a base year and four 1-year option periods. Id. at 20, 92. The RFP provided that award was to be made to the offeror whose proposal provided the best overall value to the government, price and other factors considered. Id. at 92. Proposals were to be evaluated based on the following three factors: technical approach and capability, past performance, and price. Id. at 100. For purposes of award, the technical approach and capability and past performance factors were equal in weight, and when combined, were significantly more important than price. Id. The RFP specified that price would become more significant in the award decision as the evaluation under the technical approach and capability and past performance factors became more equal. Id.

The agency would first evaluate proposals under the following three “pass/fail” criteria: meeting key personnel qualifications; accepting all RFP terms and conditions; and submitting all required RFP information by the closing date. Id. at 101. The agency would not further evaluate proposals that failed any of these criteria. Id.

Under the technical approach and capability factor, the RFP stated that agency would evaluate the adequacy of the offeror’s proposed technical approach for “completeness and understanding” of the requirements specified in the solicitation, including the PWS. Id. at 101-102. The RFP advised offerors that “[c]larity, completeness and conciseness are essential.” Id. at 102. In evaluating proposals under technical approach and capability, the agency would assign a combined technical/risk rating that would reflect the degree the proposed approach meets the threshold performance or capability requirements through an assessment of the relative strengths, deficiencies, weaknesses and significant weaknesses, and risks to successful performance. Id. at 103.

Under the past performance factor, the RFP provided that the agency would evaluate how well the offeror has performed on contracts that have been determined to be recent

¹ Citations to the RFP are to the final amended version provided by the agency at Tab 4 of the AR. The agency amended the RFP twice to make administrative changes, to revise the Performance Work Statement (PWS), and to extend the proposal due date. AR, Tab 3, RFP amend. 0001; Tab 4, RFP.

and relevant to the PWS. Id. at 102. Each proposal would be assigned a confidence assessment rating based on the offeror’s overall record of quality on recent and relevant past performance. Id. at 103-104.

With regard to price, the RFP informed offerors that the agency would evaluate proposed prices to determine if they are “fair and reasonable.” Id. at 102.

The agency received multiple proposals prior to the closing date, including proposals from Avalon and FSI. Contracting Officer’s Statement (COS) at 3. The technical evaluation board (TEB) evaluated the proposals as follows:

	Pass/Fail Criteria	Technical Approach and Capability	Past Performance
Avalon	Pass	Acceptable	Satisfactory Confidence
FSI	Pass	Good	Satisfactory Confidence

AR, Tab 9, Best Value Decision Document, at 5.

As relevant to this protest, the TEB identified one weakness in Avalon’s proposal under the technical approach and capability factor and otherwise found no strengths, significant weaknesses or deficiencies. AR, Tab 7, TEB Consensus Report, at 3-4. The identified weakness involved Avalon’s approach to meeting the PWS requirement to provide service call responses for the Pentagon Memorial. Id. at 4. Specifically, the TEB determined that Avalon’s inclusion of a sample in its Quality Control Plan (QCP) of a “Tenant Not Available Tag,” which would hang on the door of the facility, demonstrated a lack of understanding of the PWS requirement because the Pentagon Memorial was an outdoor venue without doors on which to hang a service tag. Id.

The contracting officer, who also served as the source selection authority (SSA), concurred with the findings of the TEB and determined that FSI’s proposal represented the best overall value to the government. AR, Tab 9, Best Value Decision Document, at 22. On July 31, award was made to FSI, whose proposal had a total evaluated price of \$4,618,563.85, which represented a slightly higher price than that offered by Avalon. COS at 3. On July 31, 2019, the agency notified the protester that it was an unsuccessful offeror. Id. After requesting and receiving a written debriefing, the protester filed this protest on August 13. Protest at 1.

DISCUSSION

Avalon primarily challenges the agency’s evaluation under the technical approach and capability and past performance factors. Avalon contends that the agency unreasonably assigned a weakness to its technical approach and that the weakness became the determining factor in the resulting award decision. Protest at 5-7. Avalon also argues that the agency’s past performance evaluation was unreasonable because both FSI and Avalon received the same adjectival rating yet the agency determined that FSI’s past performance was superior. Protester Comments at 2-3. The protester raised

additional grounds, and while we do not address each of the protest grounds raised by the protester, we have reviewed them all and find none provides a basis to sustain the protest.²

Technical Approach and Capability

Avalon contends that the agency used unstated evaluation criteria in assigning a weakness to its proposal under the technical approach and capability factor for its “Tenant Not Available” sample form. Protest at 5. In this regard, Avalon claims that it included the sample form as part of its QCP at the end of the Technical Approach and Capability Volume, but contends that the QCP was not part of the technical approach and capability section of that volume. Protest at 4-5. Avalon alleges that the agency was prohibited from assigning a weakness for the sample form because “nowhere does the RFP indicate that the QCP was to even be considered as part of the evaluation for award” but rather is required post award. Protest at 3. The protester further argues that it was unreasonable for the agency to assign a weakness for the sample form, which Avalon describes as a “de minimis issue,” that became, in Avalon’s view, the determining factor in the award decision. Protest at 6-7.

The agency responds that it did not use unstated evaluation criteria in its evaluation and that the assignment of the weakness was reasonable. COS at 6-7; Memorandum of Law (MOL) at 7-10. According to the agency, the RFP specified that it would evaluate the technical approach and capability factor based on the completeness and demonstrated understanding of the offeror’s approach to the PWS requirements, which required the contractor to provide its approach to service calls. MOL at 9; RFP at 35, 102. While the agency concedes that the RFP did not require the submission of a QCP, the agency contends it was Avalon’s decision to submit the QCP as part of its technical approach and capability volume and it was therefore reasonable for the agency to consider the submitted documents in evaluating the completeness and understanding of Avalon’s technical approach. MOL at 9-10; COS at 4. The agency further argues that it considered the weakness to be minor and that the weakness was not the determinative factor for the award decision. COS at 7-8.

² For example, Avalon challenged the agency’s price evaluation, arguing that FSI’s price was unreasonably high. Protest at 7. The agency provided a substantive response to the protest argument, but Avalon did not respond to the agency’s arguments in its comments on the agency report. Thus, we dismiss this allegation as abandoned. Medical Staffing Sols. USA, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3 (“Where, as here, an agency provides a detailed response to a protester’s assertion and the protester fails to rebut the agency’s argument in its comments, the protester fails to provide us with a basis to conclude that the agency’s position with respect to the issue in question is unreasonable, and as a result, the protester abandons that assertion.”).

The evaluation of an offeror's proposal is a matter within the agency's discretion. HP Enter. Servs., LLC; Aon Nat'l Flood Servs., B-413967 et al., Jan. 17, 2017, 2017 CPD ¶ 26 at 6. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Id. In evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Glock, Inc., B-414401, June 5, 2017, 2017 CPD ¶ 180 at 16. A protester's disagreement with a procuring agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Gonzales Consulting Servs., Inc., B-416676, B-416676.2, Nov. 20, 2018, 2018 CPD ¶ 396 at 7. Moreover, 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. Id.

Here, we conclude that the evaluation was reasonable and consistent with the terms of the RFP.³ While not required by the RFP, Avalon submitted a QCP as part of its technical approach and capability volume. AR, Tab 5, Avalon's Proposal, Volume II-- Technical Approach and Capability, at 27-46. Avalon contends that it inserted the extraneous documents in its technical approach and capability volume because there was not a "better place" to insert the QCP. Protest at 4. However, Avalon fails to explain why it submitted the QCP as part of its proposal if it did not intend for the agency to consider it as part of its technical approach. The RFP warned offerors that "[c]larity, completeness and conciseness are essential." RFP at 102.

We have previously found that cover letters and extraneous documents submitted with proposals are considered part of the proposal. See Potomac Electric Corp., B-311060, Apr. 2, 2008, 2008 CPD ¶ 63 at 2. Only by evaluating the cover letter or extraneous documents submitted with a proposal can a contracting officer be assured of making award on the basis of a compliant proposal which satisfies the agency's stated requirements. Id. at 2-3; see also Techniarts Eng'g; Department of the Navy--Recon., B-238520.3, B-238520.4, June 27, 1991, 91-1 CPD ¶ 608 at 3-4. Based on our review of the record, the agency reasonably considered the content of the QCP Avalon chose to submit as part of its proposal to assess Avalon's understanding of the PWS requirements, as stated in the evaluation criteria. In doing so, the agency reasonably identified a weakness in Avalon's understanding of the requirement for proposing to hang service tags at the Pentagon Memorial, which is an outdoor venue without doors.

³ No protective order was issued in this matter because Avalon Contracting proceeded with its protest without retaining outside counsel. A full version of the AR was provided to our Office, while a redacted version of the report was furnished to the protester. We have reviewed the entire record. As much of the information reviewed by our Office is source selection sensitive or proprietary in nature, our discussion of some aspects of the agency's evaluation of FSI's proposal is necessarily general in nature.

MOL at 9; RFP at 35, 102. As the RFP stated that the agency would evaluate proposals based on their completeness and understanding of the offeror's approach to service calls, the weakness identified in Avalon's proposal was reasonably encompassed by the stated terms of the RFP.

Finally, contrary to Avalon's contention that the weakness unreasonably became the determining factor for award, the TEB concluded that the weakness was not indicative of Avalon's overall proposed technical approach and capability, and the SSA considered the weakness as minor. AR, Tab 9, Best Value Decision Document, at 20; COS as 5. Furthermore, as Avalon's proposal did not contain any strengths, the removal of the weakness would not have increased its "acceptable" rating to a "good" rating; the RFP defined a "good" rating, in part, as a proposal that contains at least one strength.⁴ RFP at 103; COS at 5. Our review of the record shows that the identified weakness in Avalon's proposal was not the determinative factor for the award decision; rather, the agency reasonably determined that FSI's proposed approach contained specific advantages and was technically superior. AR, Tab 9, Best Value Decision Document, at 21-22.

Past Performance Evaluation

Avalon next argues that the agency's past performance evaluation was unreasonable and did not follow the RFP's evaluation criteria. Protester Comments at 2-3. Avalon contends that once the agency determined that the proposals of both FSI and Avalon warranted a "satisfactory confidence" rating for past performance, it was improper for the agency to determine that FSI's past performance was superior to Avalon's. Id. at 3. According to Avalon, the RFP contained no variations in the degree of a "satisfactory confidence" rating and it was therefore unreasonable for the agency to further consider the relative merits of the offerors' past performance. Id.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. Thoma-Sea Marine Constructors, LLC, B-416240, B-416240.2, July 16, 2018, 2018 CPD ¶ 245 at 7. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. Id.

⁴ Avalon appears to allege that the identified weakness prevented the agency from recognizing strengths in its proposal, but fails to specify what aspects of its proposal warranted a strength. Protester Comments at 2. We dismiss this protest ground as it fails to provide a detailed statement of the legal and factual grounds of protest as required by our Bid Protest Regulations. See 4 C.F.R. §§ 21.1(c)(4), 21.5(f).

The agency contends, and we agree, that it was reasonable for the agency to look behind the assigned rating to compare the qualitative value of the proposals in making an award decision. Supp. MOL at 2. While Avalon argues that the RFP did not allow for any variations in the past performance rating, our prior decisions provide that adjectival ratings are merely guides to intelligent decision making; the qualitative information underlying those ratings is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful difference exist between proposals. See ERC Inc., B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6. Proposals with the same adjectival ratings are not necessarily of equal quality, and agencies may properly consider specific advantages that make one proposal of higher quality than another. Id. at 6-7. Consequently, the agency's decision to look behind the offerors' adjectival ratings to consider the relative quality of the past performance in determining that FSI's proposal would be most advantageous to the government was reasonable and consistent with the RFP. See id.; RFP at 100.

The protest is denied.

Thomas H. Armstrong
General Counsel