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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Independence Construction, Inc.

File: B-292052

Date: May 19, 2003

Jay Stoddard for the protester.

Mark G. Garrett, Esq., Department of Agriculture, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency did not misevaluate protester's proposal using unstated evaluation criteria, where the weaknesses found in the protester's proposal were reasonably encompassed in the evaluation factors and were attributable to a lack of detail in the protester's proposal.

DECISION

Independence Construction, Inc. protests the award of a contract to DG&S Co. under request for proposals (RFP) No. R1-04-03-12, issued by the Department of Agriculture, Forest Service, for the restoration and construction of roads and a segment of Hamilton Creek in the Idaho Panhandle National Forests. Independence contends that the agency misevaluated its technical proposal using unstated evaluation criteria.

We deny the protest.

The RFP, issued September 19, 2002, provided for award of a fixed-price contract to the offeror "whose proposal is technically acceptable and . . . whose technical/cost relationship is the most advantageous to the Government." RFP at 85. The evaluation factors were past performance, technical approach/organization structure, and cost/price. The first two factors were said to be of equal importance and together were more important than cost. The technical approach/organization structure factor included four subfactors: (1) how the project will be managed and staffed, addressing the contractor's proposed schedule of operations; (2) skills and skill levels within the firm to accomplish the project; (3) quality control; and (4) safety. RFP at 85-86.

In response to the RFP, seven offerors submitted proposals by the October 18 closing date. A technical evaluation team (TET) reviewed and evaluated proposals, and, on November 12, the agency made award to DG&S. Independence protested the award on November 22. The agency then took corrective action to better document its award decision, and we dismissed that protest. The TET reconvened to “memorialize[] their earlier analysis” and the contracting officer (who was also the source selection authority) documented the cost/technical tradeoff.¹ Agency Report (AR) at 2.

The agency again selected DG&S for award after determining that its proposal presented the “best value to the government considering the factors stated in the solicitation.” AR, Tab H, Memorandum of Negotiations, at 5. The agency found that both DG&S and Independence had acceptable past performance.² However, DG&S’s technical approach/organization structure was rated “green [acceptable] plus,” whereas Independence’s technical approach/organization structure was rated “yellow [marginal] plus.” AR, Tab J, TET Report, at 1. Only DG&S’s proposal was rated acceptable overall among the proposals received; Independence’s proposal was rated marginal overall. Independence’s proposed final price was \$107,800.00 and DG&S’s was \$124,624.44. AR, Tab H, Memorandum of Negotiations, at 2.

Independence’s technical approach/organization structure was considered marginal because it “contained critical omissions” and “failed to adequately address the evaluation criteria.” For example, the agency found that the proposal provided “[o]nly general statements with no supportive documentation to demonstrate sound project management.” The proposal only “briefly addressed a schedule of operations,” and “did not adequately address a timeline for performance.” The agency found that the qualifications and experience of key personnel were “not demonstrated” or “tied to specific projects,” and no resumes were provided.

¹ Award was not immediately made to DG&S, however, due to concerns over insufficient appropriations to fund the contract. When funding was approved, award was made to DG&S on February 28, 2003. Contracting Officer’s Statement at 3.

² The agency received eight past performance evaluations for Independence and six evaluations for DG&S. Two of the DG&S evaluations were submitted by TET members who had dealt with DG&S on a prior contract. Although Independence asserts that this gave DG&S “a little help from the inside” and is “just plain wrong,” Protester’s Comments at 4, we find the agency’s actions were not improper. The RFP specified that references other than those identified by the offeror “may be contacted by the Government” for information to be used “in evaluation of the offerors’ past performance.” RFP at 83. Moreover, an evaluator’s personal knowledge of an offeror may properly be considered in a past performance evaluation. Omega World Travel, Inc., B-271262.2, July 25, 1996, 96-2 CPD ¶ 44 at 4.

Additionally, “no organizational chart or explanation of the workforce was provided.” The size of the workforce was also “a concern.” AR, Tab H, Memorandum of Negotiations, at 2-4; Tab J, TET Report, at 2.

The agency also noted that Independence’s quality control plan was “weak” and consisted of only one “terse and conclusory” sentence that “does not give any assurance that Independence understands the requirements, and will deliver quality work.” Although Independence’s proposal indicated that this work would be subcontracted out, it “did not identify firms or personnel for quality control.” AR, Tab H, Memorandum of Negotiations, at 3-4; see Tab J, TET Report, at 2.

With regards to project safety, Independence’s proposal contained only a five-sentence paragraph that the agency found to be “very conclusory, in essence merely saying ‘we are safety conscious, and have performed accident-free jobs in the past.’” Although the agency noted that two of Independence’s employees were Emergency Medical Team (EMT) certified, it was concerned that the firm “provided no safety plan or further discussion of safety.” AR, Tab H, Memorandum of Negotiations, at 3-4; see Tab J, TET Report, at 2.

With regards to Independence’s proposed price, the agency expressed “concern with regard to the firm’s ability to meet contract specifications at that price,” given that it was approximately \$40,000 below the government estimate of \$148,180.87. AR, Tab H, Memorandum of Negotiations, at 3.

In comparing Independence’s proposal to DG&S’s, the agency found that the “overall quality of the DG&S submission was superior to that submitted by Independence.” More specifically, it found superior “DG&S[s] planned approach to accomplishing the work, as well as the highly qualified and experienced personnel and equipment being offered, . . . skilled subcontractors, . . . [and] comprehensive safety plan.” The agency concluded that the “vast differences” between proposals “showed that [DG&S] had a greater understanding of the job, a more detailed approach to the job, a greater appreciation of the risks to be encountered in performance, and a higher assurance that the job would be subjected to quality assurance oversight throughout the project[, and that for] the . . . cost premium, [the agency] expect[s] to get a better job, a safer job, and a job with greater assurance of timely performance.”³ AR, Tab H, Memorandum of Negotiations, at 3-5.

³ Independence contends that the agency should not have compared its proposal to DG&S’s. However, such a comparison was required. See Federal Acquisition Regulation (FAR) § 15.305(a) (“An agency shall evaluate competitive proposals and then assess their relative qualities”).

Our review confirms that Independence's proposal contained far fewer specifics than DG&S's proposal, and that the agency's evaluation conclusions regarding Independence's proposal were reasonably based.

Independence complains, however, that the agency used unstated evaluation criteria in evaluating its proposal, in that the weaknesses found by the agency in Independence's proposal do not reflect requirements of the RFP.⁴

Where an agency's evaluation is challenged, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Preferred Sys. Solutions, B-291750, Feb. 24, 2003, 2003 CPD ¶ 56 at 2. In evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. North Am. Military Housing, LLC, B-291750, Mar. 20, 2002, 2002 CPD ¶ 69 at 5.

Independence specifically contends that it was improperly downgraded for failing to provide items not required by the RFP, such as documentation of project management, project timelines or flowcharts, organizational charts, key personnel resumes, quality control plan, safety plan, and the identity of subcontractors. However, offerors were specifically instructed by the RFP to provide a detailed technical proposal that contained "sufficient information to reflect a thorough understanding of the requirements and a detailed, description of the techniques, procedures and program for achieving the objective of the specifications/statement of work." RFP at 82. Offerors were also specifically instructed to "at a minimum" provide information concerning the "name and qualifications of key personnel" and to "address[] supervision and communication," "crew size and experience," "quality control plan," "proposed schedule of operations," and "safety." RFP at 84. Given these requirements, we think that the items noted as missing or deficient in Independence's proposal were reasonably encompassed under the four listed subfactors of the technical approach/organization structure factor: (1) how the project will be managed and staffed, addressing contractor's proposed schedule of operations—which reasonably encompassed project management information and organizational charts as an indicator of how the project will be managed, subcontractor identity as an indicator of staffing, and the time frame for completion of the work as an indicator of scheduling; (2) skills and skill levels within the firm to accomplish the project—which reasonably encompassed key personnel qualifications

⁴ Independence also complains that the evaluation criteria were "vague and ambiguous." However, this allegation is untimely because it concerns an impropriety in the solicitation, which should have been protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2003).

and experience, as may be reflected in resumes; and (3) quality control and (4) safety--which both reasonably encompassed providing plans.⁵ RFP at 84, 86.

Independence also complains that it was improperly underrated under the safety subfactor because it proposed two employees that are certified EMTs, who, according to the protester, provide a “greater value” than a safety plan. Protest at 5. However, the record shows that the agency considered this and concluded, nonetheless, that the protester’s “very conclusory” statements concerning safety fell “far short of providing adequate assurance that Independence understands the scope of this job, the risks that may arise, and is adequately trained and prepared to deal with those risks.” AR, Tab H, Memorandum of Negotiations, at 4. We do not find the agency’s conclusions unreasonable.

Independence finally complains that the agency overlooked the identification and experience of key personnel in its proposal. However, as the agency noted, the proposal did not identify key personnel, but only listed three “[p]ersonnel available for this project,” provided no detailed work experience or resumes for these individuals, and did not identify either the project manager or entity responsible for quality control. AR, Tab E, Independence Proposal, at 36. While Independence contends that the skill levels of its key personnel could have been ascertained from its past performance references, we note that there was no requirement for the agency to undertake such an investigation. Indeed, it is an offeror’s obligation to submit an adequately written proposal for the agency to evaluate. Innovative Communications Techs., Inc., B-291728, B-291728.2, Mar. 5, 2003, 2003 CPD ¶ 58 at 5.

Based on our review, we find the agency’s evaluation of Independence’s proposal to be reasonable, and we find no basis to object to the award.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Independence complains, however, that if additional detail was required, the contracting officer should have requested it. However, the contracting officer was not required to do so here because, as the RFP instructed, offerors were to submit their “most favorable terms, from both a price and technical standpoint” because “[a]ward may be made without further negotiations.” RFP at 85.