



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: J.E. McAmis, Inc.

File: B-420310

Date: January 19, 2022

Joseph Lawrence, Esq., and Steven K. Johnson, Esq., Vezina, Lawrence & Piscitelli, P.A., for the protester.

Robert J. Symon, Esq., Sabah K. Petrov, Esq., Nathaniel Greeson, Esq., and Patrick Quigley, Esq., Bradley Arant Boult Cummings LLP, for Phillips & Jordan, Inc., the intervenor.

Deena G. Braunstein, Esq., James Zaleski, Esq., Amber Jackson, Esq., and Susan E. Symanski, Esq., Department of the Army, for the agency.

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

DIGEST

Protest that agency unreasonably rated proposal as unacceptable is denied where protester failed to follow solicitation instructions to provide basis for timeframes for proposed work.

DECISION

J.E. McAmis, Inc., of Chico, California, protests the award of a contract to Phillips & Jordan, Inc., of Knoxville, Tennessee, under request for proposals (RFP) No. W912EP21R0024, issued by the Department of the Army, Army Corps of Engineers, for the Central Everglades Planning Project. J.E. McAmis asserts that the agency unreasonably evaluated its proposal as technically unacceptable.

We deny the protest.

BACKGROUND

The agency issued the solicitation on July 16, 2021, for a contractor to construct approximately 7.3 miles of canals and a maintenance road with benches between the canals in the Everglades agricultural area of Florida. The RFP provided that the contract would be awarded on a best-value tradeoff basis considering the following factors: technical merit (with separate elements for technical approach plan, and

construction schedule); past performance; small business participation (with separate elements for small business participation proposal and past utilization of small business concerns); and price. Agency Report (AR), Tab B, RFP Vol. I at 13-14. Individual elements were not separately rated, but were considerations in the factor rating. *Id.* at 13. The solicitation provided that to be considered for award, a rating of no less than acceptable was required for the technical merit and small business participation factors.¹ *Id.*

Five offerors submitted proposals in response to the solicitation. The technical merit and past performance factors were evaluated by the source selection evaluation board (SSEB), the small business participation factor was reviewed by the agency's deputy for small business, and the price proposals were reviewed by the cost team. The source selection official reviewed the evaluation results and conducted the best-value tradeoff. The SSEB rated J.E. McAmis's proposal unacceptable under the technical merit factor, and as a result its proposal was not considered in the best-value tradeoff. AR, Tab A, Contracting Officer's Statement (COS) at 6.

J.E. McAmis protests that the agency unreasonably rated its proposal unacceptable under the technical merit factor. As discussed below, we find that the proposal of J.E. McAmis was properly rated unacceptable and eliminated from the competition.

DISCUSSION

With respect to the technical merit factor, offerors were required to address two elements: technical approach plan and construction schedule. For the technical approach plan, as relevant to this protest, offerors were required to provide a narrative that addressed the following items:

1. Provide a list of equipment planned to be utilized to blast, excavate, remove, transport, crush, process, place, and stockpile material.
2. Provide typical production rates for all listed equipment planned to be utilized to blast, excavate, remove, transport, crush, process, place, and stockpile material.
3. Present the sequence of activities which represent work through the entire project from mobilization to demobilization.

* * *

10. Provide basis for timeframes for required work items proposed in Element 2, Construction Schedule, including all assumed contingencies

¹ The possible ratings for the technical merit and small business participation factors were outstanding, good, acceptable, marginal, or unacceptable. RFP at 17.

(i.e. adverse weather, mechanical shut-down, environmental issues, additional permits etc.).

RFP at 15. As relevant here, the construction schedule element required offerors to provide a schedule of construction within the required period of performance, showing the start and completion dates, interdependence, and other relative scheduling factors for the items of work listed in the technical approach plan element. *Id.* at 16.

In responding to items 1 and 2 under the technical approach plan element, J.E. McAmis's proposal identified the equipment it would use to perform the work and the equipment production rates, as required. AR, Tab G, J.E. McAmis Prop. Vol. I at 4-7. For example, the proposal provided that select fill material placement would be at the rate of 2,500 cubic yards per day, and listed the pieces of equipment that would perform this work. *Id.* at 7. In response to item 3, the protester identified the sequence of activities representing the work throughout the entire project, and listed the work items included in its construction schedule. *Id.* at 6-7. Finally, in responding to item 10, J.E. McAmis's proposal stated that the schedule would use project calendars; that for project submittals and field construction activities the contractor would work a six-day week, exclusive of major holidays; and that the calendar for construction activities would include days to account for delays that result from inclement weather. *Id.* at 14-15.

The agency assigned a deficiency to J.E. McAmis's proposal under the technical merit factor because the SSEB concluded that in addressing the technical approach plan element, the protester did not provide a basis for required work items in the construction schedule, as required by item 10. AR, Tab O, SSEB Report at 13. As a result of the deficiency, J.E. McAmis's proposal was considered unacceptable, and ineligible for award.² AR, Tab O, SSEB Report at 13-14; COS at 6.

J.E. McAmis protests that the agency unreasonably assigned its proposal a deficiency for failing to provide a basis for the timeframe for the work items in the construction schedule.³ J.E. McAmis explains that its proposal listed the equipment that it would use, as well as the production rates for each piece of equipment. J.E. McAmis further states that its technical approach plan also included a schedule narrative providing for a six-day work week, with no work on basic holidays, and that the calendar accounted for potential weather delays. According to J.E. McAmis, nothing more than the required equipment with production rates, and the calendar information, should have been

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 increases the risk of unsuccessful contract performance to an unacceptable level. RFP at 17.

³ J.E. McAmis also contends that alleged inconsistencies in its debriefing demonstrate that the agency's evaluation was unreasonable. The adequacy of a debriefing is a procedural matter that GAO will not review. See *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 5. In any case, the agency ultimately clarified the basis for the deficiency assigned to the proposal.

necessary to understand the basis for the timeframes in its proposed construction schedule.

The agency responds that under the RFP, “offerors were required to explain *how* they calculated the timeframes needed for required work items” proposed in the construction schedule. Memorandum of Law at 8. The agency asserts that a deficiency was appropriately assigned because J.E. McAmis’s proposal did not include any narrative or explanation of the basis for the timeframes and that the production rates, without more, were insufficient to show how the timeframes were developed. *Id.* at 8-9.

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 a well-written proposal with adequately detailed information that allows for meaningful review by the procuring agency. *Id.* at 5-6. A protester’s disagreement with an agency’s evaluation, without more, does not establish that the evaluation was unreasonable. *Id.* at 8.

Based on the record before us, we conclude that the evaluation was reasonable. First, the solicitation clearly required offerors to address, as separate items, a list of equipment (item 1), the production rates of the equipment (item 2), and a basis for the timeframes for the required work items in the construction schedule (item 10). It is thus clear from the solicitation that in instructing offerors to separately address the basis for the timeframes for required work items, the agency expected something in addition to the list of equipment and equipment production rates. Notably, J.E. McAmis’s proposal included the equipment and production rates, and separately addressed the item 10 basis for timeframes by indicating the number of days per week it would work. This section, however, did not explain how J.E. McAmis developed its construction schedule for the listed work items.

Second, even accepting J.E. McAmis’s assertion that the basis for the timeframes in its construction schedule could be derived from the production rates for the listed equipment and its discussion of the work calendar, the solicitation specifically instructed offerors to provide the basis for the timeframes. Therefore, it was not the agency’s responsibility to perform calculations based on production rates in order to derive the basis for the timeframes for the required work. Notably, the solicitation specifically advised offerors that, “[t]he Government will not make assumptions concerning intent, capabilities, or experiences. Clear identification of proposal details shall be the sole responsibility of the offeror.” RFP at 14.

Finally, there are items that cannot be derived from the production rate of the equipment. For example, the agency notes that in addressing the sequence of activities that would be performed in completing the project, J.E. McAmis included survey clearing limits, which is not even included in the schedule. Given these factors we

conclude that the agency reasonably assigned J.E. McAmis's proposal a deficiency for failing to provide the basis for the timeframes for the required work.

J.E. McAmis also challenges the other weaknesses and significant weakness assigned to its proposal under the technical approach plan element; its rating under the small business participation factor; and the agency's failure to factor in a 10 percent price preference because J.E. McAmis is a historically underutilized business zone small business concern, and Phillips is a large business. Our office will not sustain a protest absent a showing of competitive prejudice, that is, where the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving the award. *Fintrac, Inc.*, B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 11-12. Since J.E. McAmis was rated unacceptable under the technical merit factor, it is ineligible for award. Accordingly, we will not consider these additional issues because even if we agreed with J.E. McAmis, the protester was not competitively prejudiced and would not otherwise be in line for award.

The protest is denied.

Edda Emmanuelli Perez
General Counsel