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Decision

Matter of: U.S. Electrodynamics, Inc.

File: B-418574.2; B-418574.4

Date: June 23, 2020

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Frank V. DiNicola, Esq., Tobias Hunziker, Esq., and Reza Behinia, Esq., Department of Veterans Affairs, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals is dismissed where protester abandoned its challenge to the evaluation of its proposal, and is not an interested party to challenge the evaluation of the awardee's proposal.

DECISION

U.S. Electrodynamics, Inc. (USEI), of Brewster, Washington, protests the award of a contract to Strategic Approach Solutions, LLC (SAS), of Vienna, Virginia, under request for proposals (RFP) No. 36C10A-20-R-0003, issued by the Department of Veterans Affairs (VA) for enterprise satellite communications services. USEI argues that the agency miscalculated proposals and made an unreasonable source selection decision.

We dismiss the protest.

BACKGROUND

The solicitation, issued as a 100 percent service-disabled, veteran-owned small business (SDVOSB) set aside, contemplates the award, on a best-value basis, of a fixed-price contract for a base year and nine 1-year options to provide enterprise satellite communications services. The RFP contemplates that the successful offeror will replace all of the agency's satellite communications equipment and, thereafter, will operate, maintain and support the newly-installed satellite communications enterprise.

Firms were advised that proposals would be evaluated considering price and two non-price factors, technical and past performance, with the technical factor significantly more important than the past performance factor; the past performance factor significantly more important than price; and the two non-price factors collectively significantly more important than price.¹ RFP at 101. Offerors were advised that, to be considered for award, a rating of no less than acceptable under the technical factor was required. *Id.*

In response to the RFP the agency received a total of 10 proposals. The agency evaluated these proposals and arrived at the following results:

Offeror	Technical	Past Performance	Price
A	Unacceptable	Low Risk	\$57,910,432
B	Unacceptable	Low Risk	\$45,675,104
C	Unacceptable	Low Risk	\$43,800,300
D	Outstanding	Low Risk	\$44,926,476
E	Unacceptable	Low Risk	\$48,565,262
F	Outstanding	Low Risk	\$48,231,840
G	Unacceptable	Low Risk	\$49,959,084
SAS	Outstanding	Low Risk	\$39,912,886
I	Unacceptable	Low Risk	\$69,929,900
USEI	Unacceptable	Low Risk	\$59,999,999

AR, exh. 24, Source Selection Decision Document (SSDD) at 3. After arriving at these evaluation results, the agency made award to SAS on the basis of initial proposals without engaging in discussions noting, among other things, that seven of the proposals received (including the proposal of USEI) were found unacceptable under the technical evaluation factor and eliminated from consideration for award. *Id.* at 4, 14. The agency advised USEI of its source selection decision and provided it a debriefing. USEI filed the instant protest.

DISCUSSION

USEI originally protested the evaluation of its proposal. However, based on the reasons discussed below, we conclude that USEI effectively abandoned this allegation.

¹ The agency's source selection plan provided that the VA would assign adjectival ratings to the proposals of outstanding, good, acceptable, susceptible to being made acceptable or unacceptable under the technical evaluation factor. Agency Report (AR), exh. 9, Source Selection Plan, at 18-19. The plan provided for the assignment of past performance ratings of high risk, moderate risk, low risk, or unknown risk in the case of an offeror with no record of past performance. *Id.* at 19.

The record shows that the agency assigned a deficiency to the USEI proposal because the evaluators determined that it lacked necessary detail about how the firm planned to transition from the agency's existing equipment to the equipment to be provided under the resulting contract. AR, exh. 15, Technical Evaluation Report, at 31.² In its initial protest, USEI argued that the agency had erred in assigning its proposal this deficiency and eliminating it from further consideration.

The agency provided a detailed response to this aspect of USEI's protest in its agency report, explaining at length the basis for its finding of a deficiency, and identifying those portions of the record it thought supported its position. In its comments responding to the agency report, USEI did not meaningfully respond to the agency's position.

Specifically, USEI's comments do no more than restate verbatim a claim from its initial protest, and then suggest--through a misleading, incomplete quotation of the evaluation record--that the agency's legal memorandum and contracting officer's statement mischaracterize the evaluation record. USEI states as follows in arguing that the agency's evaluators actually found its proposal transition approach acceptable:

These post-protest after the fact rationales provided by the contracting officer and Agency legal counsel, neither of whom was part of the Technical Evaluation Team, continue to ignore the conclusion in the TE [technical evaluation] Report that USEI "gives detailed tasks and their related transition time frames in figure 2.3.1-1 of the proposal."

Protester's Comments and Supplemental Protest, at 33. However, the quote above mischaracterizes the record. The complete finding by the agency's technical evaluators was as follows:

Reference section 2.3.1 pages 15-19, of the technical proposal. The Offeror fails to provide technical details, required resources or proposed transition methodologies in Phase-In Plan Part 1 in regard to transitioning of the VSAT Terminals [very small aperture terminal] from the incumbent provider, as reference[d] in Section 5.3 of the PWS [performance work statement]. Although the offeror *gives detailed tasks and their related transition timeframes in figure 2.3.1-1 of the proposal*, they failed to identify the technical steps on how they would transition the teleports and the remote terminals. This is a deficiency because the lack of technical

² In the agency's technical evaluation report, the USEI proposal was assigned the rating of susceptible of being made acceptable in light of the identified deficiency. AR, exh. 15, Technical Evaluation Report, at 31. In the SSDD, the source selection official determined that the USEI proposal, along with all other proposals assigned a rating of susceptible to being made acceptable, was unacceptable because the agency did not intend to engage in discussions. AR, exh. 24, SSDD, at 4.

detail increases the risk to VA of an unsuccessful transition to the new SATCOM [satellite communications] equipment to an unacceptable level.

AR, exh. 15, Technical Evaluation Report, at 31 (emphasis on the portion of the finding quoted by USEI).

It is clear from a reading of the complete, unedited record that, in fact, the evaluators identified a deficiency in the protester's proposal that rendered it unacceptable, as represented by the agency in its report. However, beyond the misleading quote discussed above, USEI did not offer any substantive response to the agency's position, as outlined in its report. Under the circumstances, we conclude that USEI abandoned this aspect of its protest, and we therefore dismiss this contention. *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109.

USEI also argues that SAS should not have been awarded the contract because it is not an eligible SDVOSB contractor, and challenges the agency's evaluation of SAS's past performance. We dismiss these aspects of USEI's protest because we conclude that USEI is not an interested party to make these allegations.³ We reach this conclusion based on evidence in the record, but point out that the state of the record in this case is a consequence of USEI's action or inaction during development of the protest record.

Our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a)(1), 21.1(a), require a protester to be an "interested party," that is, an actual or prospective offeror whose direct economic interest would be affected by the award, or the failure to award, a contract. Determining whether a party is interested involves a variety of considerations, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *Technica LLC*, B-417177 *et al.*, Mar. 21, 2019, 2019 CPD ¶ 125 at 7. Where a firm would not be in line for award of a contract, it is not an interested party to maintain its protest. *Id.*

As shown by the evaluation results displayed above, two other firms--offerors D and F--submitted proposals that were rated outstanding under the technical factor; low risk under the past performance factor; and lower-priced than USEI. The protester did not challenge the agency's evaluation of these interceding offerors.

³ In challenging the SDVOSB status of SAS, USEI relies on prior decisions of our Office where we consider whether an agency acted reasonably in declining to refer a question concerning the SDVOSB status of a prospective awardee to the Small Business Administration (SBA). See *Kodiak Base Operations Services, LLC*, B-414966, *et al.*, Oct. 20, 2017, 2017 CPD ¶ 323. Here, although USEI never actually filed a protest with the agency challenging SAS's SDVOSB status, another offeror did file such a challenge, and the agency referred the matter to the SBA. AR, exh. 16, Agency Referral of SAS's status to the SBA. Accordingly, even if we were to find that USEI was an interested party for purposes of raising this issue, we would nonetheless dismiss the allegation for failing to state a basis for protest. 4 C.F.R. § 21.5(f).

In its initial protest, USEI, in addition to challenging the agency's evaluation of its own proposal, argued only that SAS was not an SDVOSB concern eligible to receive award of the contract, and that SAS had no past performance experience of its own and improperly was relying on the past performance of a large business subcontractor. USEI's initial protest requested copies of any memoranda or similar documents reflecting the agency's determination that the proposals of any other offeror, were technically acceptable. However, since its initial protest did not raise a challenge to the agency's evaluation of any proposal other than those of USEI and SAS, the protester's initial request for such documentation--as it related to the offerors other than SAS--was not cognizable under our Regulations, which only require an agency to produce documents relevant to the protest issues raised. 4 C.F.R. § 21.3(d).

After USEI submitted its initial protest, the VA filed a preliminary request for dismissal arguing that USEI was not an interested party. Agency Request for Dismissal, April 1, 2020. We declined to dismiss the protest at that time because the agency did not provide any contemporaneous evaluation materials with its request that could serve as evidence to corroborate its position regarding USEI's standing among offerors.

In responding to the agency's dismissal request, USEI--once again--did not challenge the agency's evaluation of the interceding offerors. Instead, USEI speculated--without any basis for its position--that the two interceding offerors might not be SDVOSB concerns; the speculative nature of USEI's assertion is demonstrated by the fact that the identity of the two interceding offerors had not been revealed to USEI. In any event, nothing in USEI's response to the agency's dismissal request, or in any of its subsequent protest filings, actually raised a cognizable challenge to the agency's evaluation of offeror D's and F's proposals, or their SDVOSB status.

USEI requested the proposals of offerors D and F for the first time in a letter dated April 20 that it filed in objection to the agency's proposed document production. (In that same letter, USEI repeated its original request for evaluation materials relating to those offerors.) We declined USEI's request at that time because there were no outstanding issues relating to the agency's evaluation of offerors D and F, or their SDVOSB status. Because USEI failed to protest either the evaluation of the proposals of offerors D and F, or their SDVOSB status, the protester, by its own actions, effectively foreclosed any avenue for it to obtain information that might be relevant to such a challenge. By extension USEI, by its own actions, effectively foreclosed any opportunity to demonstrate its interested party status.

The protest is dismissed.

Thomas H. Armstrong
General Counsel