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Decision

Matter of: Enterprise Solutions Realized, Inc.

File: B-405203

Date: September 22, 2011

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DIGEST

Protest of the exclusion of the protester's proposal from the competitive range is denied, where the agency reasonably found that the protester's proposal was not among the highest-rated offers.

DECISION

Enterprise Solutions Realized, Inc. (ESR), of Marriottsville, Maryland, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DOC52PAPT-10-00022, issued by the Department of Commerce, U.S. Patent and Trademark Office (PTO), for software development and integration services.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside, provided for the award of multiple labor-hour contracts for various software development and integration services. A detailed statement of work was provided that described the scope of the requirement to be performed. See RFP amend. 2, § C.

As relevant here, RFP § C.12, Scope of Requirements, described the activities the contractor would perform with respect to program management, system and software development, services related to new and existing systems, architecture and design, coding, unit and integration testing, configuration and release management, testing support and bug triage, and production support. Id. § C.12. For

example, under program management, the contractor was required to establish a work breakdown structure describing the project tasks and identify critical paths in project schedules. See id. § C.12.2.3. The contractor was also required to review, update and submit a quality assurance surveillance plan on a yearly basis. See id. § C.12.2.14. With respect to production support, the contractor was required to, among other things, ensure that any proposed software solution includes all technical support data and maintenance procedures to help detect and isolate issues in production. Id. § C.12.11.1.

Offerors were informed that award would be made on a best value basis, considering price and the following technical evaluation factors: experience, past performance, and sample tasks. Id. §§ M.4, M.3.1. The RFP also provided that the experience and past performance factors were equally weighted and more important than the sample tasks factor.¹ Offerors also were informed that the technical evaluation factors, when combined, were significantly more important than price. Id. § M.3.1.

The RFP provided instructions for the preparation of proposals under each evaluation factor. Id. § L. Offerors were instructed to submit separate technical and price proposal volumes. The RFP instructed that the technical proposal, which was limited to 50 pages, was to be comprised of two sections, as follows:

Section 1: Experience

Subsection A: Past Performance Reference
Worksheets (10-page limit, no more than 2 pages per
worksheet)

Subsection B: Contract Termination Worksheets (two
pages per worksheet)

Section 2: Confirmation of Past Performance Evaluation
Order Submission to Open Ratings, Inc. (one page)

Id. §§ L.6 Table, L.9.2.1.e. The RFP provided that the offerors' section 1 responses were limited to providing completed past performance reference and contract termination worksheets. Id. § L.6, note 1. The worksheets that the offerors were to complete were provided as attachments to the solicitation. See id., attaches. 15, 16.

With respect to the experience factor (section 1 of offerors' technical proposals), the RFP requested three references to demonstrate the offeror's experience with, and

¹ Offerors were informed that the sample tasks would only be evaluated for proposals that were included in the competitive range. RFP amend. 2, § M.3.1.a.3.

ability to perform, the software development and integration services specified in RFP § C.12. Offerors were required to provide a completed past performance reference worksheet for each reference, and, as quoted above, to limit each worksheet to two pages.² Id. § L.9.2.1.1.a, b. Offerors were also informed that the agency expected to see contract references that:

Collectively demonstrate experience in the following areas:

- a. Program Management Support
- b. Software Development and Integration
- c. Unit and Integration Testing
- d. Configuration Management Support
- e. Software Maintenance
- f. Contract Transition

Id. § L.9.2.1.1.c. The RFP also informed offerors that the “evaluation of the Offeror’s experience will be a subjective assessment of the offeror’s ability to perform and demonstrated experience” in these six areas. Id. § M.3.2.1.

With respect to the past performance factor (section 2 of offerors’ technical proposals), the RFP required a minimum of 4 and a maximum of 20 references to Open Ratings, Inc., a commercial past performance evaluation service. See id. § L.9.2.1.2. The RFP also advised offerors that the three references provided under the experience factor must be included among the references identified for evaluation under the past performance factor. Id. § L.9.2.1.1(d).

PTO received proposals from [Deleted] offerors, including ESR. Contracting Officer’s (CO) Statement at 2. The proposals were evaluated by the agency’s technical evaluation team (TET), which individually reviewed each contract reference for demonstrated experience in each of the six areas identified in the RFP (and set forth above). See Agency Report (AR), Tab 23, Individual Evaluation Sheets. The TET’s findings were reported in a consensus evaluation report. See AR, Tab 14, Initial Technical Evaluation Report; see also Tab 15, Consensus Evaluation Sheets. As relevant here, the TET assigned a deficiency for each instance in which a

² The specific instructions for completion of the past performance reference worksheets direct offerors to provide a high-level description or abstract summarizing the work performed to demonstrate how the prior work is relevant to the current scope of work. RFP amend. 2, attach. 16.

contract reference sheet did not address one of the six experience areas identified in the RFP.³ In addition, the TET evaluated each deficiency, weakness, or group of weaknesses, for impact on program success.⁴

The TET noted that ESR provided four experience references (in section 1.A.) for consideration under the experience evaluation factor, contrary to the RFP's instructions to submit only three experience references. Thus, the TET evaluated only the first three references identified. CO's Statement at 2. The TET also noted that ESR submitted an additional 33 pages of narrative discussion for consideration under the experience evaluation factor, which the TET did not consider because it was not requested by the RFP.⁵ Id.

The TET determined that ESR's technical proposal contained two deficiencies under the experience factor because one of its experience references did not address activities relating to the program management support area and another did not address activities relating to the software maintenance support area; the TET also identified multiple weaknesses under the experience factor. AR, Tab 15, Consensus Evaluation Sheets for ESR, at 2, 4. As a result, ESR's proposal was assigned a marginal rating under the experience factor.⁶ AR, Tab 14, Initial Technical Evaluation Report, at 4. ESR's past performance was evaluated as good.⁷ Id.

³ A deficiency is defined by PTO's source selection plan (SSP) to be a material failure of a proposal to meet a government requirement, or a combination of weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. A weakness was defined as a flaw in the proposal that increases the risk of unsuccessful contract performance. AR, Tab 4, SSP, at 9.

⁴ In this regard, the TET assigned the following ratings: 2 - negligible impact on program success, 3 - limited impact on program success, 4 - program success could be jeopardized, or 5 - program success in doubt. As relevant here, the TET deemed that program success could be jeopardized (a rating of 4) by one of the identified deficiencies and four of the weaknesses; the TET also concluded that one deficiency in ESR's proposal placed program success in doubt (a rating of 5). AR, Tab 15, Consensus Evaluation Sheets for ESR, at 1-4.

⁵ With respect to the requirement to identify between 4 and 20 past performance references in Open Ratings for consideration under the past performance evaluation factor, ESR submitted a single page that stated that an Open Ratings survey had been completed, and that the report would be separately sent to the agency. See ESR Technical Proposal, section 2, at 45.

⁶ Under the SSP, a marginal rating indicated that each of the offeror's experience references received either full or partial credit under the majority of the experience areas, and where the proposal contained few, if any, strengths, many weaknesses, and some deficiencies. A marginal rating indicated that a proposal's weaknesses,
(continued...)

A price evaluation team determined the prices offered by all of the offerors to be fair and reasonable; however, ESR's average labor rates were found to be among the highest the agency received. AR at 8; Tab 13, Initial Price Evaluation, at 3, 14. Afterwards, the contracting officer established a competitive range of the most highly rated offers. [Deleted] were included in the competitive range. ESR's proposal was not found to be among the most highly-rated offers and was excluded from the competitive range. AR, Tab 16, Competitive Range Memorandum, at 6-7.

This protest followed a written pre-award debriefing.

DISCUSSION

ESR challenges the exclusion of its proposal from the competitive range, complaining that PTO failed to consider its entire proposal in its evaluation of ESR's experience against the solicitation requirements. Specifically, ESR states that the agency unreasonably did not consider the 33 pages of narrative discussion the firm provided in its proposal and its fourth experience reference. ESR also complains that PTO's evaluation of the three experience references was unreasonable, because the agency required each reference to individually establish experience in each of the six areas identified by the RFP. ESR contends that the RFP informed offerors that experience in each area could be established collectively, that is, that offerors' references could collectively demonstrate experience in the required areas.

Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation (FAR) § 15.306(c)(1); D&J Enter., Inc., B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2. In this regard, a protester's mere disagreement with an agency's evaluation and competitive range judgment does not establish that the agency acted unreasonably. SPAAN Tech, Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 9.

(...continued)

risks, and deficiencies may be difficult to correct, and may outweigh any strengths. In contrast, an acceptable rating indicated that each experience reference received full or partial credit for a majority of the experience areas, but the evaluated strengths were equivalent to, or outweighed, any evaluated weaknesses, risks, or deficiencies. AR, Tab 4, SSP, attach. 3, Experience Ratings, at 2.

⁷ Past performance ratings were assigned based on the numeric rating each offeror received from Open Ratings. AR, Tab 14, Initial Technical Evaluation Report, at 3.

Failure to Evaluate ESR's Entire Proposal

ESR primarily challenges the exclusion of its proposal from the competitive range on the basis that PTO, in rating ESR's experience as marginal, failed to evaluate the firm's entire technical proposal. See Comments at 2-6.

With respect to the firm's 33-page narrative discussion of its experience, ESR contends that offerors could reasonably interpret the RFP's page limitation instructions as permitting such a narrative discussion. Specifically, ESR points to language in the RFP stating that the technical proposal was limited to 50 pages, and argues that, given the 10-page limit for the past performance reference worksheets and 1-page limit for section 2 of the proposal, it was reasonable to conclude that the remaining pages could be used to explain ESR's relevant experience. Comments at 2-3. ESR argues that it was not reasonable for the offerors to conclude, as the agency argues, that the remaining 39 pages were limited to explaining contract terminations, where each contract termination worksheet was limited to 2 pages. Id. at 3. ESR also contends that it was not reasonable to expect offerors to adequately address the experience areas within the limited space afforded by the past performance reference worksheets.⁸ Id.

We disagree with ESR's reading of the solicitation. Although it is true that the RFP provided that the technical proposal had an overall limitation of 50 pages, offerors were specifically informed that their technical proposals were limited to two sections. As quoted above, the experience section of the proposal was itself limited to providing past performance reference worksheets (subsection A) and contract termination worksheets (subsection B). See RFP amend. 2, § L.6 Table and Note 1. The RFP did not provide for other sections or subsections to further address the experience evaluation factor.

To the extent that ESR believes that the RFP did not allow offerors adequate space to address the required experience areas, or that the instructions were ambiguous with respect to the stated page limitations—including the dichotomy between the

⁸ ESR argues that the past performance reference worksheet instructions provided in RFP attachment 16 do not specifically state that offerors are required to address the activities listed in RFP § C.12. ESR contends that therefore PTO should have reviewed ESR's 33-page narrative discussion addressing the scope of requirements activities. Comments at 4. This argument is without merit and ignores the RFP's specific instructions for preparation of proposals. In this regard, the RFP advised offerors that "the Government is seeking three (3) reference contracts for the offeror who is proposing as the contractor that will . . . [d]emonstrate the Offeror's ability to perform the SD&I activities specified in C.12 of this solicitation" RFP amend. 2, § L.9.2.1.1(a).

50-page limit for technical proposals and the specific page limitations for subsections A and B of the technical proposals--these alleged apparent solicitation improprieties were required to be protested prior to the closing time for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (2011); SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 6 n.10. ESR cannot now challenge the ground rules for the competition after the submission of proposals.

With respect to the agency's decision not to consider ESR's fourth experience reference, ESR disagrees with PTO that the RFP limited offerors to three references. ESR contends that the 10-page limitation stated for past performance reference worksheets in subsection A suggested that offerors could provide up to five references, given that each reference worksheet was limited to 2 pages. Comments at 5. ESR also notes that offerors were required to identify a minimum of four references under the past performance factor and the experience factor required past performance reference worksheets for each experience reference. Id. ESR contends that this demonstrates that offerors could provide more than three references for experience.

We find no merit to ESR's arguments. The RFP here provided for separate proposal responses to the experience and past performance factors. As described above, offerors were to provide three references for experience, RFP amend. 2, § L.9.2.1.1.a, and for each of these references they were also required to provide a completed past performance worksheet. Id. § L.9.2.1.1.b. In contrast, for the past performance factor, offerors were required to identify between 4 and 20 references in Open Ratings. Id. § L.9.2.1.2. To the extent that ESR found these instructions confusing or ambiguous, this should have been protested prior to the closing time for receipt of proposals.

Deficiencies in ESR's Experience

ESR also disagrees with the two deficiencies evaluated in its proposal under the experience factor. Comments at 7. As noted above, the TET found that one of ESR's experience references failed to address activities relating to the program management support area and another failed to address activities relating to the software maintenance support area. See AR, Tab 15, Consensus Evaluation Sheets for ESR, at 2, 4.

With regard to the deficiency noted for program management support, ESR argues that the past performance worksheet for this reference provided four paragraphs addressing program management support that adequately demonstrated experience for this area. Comments at 8. In response, PTO states that this reference did not demonstrate experience in at least 11 of the required program management support activities identified in RFP § C.12.2. Specifically, the TET found that this reference did not address ESR's experience in: adhering to PTO Project Management Policies and Procedures (C.12.2.1); following PTO system development life cycle (C.12.2.2); establishing a work breakdown structure (C.12.2.3); providing written notification of

issues (C.12.2.4); providing information and plans, and resolving schedule slippage (C.12.2.5); conducting weekly technical meetings (C.12.2.6); providing staff to develop and maintain multiple automated information systems (C.12.2.7); providing weekly status updates (C.12.2.9); providing estimates by project, subtask, and system development life cycle (C.12.2.10); providing verbal and written notification of problems (C.12.2.11); and reviewing, updating, and submitting quality assurance surveillance plans (C.12.2.14). AR, Tab 15, Consensus Evaluation Sheets for ESR, at 2.

We find reasonable the agency's assessment that this reference did not adequately address the program management support activities required by the RFP. In this regard, the protester does not identify any specific information in the reference's worksheet addressing these activities, but rather points to general statements addressing outcomes, rather than specific activities. For example, ESR states that [Deleted]. Comments at 8.

Similarly, with regard to the deficiency noted for software maintenance support, ESR identifies two sentences in that reference's worksheet, which ESR argues sufficiently address software maintenance support such that PTO should have assigned at least partial credit for addressing this area. Comments at 8. PTO responds that the two sentences--"[Deleted]"--fail to address the software maintenance requirements in the RFP. That is, these two sentences do not address the protester's experience in requirements for the analysis, design and development, installation and integration for the maintenance of existing systems; and for the analysis, design and development of new applications and services to achieve a high degree of capacity and availability. See Supp. AR at 8. We agree with the agency that this reference did not adequately address ESR's experience for these activities. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. American Title Servs., a Joint Venture, B-404455, Feb. 4, 2011, 2011 CPD ¶ 38 at 4.

ESR also complains that PTO failed to evaluate the experience of its references collectively, as provided for by the RFP, but rather assigned deficiencies where one contract reference did not address an area of experience. Comments at 7. As noted above, the RFP provided that offerors would provide references that "collectively demonstrate experience" in the required areas. RFP amend. 2, § L.9.2.1.1.c. ESR contends that its experience references collectively demonstrate its experience under all of the required areas, and therefore ESR should have received the same ratings as that provided to offers included in the competitive range.

We agree with ESR's interpretation of the RFP in this regard. Nothing in the solicitation indicates that each reference had to demonstrate experience in all six areas. Rather, the RFP informed offerors that their references collectively had to demonstrate experience in the required areas. See Raytheon Co., B-404998, July 25,

2011, 2011 CPD ¶ __ at 17-18. Despite our conclusion, however, we find no reasonable possibility that ESR was prejudiced by the agency's evaluation here.

Prejudice is an element of every viable protest, Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5, and we will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

As noted above, contracting agencies are only required to include the most highly rated offers in the competitive range. See FAR § 15.306(c)(1). ESR has not demonstrated a reasonable possibility that its proposal would be among the most highly rated offers. Although ESR essentially contends that its worksheets collectively demonstrate the same level of experience as proposals included in the competitive range, Supp. Comments at 3, ESR does not recognize that its experience was assessed as having more weaknesses that the TET found would jeopardize program success. For example, the TET noted that none of ESR's experience references demonstrated any experience in ensuring that code deliveries met minimum defects per 1,000 lines of code as specified in the quality assurance surveillance plan; establishing a work breakdown structure; or developing a risk management plan to provide information and plans to resolve schedule slippage. See AR, Tab 15, Consensus Evaluation Sheets for ESR, at 1-3. ESR does not challenge these weaknesses, which could jeopardize program success.⁹ In short, the

⁹ ESR also does not specifically challenge the evaluation of the proposals of the competitive range offerors. Instead, ESR complains, based upon its own interpretation of the agency's internal source selection plan, that its and the competitive range offerors' proposals should have all received the same adjectival rating under the experience factor. This ignores, however, that ESR's proposal was assessed as having multiple weaknesses that could jeopardize program success. In any event, an agency's source selection plan is an internal guide that does not give rights to parties; it is the RFP's evaluation scheme, not internal agency documents such as source selection plans, to which an agency is required to adhere in evaluating proposals. Sig Sauer, Inc., B-402339.3, July 23, 2010, 2010 CPD ¶ 184 at 6 n.9.

protester does not show that its proposal should reasonably be considered to be among the most highly rated proposals here.

The protest is denied.

Lynn H. Gibson
General Counsel