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Decision

Matter of: SOC LLC

File: B-419977; B-419977.2

Date: October 15, 2021

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DIGEST

1. Agency reasonably assessed a significant weakness in protester's technical proposal with regard to protester's proposed performance of maintenance requirements.
 2. In conducting discussions, the agency was not required to advise protester that its price was substantially higher than that of its competitors where protester's price was not considered to be unreasonably high.
 3. Agency's evaluation of offerors' proposed prices was reasonable and consistent with the terms of the solicitation.
 4. Where agency properly evaluated protester's proposal, conducted meaningful discussions, and properly applied the solicitation's terms in evaluating offerors' prices, protester is not an interested party to further challenge the agency's source selection process because it is not next in line for award.
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DECISION

SOC LLC, of Chantilly, Virginia, protests the Department of the Army's award of a contract to DynCorp International, LLC, of Fort Worth, Texas, pursuant to request for proposals (RFP) No. W52P1J-19-R-0069, to perform operation and maintenance

services at the Hawthorne Army Depot (HWAD) in Hawthorne, Nevada.¹ SOC, the incumbent contractor, asserts that the agency: failed to properly evaluate technical proposals; failed to conduct meaningful discussions; and improperly evaluated proposed prices.

We deny the protest in part and dismiss it in part.

BACKGROUND

In December 2019, the agency issued the RFP, seeking proposals to perform operation and maintenance services at HWAD, to include the storage and demilitarization of multiple “families” of ammunition. AR, Tab 10, RFP at 96-98. The solicitation contemplated award of a single indefinite-delivery, indefinite-quantity contract with a 5-year base performance period, a 3-year option period, and a 2-year option period, under which the agency will subsequently issue fixed-price task orders.²

Of relevance here, the solicitation provided that offerors must submit fixed prices, using agency-provided price matrices, for the solicitation’s various contract line item numbers (CLINs). In this regard, the CLINs referenced corresponding sections of the performance work statement (PWS), along with quantity ranges of performance units. See RFP at 16-17; Tab 42, RFP attaches. 16-18. For example, with regard to one of the sub-CLINs under CLIN 0001, supply depot operations, offerors were required to submit fixed per-ton prices, by contract period, to perform the specific ammunition storage services identified in the PWS. *Id.* In short, the solicitation did not provide that offerors would propose--or that the agency would pay--labor hours or labor rates; rather, the solicitation committed the agency to pay the fixed prices associated with each CLIN in the pricing matrices for performing the corresponding PWS requirements.

The solicitation provided for award on a best-value tradeoff basis and established the following evaluation factors, listed in descending order of importance: technical,³ past

¹ HWAD is a government-owned, contractor-operated facility, with 3,500 buildings on 147,000 acres, located approximately 300 miles north of Las Vegas, Nevada. Agency Report (AR), Tab 1, Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 4.

² The RFP also provides for a limited number of cost-reimbursement items. RFP at 16.

³ Under the technical factor, the solicitation established three equally-weighted subfactors--supply depot operations, demilitarization of ammunition, and maintenance---and provided that, in evaluating technical proposals, the agency would assess multiple aspects of an offeror’s proposed approach to determine its adequacy, feasibility, and risk. *Id.* at 96, 98-99.

performance, management, price,⁴ and small business participation.⁵ RFP at 11, 16, 96-103. Finally, the solicitation placed offerors on notice that the agency's evaluation under each factor or subfactor would be limited to consideration of the information submitted in response to that factor/subfactor. Specifically, the solicitation stated: "The Government will not consider information located in other sections or other Volumes of the proposal in its evaluation of an individual factor or subfactor." *Id.* at 82.

On or before July 27, 2020, proposals were submitted by four offerors. Those proposals were evaluated, and the agency established a competitive range comprised of three offerors – DynCorp, SOC, and [redacted]; thereafter, the agency conducted discussions with the competitive range offerors. In conducting discussions, the agency provided evaluation notices (ENs) to each offeror, identifying multiple aspects of the proposals that required additional information. Among other things, the agency sought information regarding the offerors' proposed pricing to, among other things, assess the offerors' understanding of the contract requirements. See AR, Tab 89, ENs and Responses; Tab 110, Source Selection Evaluation Board (SSEB) Report at 345-63.

Following discussions, the agency requested, received, and evaluated final revised proposals. In its evaluation, the agency identified various strengths, significant strengths, weaknesses, and significant weaknesses in the proposals,⁶ rating them as follows:⁷

⁴ With regard to evaluation of price, the solicitation provided that an offeror's total evaluated price would be calculated as the sum of the fixed-price CLINs and stated that "[p]rice analysis shall be used to determine (a) price reasonableness; and (b) whether the proposal reflects an understanding of the effort required." RFP at 101-02. The solicitation also provided that offerors should include "additional information considered necessary to explain the proposed pricing" within their price proposals. *Id.* at 93. Finally, the solicitation provided that, in addition to making determinations regarding price reasonableness and understanding of the effort required, the agency would assess proposed prices for unbalancing (between performance periods, quantity ranges and/or CLINs); the solicitation did not provide for a price realism analysis.

⁵ The solicitation also contained a PWS factor that was evaluated on an acceptable/unacceptable basis.

⁶ Of relevance here, the solicitation defined a significant weakness as "[a] flaw in the proposal that appreciably increases the risk of unsuccessful contract performance." RFP at 97.

⁷ Under the technical, management, and small business evaluation factors, the agency assigned adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable; under the past performance factor, the agency assigned ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or neutral confidence; and, as noted above, the PWS factor was evaluated only on an acceptable/unacceptable basis. *Id.* at 97, 101, 103.

	[Redacted]	SOC	DynCorp
Technical	Outstanding	Good	Good
Past Performance	Satisfactory	Satisfactory	Satisfactory
Management	Outstanding	Good	Outstanding
Small Business	Acceptable	Good	Good
PWS	Acceptable	Acceptable	Acceptable
Price	\$764,462,788	\$871,242,312	\$590,046,015

AR, Tab 123, Source Selection Decision Document (SSDD) at 3.

In evaluating SOC’s proposal under the most important factor, technical, the agency assessed a significant weakness regarding SOC’s proposal to perform “abnormal maintenance.”⁸ The agency concluded that SOC’s proposal attempted to expand the solicitation’s definition of “abnormal maintenance” to include activities within the scope of normal maintenance and, thereby, failed to demonstrate SOC’s understanding of the solicitation’s requirements and created a risk of unsuccessful contract performance.

AR, Tab 110, Final SSEB Report at 68-69; Tab 123, SSDD at 4.

Following completion of its final evaluation, the agency compared the three proposals and concluded that: DynCorp’s proposal offered the best value; [redacted]’s proposal offered the second-best value; and SOC’s proposal offered the least value. AR, Tab 123, SSDD at 7. Among other things, the source selection authority stated:

In viewing the merits of [SOC’s] proposal, it is easy to see that it loses in any best value tradeoff comparison with either [redacted] or [DynCorp]. [SOC] has the highest TEP [total evaluated price], much higher than [redacted] and [DynCorp]. [Redacted] is moderately superior under the Technical factor and markedly superior under the Management factor when compared with [SOC]. All offerors are essentially the same under the Past Performance factor. The only slight benefit for [SOC] comes from the Small Business Participation factor, which is the least important factor overall. This slight edge under the Small Business Participation factor cannot justify paying approximately a 15% premium in price, especially since [redacted] is superior on the Technical and Management factors. Selecting [SOC] versus [redacted] would basically result in paying a premium for a lower rated proposal with fewer strengths, something which is simply not logical or supportable under the evaluation scheme in this Solicitation.

⁸ Offerors were required to submit fixed prices for performing normal maintenance, and the solicitation contained a detailed description of the requirements encompassed by that term. See AR, Tab 29, PWS (maintenance) at 2-10, 12-13. Additionally, the solicitation contained a requirement to perform “abnormal maintenance”; defined that term (as discussed in more detail below); and provided for additional contractor compensation where such activities will be required. *Id.* at 11-12.

A comparison of [SOC] to [DynCorp] shows a similar disparity. Under the Technical Factor, [both offerors] are similarly matched. Both offerors have the same overall rating of “Good,” with [SOC] being superior under the Demilitarization subfactor, [DynCorp] being superior under the Maintenance subfactor, with a tie under Supply Depot Operations. There is, however, a clear benefit when looking at the Management factor, and [DynCorp] clearly prevails here. [Both offerors] are also similarly matched under the Small Business Participation factor. . . . [T]here is no reason to pay a substantial premium (over 45%) to select [SOC], as [DynCorp] is technically superior when considering all of the non-price factors as a whole.

For these reasons, [SOC] is lacking when compared with [redacted] and [DynCorp], and does not represent the best overall value to the Government.

Id.

Thereafter, the contract was awarded to DynCorp and SOC was notified of the source selection decision. This protest followed.

DISCUSSION

SOC protests that the agency improperly evaluated its technical proposal; failed to conduct meaningful discussions; and improperly evaluated all of the offerors’ price proposals. None of SOC’s allegations provides a basis to sustain its protest.⁹

Technical Evaluation of SOC’s Proposal

First, SOC protests that it was unreasonable for the agency to assess a significant weakness in SOC’s technical proposal with regard to performance of abnormal maintenance. SOC complains that its proposal was consistent with the terms of the solicitation regarding abnormal maintenance requirements, maintaining that its proposal “efficiently summarize[d]” those requirements. Protest at 27.

The agency responds that, rather than reflecting the solicitation’s requirements, SOC proposed to expand the definition of abnormal maintenance¹⁰ and created the risk that,

⁹ SOC’s initial protest raised various arguments that are in addition to, or variations of, those discussed below; following receipt of the agency report, SOC withdrew or abandoned several of its initial arguments. We have considered all of SOC’s remaining arguments and find no basis to sustain its protest.

¹⁰ There is no dispute that, pursuant to the solicitation, abnormal maintenance is beyond the scope of normal maintenance, is compensated separately, and requires agency approval.

during performance, SOC would seek compensation for efforts that the solicitation contemplated as being covered by the fixed price that SOC proposed to perform normal maintenance. AR, Tab 1, COS/MOL at 46.

In responding to SOC's protest, the agency first notes that the solicitation contained a narrow definition of abnormal maintenance, limiting the applicability of that term to projects that exceeded \$100,000 and met one of the two following requirements:

[1] Repair, restoration, or replacement required due to a rare act of Nature, e.g., weather related damage or other isolated peculiar event . . . [or]

[2] Major repairs, overhaul, or replacement of building components/equipment/infrastructure that have exceeded the service life even though normal maintenance practices have been followed.

AR, Tab 29, PWS (maintenance) at 12-13.

Next, the agency notes that SOC's final revised proposal stated:

Abnormal Maintenance is defined as [in] excess of \$100,000 for each particular occurrence. Abnormal maintenance projects are those necessary to restore or modernize real property infrastructure that is beyond its normal expected life span, is now obsolete . . . or for any other reason cannot be brought to a workable/useable state using normal maintenance practices.

AR, Tab 73, SOC Proposal at 74.

The agency states that, due to the depot's age,¹¹ much of the equipment and infrastructure in use at HWAD "is no longer produced, but still in heavy use due to its durability, regular maintenance cycles, and highly specialized nature." AR, Tab 1, COS/MOL at 49. The agency maintains that SOC's proposed definition of abnormal maintenance could be construed to include activities within the scope of normal maintenance requirements that are necessary for day-to-day operation of HWAD. *Id.* at 48. More specifically, the agency asserts that SOC's inclusion of the word "obsolete" in its definition, as well as its inclusion of the clause beginning "for any other reason," effectively broadened the scope of activities that could be considered abnormal maintenance and would permit SOC to subsequently seek additional compensation for activities that should be covered by SOC's fixed price for normal maintenance. *Id.* On this record, the agency maintains that it properly assessed a significant weakness in SOC's proposal.

¹¹ The agency explains that HWAD "was founded as a depot for naval ammunition in 1928 . . . and has had limited upgrades to much of its industrial base and [buildings] over the last 90 years." AR, Tab 1, COS/MOL at 46.

An agency has the discretion to determine its needs and the best way to meet them. *USA Fabrics, Inc.*, B-295737; B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 4; the evaluation of an offeror's proposal is also a matter within the agency's discretion. *IPlus, Inc.*, B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. Our Office will not reevaluate proposals, nor substitute our judgment for that of the agency but, rather, 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. See *Shumaker Trucking & Excavating Contractors, Inc.*, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. Further, an offeror has the burden of submitting a clearly-written proposal, and where a proposal fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. *G.A. Braun, Inc.*, B-413735, Dec. 21, 2016, 2016 CPD ¶ 374 at 5.

Here, as discussed above, the solicitation established a narrow definition of abnormal maintenance, specifically stating that this term was limited to repair/restoration of building components, equipment, or infrastructure that was necessitated by a "rare act of nature" or by having "exceeded [its] service life." We find nothing unreasonable in the agency's assessment that SOC's proposal attempted to expand the scope of this definition beyond the terms of the solicitation and, accordingly, that SOC's proposal failed to demonstrate a full understanding of the solicitation requirements and/or created risk for unsuccessful contract performance. SOC's protest challenging the agency's assessment of a significant weakness in its proposal is denied.¹²

Meaningful Discussions

Next, SOC asserts that the agency failed to conduct meaningful discussions regarding SOC's proposed price because the discussions "failed to reveal that SOC's overall price was non-competitive." Protest at 18-21. In this context, SOC asserts that, because the agency's discussions covered a broad range of issues, including other questions

¹² SOC also protests that the agency "failed to assign warranted strengths and significant strengths" in its evaluation of SOC's technical proposal. Protest at 28. Among other things, SOC complains that, as the "uniquely-situated" incumbent, it should have received a significant strength for its transition plan and, because it proposed a "tried and tested leadership team" with "on-the-ground experience," its proposal should have received a strength or significant strength for key personnel. *Id.* at 28-33. In its report, the agency fully responded to each of SOC's allegations, providing full explanations for its various judgments. As noted above, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency and, a protester's disagreement with the agency's judgment, without more, does not constitute a valid basis for protest. See *Shumaker Trucking & Excavating Contractors, Inc.*, *supra*. Here, based on our review of the record, we find no basis to question the agency's evaluation of SOC's proposal or to conclude that the agency was required to assess additional strengths/significant strengths in that proposal.

regarding SOC's proposed pricing, the agency was required to advise SOC that it should lower its price. *Id.*

The agency responds that, while SOC's proposed price was higher than those of its competitors, it was not unreasonably high.¹³ See AR, Tab 112, Price Evaluation Report at 9. The agency further notes that all of the offerors' prices, including SOC's, were below the agency's internal government cost estimate (IGCE).¹⁴ Accordingly, the agency maintains that it was not required, nor would it have been appropriate, to effectively disclose the relative prices of the offerors during discussions. Accordingly, the agency maintains that its decision not to suggest that SOC should lower its price did not render the discussions less than meaningful.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. More specifically, unless an offeror's proposed price is unreasonably high, an agency is not required to notify the offeror that its proposed price is higher than those of its competitors, even where price is the determinative factor for award. See, e.g., *World Wide Tech., Inc.*, B-417909.2, B-417909.3, Dec. 14, 2020, 2021 CPD ¶ 6 at 5; *DeTekion Sec. Sys., Inc.*, B-298235, B-298235.2, July 31, 2006, 2006 CPD ¶ 130 at 15.

Here, we reject SOC's assertion that the agency was obligated to advise SOC that its price was higher than the prices of its competitors. The record establishes, and SOC does not dispute, that the agency did not view SOC's price as unreasonably high or unacceptable. Accordingly, SOC's assertion that the agency was required to advise SOC that it should lower its price is without merit, and its protest in this regard is denied.

Price Evaluation

Next, SOC complains that the agency failed to evaluate the offerors' proposed prices in a manner contemplated by the terms of the solicitation. Protest at 21-25; SOC Comments/Supp. Protest, Aug. 23, 2021, at 6-16. More specifically, SOC refers to a solicitation provision stating that evaluation of an offeror's proposed price would include consideration of its "understanding of the effort required," asserting that the agency's evaluation record reflected a "complete and total failure to evaluate [price] proposals against this requirement," and maintaining that "no such evaluation occurred." *Id.* In this context, SOC asserts that: the agency's obligation to assess an offeror's understanding of the requirements could only be performed through a "distinct analysis" that was separate and apart from the agency's price reasonableness assessment and/or its consideration of unbalanced pricing, *id.* at 9-17; the required analysis must be

¹³ SOC does not assert in any of its protest submissions that its proposed price was unreasonably high.

¹⁴ The total IGCE was \$[redacted]. AR, Tab 112, Price Evaluation Report at 7.

“detailed and complex,” Protest at 24 n.7; and, in meeting this obligation, the agency was required to perform a “cross-walk” between each offeror’s price proposal and technical proposal.¹⁵ SOC Comments/Supp. Protest, Aug. 23, 2021, at 8.

The agency responds by first noting that the solicitation did not provide that offerors would propose--or that the agency would pay--labor hours or labor rates; rather, the solicitation committed the agency to pay the fixed prices associated with each CLIN as compensation for the contractor’s completed performance of the corresponding PWS requirements. AR, Tab 1, COS/MOL at 35-43. The agency further notes that offerors’ price proposals were to include “additional information considered necessary to explain the proposed pricing”--and that the solicitation expressly placed offerors on notice that the agency’s evaluation under each factor or subfactor would be limited to consideration of the information submitted in response to that factor/subfactor.¹⁶ See RFP at 82, 93.

Next, the agency maintains that, consistent with the terms of the solicitation, its price evaluation did, in fact, include consideration of each offeror’s understanding of the solicitation requirements; the agency maintains that SOC’s protest in this regard merely reflects its disagreement with the scope and extent of the agency’s analysis. With regard to the scope of its analysis, the agency states that it compared each offeror’s proposed price, by CLIN, to the other proposed prices and to the IGCE. Additionally, the agency considered the supporting information submitted by each offeror as part of its price proposal,¹⁷ and where an offeror’s proposed pricing or supporting information created uncertainty, the agency prepared discussions questions, seeking additional information. See AR, Tab 89, ENs and Responses; Tab 110, SSEB Report at 345-63.

Finally, the agency states that it considered the offerors’ responses to the discussion questions in making its various evaluation assessments, including its assessment regarding the offerors’ understanding of the requirements. In sum, the agency maintains that its price evaluation properly included an assessment of the offerors’ understanding of the requirements as contemplated by the solicitation.

The manner and depth of an agency’s price analysis is a matter within the sound exercise of the agency’s discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Gentex Corp.-Western Operations*, B-291793 *et al.*, Mar. 25, 2003, 2003 CPD ¶ 66 at 27-28. In reviewing a protest against the propriety of an evaluation, we will review an evaluation to ensure that it was reasonable and consistent

¹⁵ SOC does not deny that, in its separate evaluation of technical proposals, the agency performed a comprehensive assessment of proposed technical approaches.

¹⁶ As noted above, the solicitation stated: “The Government will not consider information located in other sections or other Volumes of the proposal in its evaluation of an individual factor or subfactor.” RFP at 83.

¹⁷ For example, DynCorp’s price proposal included 34 separate tables explaining how DynCorp arrived at its proposed prices. See AR, Tab 107, DynCorp Cost-Price Model, Tab 108, DynCorp Price Proposal Narrative Explanation.

with the evaluation criteria in the solicitation and applicable procurement statutes and regulations. *Decisive Analytics Corp.*, B-410950.2, B-410950.3, June 22, 2015, 2015 CPD ¶ 187 at 11.

Here, based on our review of the record, we reject SOC's assertion that the agency's price evaluation failed to reasonably include assessments of the offerors' understanding of the requirements. First, nothing in the solicitation provided that the agency's obligation to assess an offeror's understanding had to be a "distinct analysis" that was separate from the agency's assessment of price reasonableness and unbalanced pricing; indeed, we view an assessment of the offerors' understanding of the requirements as reasonably related to those assessments. Next, while SOC may have preferred that the agency's evaluation include a more "detailed and complex" assessment, its complaint in that regard merely reflects its disagreement with the agency's judgment regarding the scope of its evaluation. Finally, to the extent SOC maintains that the agency was required to perform a comparison or "crosswalk" between each offeror's price and technical proposals, the terms of the solicitation specifically provided that the agency's evaluation under each factor or subfactor would be limited to consideration of the information submitted in response to that factor/subfactor. Overall, we find no merit in SOC's protest that the agency failed to reasonably consider the offerors' understanding of the solicitation requirements in performing its price evaluation, and SOC's protest in this regard is denied.

Additional Challenges to Agency's Evaluation of DynCorp's Proposal

Finally, SOC challenges various other aspects of the agency's evaluation of DynCorp's proposal. However, as noted above, the agency's contemporaneous evaluation established that [redacted] was next in line for award--and SOC has not meaningfully challenged the agency's evaluation of [redacted]'s proposal or its best-value determination that ranked [redacted] ahead of SOC.¹⁸

To qualify as an interested party with standing to assert an alleged procurement flaw, a protester must have a sufficiently direct economic interest that would be affected in the event its allegations have merit. See 4 C.F.R. § 21.0(a)(1). Where there is an intervening offeror who would be in line for the award even if the protester's challenges were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we consider the protester's interest to be too remote to qualify it as an interested party. See, e.g., *Panum Telcom, LLC*, B-418202, Jan. 17, 2020, 2020 CPD

¹⁸ SOC's protest submissions include its speculation regarding various aspects of [redacted]'s proposal and/or the agency's evaluation thereof. However, our Bid Protest Regulations establish a threshold requirement that protests must be based on sufficiently detailed facts, see 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f); bare allegations and speculation are insufficient to meet this requirement. See, e.g., *Ahtna Facility Servs., Inc.*, B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11. Here, SOC's speculation regarding the contents of [redacted]'s proposal and/or the agency's evaluation thereof fail to meet the mandatory threshold requirement.

¶ 34 at 3; *The COGAR Group, Ltd.*, B-413004 *et al.*, July 22, 2016, 2016 CPD ¶ 189 at 6; *Precise Mgmt., LLC – Recon.*, B-410912.2, June 30, 2015, 2015 CPD ¶ 193 at 6; *NCI Info. Sys., Inc.*, B-407901 *et al.*, Mar. 28, 2013, 2013 CPD ¶ 94 at 5.

Here, in light of our determination that the agency properly evaluated SOC's technical proposal, conducted meaningful discussions with SOC, and reasonably applied the terms of the solicitation in evaluating price proposals, SOC is not an interested party to further challenge the agency's evaluation of DynCorp's proposal since it is not next in line for award. Accordingly, SOC's additional allegations regarding the agency's evaluation of DynCorp's proposal are dismissed.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel