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Decision

Matter of: The Red Gate Group, Ltd.

File: B-410466.8

Date: May 12, 2017

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DIGEST

1. Protest that evaluation of proposals was unreasonable is denied where the evaluation was reasonable and consistent with the solicitation.
 2. Protest that agency treated offerors unequally is denied where the differences in the ratings were based on differences in the offerors' proposals.
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DECISION

The Red Gate Group, Ltd. (RGG), of Chantilly, Virginia, protests the award of a contract to St. Michael's, Inc. (SMI), of Woodbridge, Virginia, under request for proposals (RFP) No. H92222-14-R-0019, issued by the Department of Defense, Special Operations Command (SOCOM), for knowledge-based services for the headquarters, components, and theater special operations commands of SOCOM. RGG challenges the evaluation of proposals and source selection decision.

We deny the protest.

BACKGROUND

The solicitation at issue in the protest here is one of several issued by SOCOM as part of its wide mission support (SWMS) program.¹ Id. The instant solicitation (for group C service requirements) was set aside for service-disabled veteran-owned small businesses. AR at 2. Group C encompasses work that has been identified as having a significant organizational conflict of interest (OCI) risk, and includes service requirements in the program management, professional services, engineering and technical services, management support, and administrative and other portfolios. Id.

The RFP, which was issued on July 30, 2014, contemplated the award of a single IDIQ contract for a five-year ordering period with task orders to be issued on a cost-plus-fixed-fee/level-of-effort basis. The solicitation provided for award on a best-value basis, considering technical, past performance, and cost factors. RFP at 3, § M.1.1. The technical factor had two subfactors: program management and task order management. RFP § M.1.3. The solicitation established that the technical factor was more important than the past performance factor, and the past performance factor was more important than cost. RFP § M.1.2. Additionally, the RFP provided that, when combined, non-cost factors were significantly more important than cost. Id.

As relevant here, proposals were to be evaluated under the program management subfactor to determine, among other things, whether: (1) the proposed management approach demonstrates that its process meets the IDIQ statement of work (SOW) requirements to include rapid response to multiple, diverse tasks; (2) the proposal demonstrates an effective process for recruitment, retention and training of qualified personnel; and (3) the proposed management approach ensures proper security clearances are initiated and maintained. RFP § M.1.5.1. Additionally, offerors were to submit OCI mitigation plans under the program management subfactor which would, among other things, demonstrate “a robust OCI management approach to avoid and or mitigate OCI and how resolution of potential, actual and perceived OCI would be handled.” RFP at § M.1.5.1.

The agency received sixteen proposals in response to the RFP. Contracting Officer’s (CO) Statement at 3. Based on initial proposals, and following protests by several offerors at our Office and the Court of Federal Claims, the source selection evaluation board (SSEB) established a competitive range of eight offerors, including RGG and

¹SOCOM has divided the SWMS requirements into three groups: group A, group B, and group C. Agency Report (AR) at 2. Group A is an unrestricted multiple-award indefinite-delivery/indefinite-quantity (IDIQ) contract vehicle that includes service requirements in the program management, professional services, and engineering and technical portfolios. Id. Group B is a multiple-award IDIQ contract, which is set aside for small businesses, and includes service requirements in the education and training, administrative and other, and management support services portfolios. Id. Group C is described above.

SMI. Id. at 4-5. The CO issued evaluation notices (ENs), and conducted discussions with offerors in the competitive range. Id. at 5. The CO requested final proposal revisions (FPRs) on July 19, 2016, and offerors submitted FPRs on July 26. Id. The SSEB evaluated FPRs and submitted its final report to the source selection advisory council (SSAC), which conducted a comparative analysis. Id. The results of the evaluation for the protester and the awardee were as follows:

	Technical		Past Performance	Evaluated Cost
	Program Management	Task Order Management Plan		
RGG	Outstanding/ Very Low Risk	Acceptable/Low Risk	Substantial Confidence	\$33,548,296
SMI	Outstanding/ Very Low Risk	Acceptable/Low Risk	Substantial Confidence	\$33,690,826

AR, Tab 24, Source Selection Decision Document (SSDD) at 2.²

The SSEB and SSAC briefed the source selection authority (SSA) on October 18, and the SSA selected SMI for award on October 31. Id. In determining that SMI’s proposal offered the best value to the government, the SSA noted that while SMI and RGG had the same technical and past performance ratings, and shared some of the same strengths, additional strengths identified in SMI’s proposal offset SMI’s slightly higher cost. Id. at 6.

Offerors were notified that SMI was the apparent awardee and, after unsuccessful challenges to SMI’s eligibility for award as a service-disabled veteran-owned small business, award was made to SMI on January 30, 2017. Id. The agency informed RGG that it was an unsuccessful offeror on January 30, and provided RGG with debriefings on February 1 and February 7. This protest followed on February 10.

DISCUSSION

RGG challenges the agency’s evaluation of proposals under the program management subfactor. Specifically, RGG contends that two of the strengths assigned to SMI’s proposal were unreasonable; it also argues that the agency treated offerors unequally by assigning three strengths to SMI’s proposal for features also present in RGG’s proposal.³ Comments at 1-2. RGG further contends that the agency’s selection

² Possible ratings for the technical subfactors ranged from outstanding to unacceptable. RFP Table M.2. Possible ratings for the past performance factor ranged from substantial confidence to unknown confidence (neutral). RFP Table M.3.

³ In evaluating proposals, the SSEB defined a strength as an aspect of an offeror’s proposal that has merit or exceeds specified performance or capability requirements
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decision was flawed. Id. at 2. Based on the record, we have no basis to conclude that the agency erred in its evaluation of proposals or its source selection decision.

Evaluation of SMI's Technical Proposal

The protester first challenges the SSEB's assignment of a strength to SMI's proposal for proposing a team where each team member already had a top secret-facility clearance (TS-FCL).⁴ AR, Tab 22, SSEB Evaluation Report, at 31. According to the protester, "all subcontractors are required to have a TS-FCL and, as such, this aspect of an offeror's proposal cannot merit a strength." Comments at 8. In response, the agency argues that the assignment of strength to SMI's proposal was reasonable because the RFP required that only the prime contractor have a TS-FCL at the time of contract award. AR at 8. In this connection, the SSEB explained that although all subcontractors are required to maintain a minimum secret facility clearance, "the team considered the fact that all [of SMI's] proposed subcontractors already had a TS-FCL as a strength," because "[t]his could expedite filling TS positions at the task order level when the prime is unable to provide a particular position that requires a TS/SCI [top secret/sensitive compartmented information] clearance organically." AR, Tab 22, SSEB Evaluation Report, at 31.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Jacobs Technology, Inc., B-411784, B-411784.2, October 21, 2015, 2015 CPD ¶ 342 at 6. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. A protester's disagreement with an agency's evaluation does not show that it lacked a reasonable basis. Id.

Here, the agency's position is consistent with the RFP, which provided that the offeror must possess or acquire a TS-FCL prior to the award of the contract. RFP § L.5.2. Moreover, the matter was clearly addressed in the RFP questions and answers. In particular, question 156 is directly on point--"Can you tell me if a subcontractor on the SWMS Group C RFP effort has to also have a [f]acility [c]learance? It is not addressed in the solicitation." AR, Tab 5, Questions and Answers, at 19. In response, the agency

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and will be advantageous to the government during contract performance. AR, Tab 22, SSEB Evaluation Report, at 4.

⁴ In its comments, the protester argued that, to the extent the agency expected offerors to demonstrate that their subcontractors had a secret facility clearance, the agency applied an unstated evaluation criterion. The protester fails to allege that it suffered any prejudice as a result of application of this unstated requirement, however; as a result, this argument fails to state a legally sufficient basis for protest.

stated that “[t]he requirement for a TS facility clearance is for the prime contractor.”⁵ Id. Accordingly, we find no merit to the protester’s contention that the RFP required subcontractors to have TS-FCLs at the time of contract award. As a consequence, we have no basis to conclude that the agency’s assignment of a strength to SMI’s proposal on this basis was unreasonable.

RGG next challenges the strength assigned to SMI’s proposal based on its plan to use an [DELETED] as part of its process for preventing and addressing OCIs. Specifically, the SSEB assigned a strength to SMI’s proposal because SMI offered an [DELETED], who would [DELETED]. AR, Tab 22, SSEB Evaluation Report, at 32. The SSEB gave the following narrative explanation for the assignment of the strength:

The offeror’s proposed [DELETED] to proactively assess and manage [OCIs] within the offeror’s organization benefits the government by further reducing the risk of OCI issues for awarded and future task orders. This robust approach to avoid OCI issues across the life of the Group C contract is advantageous to the government, and reduces transition and performance risk for the broad scope of task orders.

Id.

The protester argues that the agency’s assignment of a strength to SMI’s proposal in this connection is unreasonable. According to the protester, the agency failed to take into account the fact that the proposed [DELETED] is the president of one of SMI’s subcontractors. Comments at 6. RGG notes that, as a result, the [DELETED] likely has other roles in addition to [DELETED] and is thus not truly [DELETED]. Id. We do not find merit in the protester’s argument here. SMI’s proposal is very clear regarding the role of the [DELETED], such that we have no basis to conclude that the SSEB misunderstood this aspect of SMI’s proposal.

The protester also argues that, based on the OCI review process outlined in SMI’s proposal, the [DELETED] will not be in a position to identify OCIs, but will instead rely on individuals to identify possible OCIs and bring them to his attention. Comments at 7. The record does not indicate, however, that the SSEB assigned the strength based on the [DELETED] ability to identify possible OCIs. Instead, the SSEB assigned a strength based on the [DELETED] ability to “provide immediate assessment and avoidance strategies for potential OCI issues.” AR, Tab 22, SSEB Evaluation Report at 32. This is

⁵ The agency also cited question 51, which was as follows: “Will team partners be provided a [Department of Defense Contract Security Classification Specification Form (DD 254)] to receive a TS [f]acility clearance, and will the prime be able to hold the clearances for team members while being processed?” AR, Tab 5, Questions and Answers at 7. In response, the agency explained that “[t]he [TS-FCL] is required to be held by the offeror. Questions about clearances for team partners should be referred to [the Defense Security Service].” Id.

further supported by the narrative accompanying the strength, in which the SSEB cites the [DELETED] ability to “proactively assess and manage [OCIs].” *Id.* In sum, the protester has failed to show that the agency’s assignment of a strength here was unreasonable.

Unequal Treatment

RGG next alleges that the agency treated offerors unequally by assigning three strengths to SMI’s proposal, but failing to assign strengths to RGG’s proposal for essentially the same features.⁶ Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in rating did not stem from differences between the offerors’ proposals. PTSI Managed Servs., Inc., B-411412, July 20, 2015, 2015 CPD ¶ 236 at 6. Here, the record reflects that the agency’s decision to assign certain strengths to SMI but not RGG is a result of differences in proposals, and did not occur as a result of unequal treatment.

First, the protester argues that, to the extent it was proper for the agency to assign a strength to SMI’s proposal because its subcontractors maintained TS-FCLs, RGG’s proposal also merited a strength because its subcontractors also maintained TS-FCLs. Comments at 6. As discussed above, while the RFP required only prime contractors to have TS-FCLs at the time of contract award, the agency assigned a strength to SMI’s proposal based on its representation that “[a]ll [t]eam St. Michael’s subcontractors also maintain current TS facility clearances.” AR, Tab 22, SSEB Evaluation Report at 31; AR, Tab 19, SMI’s Technical Proposal at 45.

RGG argues that, while it did not include information to this effect in its proposal, its subcontractors also maintain TS-FCLs. According to RGG, “its team members have incumbent experience providing SWMS services to SOCOM, and SOCOM knows that these team members have a TS FCL because such a FCL would have been required by the incumbent contract.” Comments at 6. In other words, RGG contends that the agency should have known about this feature despite the fact that RGG did not provide that information to the agency in its proposal.

Here, the RFP advised offerors that they should “assume that the [g]overnment has no prior knowledge of their facilities and experience,” and that the government’s evaluation would be “based on the information presented in the proposal.” RFP at § L1.1. As a result, RGG’s contention that the agency should have considered information not

⁶ RGG also argued that the agency erred by assigning a strength to SMI based on its proposed [DELETED], while failing to assign a strength to RGG’s proposal based on the strength of its OCI mitigation plan. Protest at 13. The agency responded to this allegation in the agency report, but the protester’s comments did not rebut the agency’s argument or otherwise address the allegation. Accordingly, we consider the argument to be abandoned. See G. A. Braun, Inc., B-413735, Dec. 21, 2016, 2016 CPD ¶ 374 at 3-4.

included in its proposal is unreasonable and inconsistent with the RFP. Additionally, it is clear that the agency's evaluation was based on differences in the offerors' proposals; thus, it was not unequal.

The protester further argues that the agency treated offerors unequally when it assigned a strength to SMI's proposal based on its access to pre-qualified employees, but did not assign a similar strength to RGG. In this regard, the SSEB assigned a strength to SMI's proposal because it identified "processes and structure, used in executing similar tasks and provides access to more than [DELETED] pre-qualified, cleared personnel who offer the specific expertise [United States Special Operations Command] requires to perform the [SWMS group C] tasks." AR, Tab 22, SSEB Evaluation Report, at 30. The narrative support provided by the SSEB was as follows:

The offeror's proposal contained detailed information regarding [its] staffing approach for the scope of Group C requirements, and highlighted [its] ability to access pre-qualified, cleared employees. The offeror's proactive approach to staffing Group C requirements with pre-qualified employees reduces lead time to initially fill and replace required positions for current and future task orders, ensuring candidates match required skills and qualifications. This is an aspect of the offeror's proposal that has merit in a way that is advantageous to the government during contract performance.

Id.

According to the protester, the agency overlooked aspects of RGG's proposal indicating that RGG also has access to a pipeline of pre-qualified personnel. Comments at 3. In particular, the protester cites to a list of RGG's cleared full-time equivalents broken down by secret, top secret, and TS/SCI clearances, which indicates that RGG has [DELETED] cleared personnel. AR, Tab 18, RGG's Technical Proposal at 38. RGG also refers to information in its proposal indicating that it has [DELETED] resumes relevant to SWMS group C requirements and that its database of resumes is updated [DELETED]. Id. at 43. Thus, according to RGG, its proposal explicitly stated the number of cleared personnel it can access in support of this effort, and it should have received a strength. Comments at 4.

RGG's argument oversimplifies the rationale for the strength assigned to SMI's proposal in that RGG contends that its proposal should have been assigned a strength for merely indicating that it had access to pre-qualified personnel. Based on the narrative explanation supporting the strength, however, it is obvious that the SSEB was concerned not only with the availability of pre-qualified personnel, but also with how SMI planned to use its pre-qualified personnel as part of its overall staffing approach.

In responding to RGG's arguments, the agency noted that while SMI provided details throughout its proposal regarding its pipeline of pre-qualified personnel as it related to various aspects of SMI's process for meeting the SWMS requirements, RGG's proposal

provided details on prior support of other requirements and lacked specific detail regarding its use of similarly pre-qualified personnel for current and future SWMS requirements. AR at 13. Here, based on our review of the record, including the proposals submitted by RGG and SMI, we have no basis to conclude that the agency treated SMI and RGG unequally with regard to the proposed use of pre-qualified personnel, and conclude that the agency's evaluation reflected differences in the offerors' proposals.⁷

Best-Value Analysis

Finally, the protester challenges the propriety of the best-value analysis, arguing that it was based on a flawed evaluation. Comments at 10. As discussed above, we have no basis to conclude that the agency's evaluation was unreasonable or otherwise flawed. As such, we need not further address the protester's contentions regarding the best-value analysis and resulting selection decision.

The protest is denied.

Susan A. Poling
General Counsel

⁷ In a related argument, RGG argues that the agency treated offerors unequally when it assigned a strength to SMI's proposal based on its process for meeting surge requirements. Comments at 4-5. According to RGG, this strength is also focused on SMI's access to pre-qualified personnel. Id. Once again, the protester has oversimplified the rationale for the strength, which was based not only on access to pre-qualified personnel, but also on SMI's detailed approach to meeting surge requirements. AR, Tab 22, SSEB Evaluation Report, at 30-31. Here, as with the protester's other allegations of disparate treatment, the record indicates that the agency's evaluation reflects differences in the proposals rather than unequal treatment of the offerors.