



Decision

Matter of: BSI Inc.

File: B-420418

Date: March 3, 2022

Hochun Song for the protester.

Anuj Vohra, Esq., James G. Peyster, Esq., and Zachary H. Schroeder, Esq., Crowell & Moring LLP, for PAE-Korea Limited, an intervenor.

John C. Degnan, Esq., Lieutenant Colonel Abraham L. Young, and Andrew J. Smith, Esq., Department of the Army, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of proposal from competitive range is denied where agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

BSI Inc., of Hwaseong-si, Gyeonggi-do, Republic of Korea (ROK), protests the evaluation of its proposal and exclusion from the competitive range under request for proposals (RFP) No. W91QVN-21-R-0021, issued by the Department of the Army for the maintenance and warehousing of war reserve materiel (WRM). BSI alleges that the agency's evaluation and competitive range exclusion were improper.

We deny the protest.

BACKGROUND

The RFP was issued on September 6, 2021, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15.¹ Agency Report (AR), Tab 3, RFP at 1;

¹ The RFP was subsequently amended five times. Unless stated otherwise, all citations are to the final version of the solicitation.

Contracting Officer's Statement (COS) at 2. The solicitation contemplated the award of a fixed-price contract for a 12-month base period with four 12-month options. RFP at 2-44; COS at 3. The RFP established that contract award would be made on a lowest-price, technically-acceptable (LPTA) basis based on three evaluation factors: technical, past performance, and price. AR, Tab 3b, RFP amend. 1 at 11-13. The technical factor consisted of four subfactors: prime contractor's prior experience (prior experience); key personnel; management approach; and phase-in plan. *Id.* at 11-12. Importantly, the RFP notified offerors that a rating of unacceptable in any factor or subfactor would result in an overall rating of unacceptable. *Id.* at 11. In general terms, the RFP's performance work statement (PWS) required the contractor to provide all labor, management, supplies, and equipment necessary to maintain WRM, peacetime operating stocks, and in-use assets at specified air bases in the ROK. AR, Tab 3a, PWS at 1.

Relevant to the protest here, the PWS specified 13 functional areas (or types of equipment) upon which the maintenance and warehousing services were to be performed: (1) vehicle maintenance; (2) aerospace ground equipment (AGE); (3) basic expeditionary airfield resources; (4) airfield damage repair; (5) aircraft racks, adapters, and pylons (RAP); (6) aircraft fuel tanks; (7) fire protection; (8) traffic management office; (9) medical; (10) chemical, biological, radiological, and nuclear; (11) fuels; (12) supply; and (13) meals ready-to-eat. PWS at 12, 75; COS at 14. Further, under the prior experience subfactor, the RFP instructed offerors to provide evidence "of at least two (2) years' experience within the last ten (10) years in logistical support and maintenance of similar types of equipment and services contained in the PWS." AR Tab 3c, RFP amend. 2 at 2. Finally, the solicitation established that the agency would evaluate whether the offeror possessed the required experience within the stated time period. RFP amend. 1 at 11.

The protester was among the offerors that submitted proposals by the October 22 closing date for receipt of proposals. BSI's proposal included six prior experience references: (1) a U.S. Air Force (USAF) contract for maintenance and supply services of medical WRM and medical equipment (*e.g.*, generators, compressors, air conditioners); (2) a USAF contract for maintenance, corrosion prevention, and painting services of AGE and vehicles; (3) an ROK Ministry of Defense contract (2012-2017) for maintenance and supply services of tactical wheeled, and tracked, vehicles; (4) an ROK Ministry of Defense contract (2011-2016) for maintenance and supply services of tactical wheeled, and tracked, vehicles; (5) a commercial contract for petroleum, oil, and lubricant operations maintenance and management services; and (6) a helicopter maintenance services contract--which included RAP repair and maintenance--of UH-1 helicopters for the ROK military. AR, Tab 4, BSI Technical Proposal at 4-11.

The agency evaluators found BSI's prior experience to be unacceptable.² Specifically, the evaluators found that BSI demonstrated limited experience and capacity of performing the WRM functional areas--either individually or collectively--as outlined in the PWS. AR, Tab 7, BSI Technical Evaluation Summary at 1-2; Tab 6, Technical Evaluator Worksheets at 2 ("offeror demonstrates limited experience and capacity of performing all functions simultaneously"), at 8 ("doesn't have the experience required [as] outlined in the PWS for all the assets on the WRM inventory"), at 14 ("previous experience does not compare in scope with work to be completed in PWS"), at 20 ("previous [BSI] scope of work does not equate to scale needed").

The contracting officer, as source selection authority, received and reviewed the evaluators' findings. AR Tab 8, Pre-Negotiation Objective Memorandum at 1-24. The contracting officer found that the majority of BSI's prior experience involved vehicle maintenance and painting services, and that while one of BSI's references involved the maintenance of medical WRM equipment, the equipment and processes there were not similar to those required in the PWS. COS at 16. The contracting officer concluded that because BSI's experience was essentially limited to one area (vehicle maintenance), "this was not enough to demonstrate to the evaluation team and me . . . that BSI could perform the other 12 areas of the requirement under [the] PWS. . . ." *Id.* Based upon the offeror's rating of unacceptable under the prior experience subfactor, the contracting officer excluded BSI from the competitive range. AR, Tab 8, Pre-Negotiation Objective Memorandum at 23-24; Supp. COS at 3-4.

After providing BSI with notice of its exclusion from the competitive range, and a debriefing, this protest followed.³

DISCUSSION

BSI challenges the agency's evaluation of its technical proposal and resulting exclusion from the competitive range.⁴ Specifically, BSI states that its proposal demonstrated

² Inasmuch as contract award was to be made on an LPTA basis, the RFP established only two possible evaluation ratings for each nonprice evaluation factor or subfactor: "acceptable" and "unacceptable." RFP amend. 1 at 11.

³ As the Army selected PAE-Korea Limited for contract award at approximately the same time that BSI was notified of its exclusion from the competitive range, we found PAE to be a proper intervenor for this protest. 4 C.F.R. § 21.0(b)(1).

⁴ BSI also alleged the existence of collusion between agency personnel and PAE, as well as the improper disclosure of official information. Protest at 2. We found these assertions to be entirely speculative, and dismissed them as factually and legally insufficient. GAO Ruling on Dismissal Requests, Jan. 12, 2022. Also, while BSI alleged that PAE was ineligible for award because of the terms of the United States/ROK status of forces agreement, we found such assertion, which did not allege a violation of a procurement statute or regulation, failed to state a valid basis of protest and also

“plenty of experience in several [PWS-required] areas,” Comments at 5, and argues that the terms of the RFP did not require a demonstration of experience in all PWS areas to be found acceptable. Protest at 3.

Where a protest challenges an agency’s evaluation and its decision to exclude a proposal from a competitive range, we first review the propriety of the agency’s evaluation of the proposal, and then turn to the agency’s competitive range determination. *DynaLantic Corp.*, B-416855, Dec. 26, 2018, 2019 CPD ¶ 11 at 6. In so doing, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency’s judgment was reasonable and in accord with the solicitation’s evaluation criteria. *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 5. An offeror’s disagreement with the agency’s evaluation, without more, is not sufficient to render the evaluation unreasonable. *Ben-Mar Enters., Inc.*, B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Additionally, contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly rated. FAR 15.306(c)(1); *FPM Remediations, Inc.*, B-407933.2, Apr. 22, 2013, 2013 CPD ¶ 107 at 3-4.

We find no basis on which to sustain the protest. The record reflects the agency reasonably determined that, when evaluated against the 13 different WRM functional areas set forth in the PWS, BSI’s prior experience was very limited in scope, and that there were many WRM functional areas where BSI’s proposal demonstrated no experience--which the protester does not dispute. See Comments at 5. As the evaluators reasonably found BSI lacked relevant experience in a majority of the WRM functional areas delineated in the PWS, the agency reasonably concluded that BSI’s prior experience was unacceptable. While the protester contends that it has “perform[ed] various tasks similar” to the solicitation’s WRM maintenance and warehousing requirements, *id.*, we find BSI’s view of what is “similar” experience is not sufficient to counter the agency’s conclusions, and in essence, amounts only to disagreement with the agency’s evaluation, which does not render the evaluation unreasonable.⁵ *Ben-Mar Enters., Inc.*, *supra*. Because BSI was reasonably found to be unacceptable under the prior experience subfactor, BSI’s proposal became technically unacceptable in accordance with the terms of the solicitation. Consequently, we find

dismissed this allegation accordingly. *Id.*; see 4 C.F.R. § 21.5(f); 31 U.S.C. § 3552(a) (“A protest concerning an alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed in accordance with this subchapter.”).

⁵ We also find BSI’s assertion--that the terms of the RFP did not require a demonstration of experience in all WRM functional areas to be found acceptable under the prior experience subfactor--to be without merit. Regardless, even if we were to agree with BSI’s interpretation--which we do not--the record reflects that BSI lacked relevant experience in so many of the required WRM functional areas that the agency’s assignment of an unacceptable rating here was reasonable, in any event.

nothing objectionable with the agency's decision to exclude BSI's proposal from the competitive range, as it was not among the most highly rated proposals.

The protest is denied.

Edda Emmanuelli Perez
General Counsel