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Decision

Matter of: Consultech Environmental, LLC

File: B-416003

Date: May 4, 2018

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DIGEST

Protest that the agency unreasonably evaluated the protester’s proposal under the technical and past performance factors is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria.

DECISION

Consultech Environmental, LLC, a small business of Cary, North Carolina, protests its failure to receive a contract award under request for proposals (RFP) No. W912HN-14-R-0019, issued by the Department of the Army, U.S. Army Corps of Engineers, Savannah District for a multiple-award task order contract (MATOC) to provide various environmental services. Consultech argues that the agency unreasonably evaluated its proposal under the technical and past performance factors.

We deny the protest.

BACKGROUND

The RFP, issued on March 2, 2015, sought proposals for award of an indefinite-delivery, indefinite-quantity (IDIQ) MATOC that will provide environmental remediation services, consisting of, among other things, environmental restoration, environmental conservation, pollution prevention, quality assurance, facilities maintenance, inspection, and energy management. RFP at 10, 191. The resulting MATOC was to be comprised of approximately six IDIQ contracts with a total capacity of \$230 million. *Id.* at 191. The contracts were set aside to be awarded on a competitive basis to economically disadvantaged small business participants in the Small Business Administration’s 8(a)

business development program for a base period of three years and one 2-year option period. Id.

Proposals were to be evaluated on a best-value tradeoff basis considering the following factors: technical approach, quality assurance/quality control (QA/QC), past performance, and price. Id. The RFP instructed offerors that proposals would not be evaluated against each other; instead evaluators would use an adjectival rating system to “assess the merits of the proposal and to depict how proposals meet solicitation requirements and standards.” Id. Price was to be evaluated for completeness and reasonableness based on a scenario comprised of total labor hours divided among various disciplines that were priced by hourly labor rate and added together for a total price. Id. at 201, 258. Of the non-price factors, technical approach was to be more important than QA/QC, which was more important than past performance. Id. at 203. The non-price factors, when combined, were approximately equal to price. Id.

Twenty-five proposals were received by the original submission date of May 14, 2015. Agency Report (AR), Tab 9, Source Selection Decision Document (SSDD), at 3. The agency conducted an initial evaluation of proposals, established a competitive range, and entered into discussions with offerors. Id. The final evaluation results for the seven awardees and Consultech were as follows:

| | Technical Approach | QA/QC | Past Performance | Total Evaluated Price |
|--|---------------------------|--------------|-------------------------|------------------------------|
| LG2-QRI JV | Good | Good | Substantial Confidence | \$67,579 |
| 3E-Plexus Solutions JV LLC | Good | Outstanding | Substantial Confidence | \$81,646 |
| Delmonico-PKS JV, LLC | Good | Good | Satisfactory Confidence | \$82,505 |
| Ayuda-ArCADIS | Good | Outstanding | Substantial Confidence | \$84,728 |
| Northwind-Jacobs JV | Good | Good | Substantial Confidence | \$90,767 |
| Aerostar SES LLC | Good | Good | Substantial Confidence | \$93,351 |
| CTI-TPMC Environmental Services LLC | Outstanding | Outstanding | Substantial Confidence | \$99,325 |
| Consultech | Acceptable | Acceptable | Satisfactory Confidence | \$85,184 |

Id. at 9, 21.¹ After receiving a debriefing, Consultech filed the following protest.

DISCUSSION

Consultech protests two aspects of the agency's evaluation of its proposal, alleging evaluation errors under the QA/QC and past performance factors. With respect to the QA/QC factor, the protester argues that the record does not reasonably explain the removal, after discussions, of a significant strength previously assigned to the firm's proposal, despite no material change to this area in the firm's final revised proposal. Protest at 13-14. Consultech also alleges the agency was unreasonable in only assigning a satisfactory confidence past performance rating to its proposal when all of its past performance references were found to be either relevant or very relevant. Id. at 15-16. We have considered both allegations and find them to be without merit.

QA/QC Evaluation

Consultech argues that the agency's evaluation under the QA/QC factor was inconsistent and unreasonable. Id. at 14. In this regard, the protester asserts that it was informed during discussions that the firm's proposal received a good rating and a significant strength under the QA/QC factor for offering "generic sub-plans," including an accident prevention plan, work plan, project management plan, sampling plan, standard operating procedures, and a site-specific health plan. Consultech asserts that the source selection evaluation board (SSEB) viewed these generic sub-plans as a significant strength in its initial evaluation. Id. citing AR, Tab 4a, Consultech Competitive Range Letter, at 4. However, in the post-award debriefing Consultech was informed that its proposal received an acceptable rating with no strengths under the QA/QC factor. Id. The protester challenges this discrepancy and concludes that the agency "failed to inquire about or come to understand the reasons for the differing evaluations of Consultech's QA/QC." Comments at 19. As a result, the protester asserts that the agency's evaluation was unreasonable. Id.

The agency responds that this aspect of Consultech's proposal was not assessed a strength because it only proposed to meet, and not exceed, the minimum requirements of the solicitation. Memorandum of Law (MOL) at 3. In this regard, the agency points to section 3.6.2 of the RFP, which sets forth the requirement for preparation of a project work plan. Id. According to the terms of the solicitation, the plan was to contain "[a]t a minimum . . . a Work Plan, an Accident Prevention Plan (APP) with a Site-specific Safety and Health Plan (SSHP), as well as any other applicable sub-plans required." RFP at 223. The agency asserts that the difference between the initial and subsequent

¹ Proposals were to be assigned one of the following adjectival ratings for the technical factors: outstanding, good, acceptable, marginal or unacceptable. RFP at 201. With respect to past performance, proposals were to be assigned one of the following performance confidence assessments: substantial confidence, satisfactory confidence, limited confidence, no confidence or unknown confidence/neutral. Id. at 200.

evaluations demonstrates that the SSEB did not appropriately evaluate the protester's proposal in the initial evaluation. MOL at 5.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. In order to facilitate our examination, contracting agencies are required to adequately document their evaluation results, and sufficiently support the findings on which award determinations are made. Sawee Consulting, Inc., B-408416, B-408416.2, Sep. 18, 2013, 2013 CPD ¶ 231 at 7.

Consultech points to our decision in Cigna Government Services, LLC, B-401062.2, B-401062.3, May 6, 2009, 2010 CPD ¶ 283, to argue that the source selection authority (SSA) and SSEB were required to inquire or come to an understanding regarding why the evaluators reached different conclusions, yet as the protester asserts, "there is no indication that anyone even acknowledged or noticed the differences in the evaluations, let alone understood the reasons for those differences." Comments at 18. In Cigna we found unreasonable the SSA's decision not to reconcile or seek explanation of differing evaluation results reached by two separate SSEBs who evaluated "essentially the same proposal, submitted by the same offeror under the same solicitation." Cigna Gov't Servs., supra, at 14.

While the protester contends that our decision in Cigna is applicable here, the Cigna decision was limited to the unique factual circumstances presented there, including the significant rating differences assessed by an SSA and the SSEB. Here, in contrast, we are confronted with a single evaluation conclusion, which was changed between the initial review and the final review. In addition, the reasonableness of the final evaluation conclusion is apparent from the record. In this regard, while the contemporaneous record does not explain the difference between the initial evaluation and the subsequent evaluation, we agree with the agency that, in assigning the initial significant strength, the SSEB had not appropriately evaluated Consultech's technical proposal. MOL at 5.

As proffered by the agency, the generic sub-plans that were the subject of the initial significant strength were minimum requirements of the solicitation. Id. at 5; RFP at 223. There is no indication from the record that, in assigning the significant strength, the agency recognized any qualitative advantage in Consultech's proposal above meeting the relevant minimum requirements, nor does the protester argue that its proposal exceeded these minimum requirements. Because only meeting the minimum requirements does not reasonably support the assignment of a significant strength, we conclude that the agency reasonably removed the significant strength in its final evaluation. Moreover, consistent with the terms of the solicitation, an acceptable rating under this factor was assigned if a proposal "meets requirements and indicates an adequate approach and understanding of the requirements." RFP at 201.

Consequently, we are provided no basis to question the agency's evaluation of Consultech's final proposal in this regard.

Past Performance

Consultech next challenges the agency's evaluation of its past performance, arguing that the evaluation was unreasonable and inconsistent with the evaluation criteria. Protest at 15. Specifically, the protester argues that the assignment of relevant and very relevant ratings to its eight past performance questionnaires (PPQ) is inconsistent with the narrative assessment of the firm's proposal under the past performance factor:

The board identified that [Consultech] submitted past performance that included work within three of the six areas of the scope of work identified within the solicitation. The board considered this a weakness because the work represented a fairly narrow range of the work anticipated under the scope of the solicitation.

Protest at 15; AR, Tab 7c, Source Selection Evaluation Report, at 33. Consultech also challenges the propriety of the assigned weakness arguing that its proposal covered five of the six sections of the scope of work, not three as stated in the evaluation narrative.² Protest at 16-17.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Advanced Env'tl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. Our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

The agency responds that a "determination by the SSEB of which rating is appropriate is a subjective one, based on the expertise and sensibilities of the SSEB members." MOL at 7. The agency asserts that the submitted past performance projects were

² Consultech also appears to allege in its comments that the agency applied an unstated evaluation criterion by evaluating past performance against the six scope requirements set forth in the RFP. Comments at 19; RFP at 13-16. The protester essentially argues that because only the section of the scope of work (SOW) detailing the general requirements is explicitly referenced in the evaluation factor (at paragraph 1 of the SOW), the agency was required to evaluate past performance against the general requirements, and not against the six specific scope requirements detailed later in the SOW. However, as the specific scope requirements (in paragraphs 3.1 - 3.6) provide greater detail about the general information (at paragraph 1) referenced in the past performance factor, we do not see how the agency used an unstated evaluation criterion. Therefore, we find no merit to this argument.

evaluated to determine whether they demonstrated performance of the various requirements that comprised the effort here. Id. at 6. In defending the relevancy rating assigned, the agency states that it evaluated past performance as relevant where the project was similar to one or more of the requirements of the scope of work, but did not require similarity to all of the requirements. MOL at 6. The agency adds that if it required offerors to submit projects involving performance of all of the requirements, “then it is likely that offerors would have performed none or only a very few projects that included all of the types of work.” Id. The agency points out that none of the projects submitted by the protester involved performance of all, or even a majority of the scope of work requirements. Id.

The RFP states that “the past performance evaluation considers each offeror’s demonstrated record of performance and experience on recent and relevant projects that involve a similar scope and magnitude of effort and complexities as this solicitation requires.” RFP at 198. Each submitted PPQ was to be evaluated for relevance considering such aspects as similarity of scope, type of work, complexity, contract type, and the degree of subcontracting or teaming proposed by the offeror. Id. Confidence was to be assessed by determining how well the contractor performed on past projects, considering the following: relevant past performance and experience information, source of the information, context of the data, general trends in contractor performance and experience on recent projects. Id. at 199-200.

Our review of the record does not provide a basis to question the reasonableness of the agency’s evaluation. In this regard, the stated evaluation scheme contemplated assessment of various aspects of past performance, of which similarity to the current scope of work was only one aspect of the relevancy determination. The RFP also notified offerors that the ultimate performance confidence assessment would be based on various considerations, including relevant past performance. Thus, we conclude it was reasonable for the agency to consider the totality of Consultech’s past performance in assigning a confidence rating, including the determination that the protester’s eight PPQs only evidenced performance of three of the six requirements of the scope of work.³

Consultech also argues that the agency erred in determining that Consultech’s eight submitted PPQs only evidenced performance of three of the six requirements of the scope of work. In this regard, the protester points to a matrix submitted with the firm’s

³ While the agency could have reasonably assessed each PPQ for similarity to all six stated requirements of the scope of work, we do not view the agency’s interpretation of the relevant evaluation criteria, that performing some of the various requirements met the standard for relevance, as being unreasonable under the terms of the solicitation. In any event, as the agency states, had it evaluated to a stricter standard of requiring more similarity between submitted projects and the scope of work, it is reasonable to conclude from the record that Consultech should have received significantly lower relevancy ratings for its submitted PPQs.

past performance proposal that details various aspects of its past performance and why they are relevant to the scope of work. Protest at 16-17; AR, Tab 5, Consultech's Proposal - Volume II, at 619-621. The agency responds that the evaluators did not consider the information in this matrix because the solicitation required that information be submitted only on the PPQ form, and that project information "submitted in a format other than or in lieu of the PPQ will not be considered." MOL at 7; RFP at 197. Moreover, the agency asserts that the matrix, which was not considered by the SSEB, contained information that was not found in the PPQs. Id. at 7-9. Finally, the agency concludes that the evaluation of Consultech's past performance was reasonable and within the agency's discretion. Id. at 9.

We have no reason to question the agency's decision to not consider information submitted by the protester outside of the PPQs. Here, consistent with the agency's position, the RFP required past performance information to be submitted in the PPQs and informed offerors that other submitted information would not be considered. RFP at 197. Therefore, it was reasonable for the agency to only consider information contained within the PPQs submitted by Consultech in its proposal.

A review of the PPQs submitted by Consultech reasonably supports the agency's determination that the firm submitted past performance relevant to only three of the six scope requirements. AR, Tab 5b, Consultech's Proposal - Volume II, at 618-666. In fact, Consultech's PPQs demonstrate that, except for one PPQ submitted on behalf of Consultech's subcontractor, all of its other PPQs contain very little information about the work that was performed. Id. In this regard, Consultech was required to fill out certain information on each PPQ, including block 4, Project Description, where the protester was required to detail how the project was relevant to the instant requirement. For one of the PPQ's, Consultech provided the following project description, in totality, "[DELETED]." Id. at 627. Another project description states only, "[DELETED]." Id. at 632.

Based on a review of the record, we do not find the agency's evaluation of Consultech's past performance to be unreasonable. In this regard, the agency's assessment of the relevance of the sparse information included by Consultech in its PPQs to support the relevance of its prior work was a matter well within the agency's discretion. Advanced Ecnvl. Solutions, Inc., supra. Nothing presented by the protester, or in our review of the record, causes us to question the agency's discretion in this regard.

The protest is denied.

Thomas H. Armstrong
General Counsel