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Decision

Matter of: Enhanced Veterans Solutions, Inc.

File: B-411576; B-411576.2

Date: September 3, 2015

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DIGEST

1. Protester's assertion that agency's evaluation of its technical proposal was flawed is denied where the record shows that the evaluation was reasonable and consistent with the solicitation.
 2. Protest challenging the agency's best value tradeoff determination because it did not include any consideration of the protester's proposal is denied where the record demonstrates that the agency reasonably determined the protester's proposal was ineligible for award.
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DECISION

Enhanced Veterans Solutions, Inc. (eVETS), of Springfield, Virginia, protests the award of a contract to Central Research, Inc. (CRI), of Lowell, Arkansas, under request for proposals (RFP) No. HSSCCG-14-R-00027, issued by the Department of Homeland Security, United States Citizen and Immigration Services (USCIS), for administrative records management services for two of USCIS's service centers. The protester challenges various aspects of the agency's evaluation of proposals and its source selection decision.

We deny the protest in part and dismiss the remainder of the protest.

BACKGROUND

The contracting officer (CO) describes the primary purpose of USCIS's service centers as being to adjudicate applications and petitions for benefits sought by legal aliens, potential immigrants, and others.¹ The service centers handle applications and petitions that were previously filed via mail or express delivery service, but not in person. CO Statement at 1. The CO states that USCIS is in the process of implementing an online, account-based system known as the "electronic immigration system," or ELIS. USCIS anticipates that with the use of ELIS, more forms will be filed electronically, either with a service center or via direct mail through lockbox facilities. Id. The agency expects that as an increasing number of forms are transferred to ELIS, the service centers' requirements will change; as relevant here, one anticipated change is a reduction in the centers' requirements for data entry work. Currently, however, almost all applications for benefits are still filed by mail. Id. at 2.

The RFP, posted on June 20, 2014, on the FedBizOpps.gov website as a set-aside for service-disabled veteran-owned small business concerns, sought proposals for management and support services at the service centers, to include program management, correspondence management, data collection, fee collection, and file operations support. RFP at 12. The RFP provided for award of two single-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts, one for the service centers in Nebraska and Texas, at issue here; and the other for service centers in California and Vermont. Id. at 118.

The contemplated ID/IQ contracts were to include fixed-price, fixed-unit price, and labor hour contract line item numbers (CLINs), for a one-year base period and three option years.² RFP at 9. The RFP stated that proposals would be evaluated on a "best value" basis, considering the following factors: technical, price and past performance. The technical and price factors were considered to be equal, and individually more important than past performance. Id. at 136. The technical factor included the following four subfactors: (1) operational approach; (2) management approach; (3) corporate experience; and (4) experience with unions. Subfactors 1-3 were considered to be of equal importance, and subfactor 4 was of lesser importance. Id. As relevant here, for the operational approach technical subfactor,

¹ This requirement was previously met by using a DHS indefinite-delivery/indefinite-quantity contract vehicle that was awarded in 2010 to service-disabled veteran-owned small business concerns. CO Statement at 2.

² The total independent government cost estimate (IGCE), including all option periods, for the Nebraska and Texas service centers is \$125,687,559. Agency Report (AR), Tab 3, IGCE, at 7-8.

offerors were informed that the agency would evaluate, among other things, the levels and sufficiency of proposed staffing. Id. at 137.

Also relevant here is the processing of immigrant visa packets.³ RFP at 15. The RFP states that the Texas service center currently processes approximately 40,000 visa packets each month.⁴ RFP at 14-16. In an amendment to the RFP, incorporating offerors' questions and answers, the agency was asked whether processing visa packets with ELIS was considered a data collection function or a file operations function.⁵ RFP amend. 1, Answers to Questions, at 6, Question No. 24. USCIS responded that "ELIS [immigrant visa] processing is a file operation performed under CLIN 0006." Id.

On July 22, 2014, five offerors, including eVETS and CRI, submitted proposals for the Texas and Nevada service centers, in response to the RFP. CO Statement at 4. The agency formed a technical evaluation committee (TEC) that performed initial technical evaluations of proposals. Id. eVETS's initial proposal received two good and two acceptable ratings under the four technical subfactors, resulting in an overall technical rating of good. In its evaluation narrative, the TEC noted that eVETS's staffing chart listed insufficient full-time equivalent (FTE) employees in data collection for both service centers, among other concerns. AR, Tab 19, Initial TEC Report, at 21. The TEC, however, did not mention the 248 FTEs eVETS initially proposed for its file operations workforce, because the TEC considered this number adequate. AR, Tab 28, Final TEC Report, at 16.

Based upon the initial proposal evaluations, the CO held discussions with offerors via letter and telephone conference. Id. at 5. In its discussions with eVETS, the agency mentioned the insufficiency noted in eVETS's staffing levels for [deleted], among other things. AR, Tab 24, eVETS Discussions, at 1-2.

Following discussions, USCIS issued a 6th amendment to the RFP, which revised the performance periods and included an attachment (Attachment 1), titled Contract Year Workload Activity Report. Attachment 1 included file operations workload

³ Although USCIS handles a variety of visas, such as travel, student, and visitor visas, among others, the visas at issue here are immigrant visas. We refer to immigrant visas in this decision simply as "visas," for brevity's sake.

⁴ The RFP explains that to receive a visa, immigrants are required to pay the USCIS visa fee online using ELIS. RFP at 15. After entering the United States with a visa packet, immigrants are processed through the port of entry by Customs and Border Protection officials who send the visa packet to the Texas service center. Id.

⁵ Previously, visa packet processing had been performed as a data collections matter. CO Statement at 9.

data, updating the workload data previously provided to offerors by an additional two months. This was intended to provide a more complete and accurate representation of the current workload at the Texas service center, in addition to providing the projected decrement volumes of work for the base year and four option years.⁶ Supp. AR at 2; RFP Amendment 6. These workload activity reports did not reference visa packet processing since visa packet processing was not performed under the file operations function either under prior contracts or the current contract. CO Statement at 9.

FPRs were due 3 weeks after the issuance of RFP amendment 6.⁷ The TEC performed final evaluations and submitted a report to the source selection advisory committee (SSAC) and source selection authority (SSA) for their review. As part of its evaluation of eVETS's FPR, the TEC noted that eVETS had reduced its file operations workforce by over [deleted] FTEs--a reduction of approximately [deleted] percent. In its FPR, eVETS did not explain this large reduction, but only stated that it had used the workload volumes provided in Attachment 1, and noted that it considered its staffing levels to be sufficient based upon the number of FTEs in the current contract. AR, Tab 27, eVETS FPR, at 29-30. The TEC concluded that this staffing level was insufficient to meet the base year requirements and identified the essentially unexplained staffing reduction as a significant weakness. AR, Tab 28, Final TEC Report, at 21. The TEC rated eVETS's FPR as marginal under the operational approach factor, and consequently, marginal under the overall technical factor.

The TEC briefed both the SSAC and SSA on the evaluation results on April 30. Id. The briefing included the technical and past performance ratings for all offerors, as well as the TEC's narrative summary of the offerors' FPRs in each of the evaluated areas. AR, Tab 32, Briefing to SSAC. The TEC rated the FPRs from eVETS, CRI, and [deleted]⁸ as follows:

⁶ The contracting officer states that during the evaluation process, it was noted that offerors initially had proposed staffing reductions related to implementation of ELIS in differing ways, due to the uncertainty surrounding ELIS's impact on the requirement. CO Statement at 8. Attachment 1 was intended to provide a uniform method of proposing reductions in the offerors' final proposal revisions (FPRs). Id.; RFP amend. 6, attach. 1.

⁷ There is nothing in the record to indicate that any offeror asked any questions based upon this amendment.

⁸ [Deleted] submitted the highest technically-rated offer, with which CRI was compared in the SSA's best value analysis.

	eVETS	CRI	[Deleted]
Overall Technical	Marginal	Good	Good
Operational Approach	Marginal	Good	Good
Management Approach	Good	Acceptable	Outstanding
Corporate Experience	Good	Good	Good
Experience w/ Unions	Acceptable	Good	Good
Past Performance	Low Risk	Low Risk	Low Risk
Price	\$97,565,189	\$112,426,292	\$127,199,705

AR, Tab 34, Source Selection Decision (SSD), at 2-4.

After the briefing, the SSAC conferred with the TEC, in an effort to better understand the assigned strengths and weaknesses noted in the TEC report. AR, Tab 33, SSAC Report, at 5. The SSAC then provided a report, including its independent analysis, and made recommendations to the SSA. Id.; Tab 34, SSD at 4. With respect to eVETS, the SSAC noted that eVETS reduced its staffing in its FPR, but failed to explain its basis for the reduction. The SSA also stated that the reduction was in an area--file operations--that was priced by labor-hour, "which shifts all risk of performance/costs to the agency, further compounding the risks associated with the insufficient proposed staffing levels." AR, Tab 33. SSAC Report, at 6. The SSAC concluded that eVETS's marginal rating and associated weaknesses and risks were "too significant to overcome for consideration of an award." Id. The SSAC recommended award to CRI.

The SSA, after being briefed by the CO and contract specialist on the results of the TEC and business evaluation committee (BEC) evaluations, and after independently reviewing the TEC and BEC reports and the SSAC's recommendation, concurred with the award recommendation of the SSAC. As part of the SSD, the SSA found that eVETS's understaffing in the file operations area made its proposal unacceptable. In this regard, the SSD observes that the file operations area "is so significant to total performance success, and so unpredictable, that it is priced as a Labor Hour CLIN to provide flexibility and accommodate daily fluctuations in workload to ensure file operations work is performed in a timely manner." AR, Tab 34, SSD at 7. The SSD also considered the possibility, or even likelihood, of contract cost increases that could result from insufficient file operations staffing, which the SSA considered an unacceptable risk. Id. Accordingly, the SSA determined that eVETS's proposal was ineligible for award, and did not consider the proposal in his best value determination. Id., at 7. The SSA agreed with the SSAC's conclusion that CRI and [Deleted] were the only viable candidates for award, and performed a best value analysis by comparing these two proposals. Id. at 7-8. The SSA concluded that CRI's slightly lower-rated and lower-priced proposal represented the best value.

On May 18, 2015, the agency notified the offerors, including eVETS, that award for the Texas and Nevada service centers' contract was made to CRI. This protest followed.

DISCUSSION

The protester raises numerous challenges to the DHS' evaluation of the offerors' technical proposals, and the agency's conclusion that CRI's proposal represented the best value to the agency. Although we do not specifically address all of eVETS's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

eVETS's Technical Evaluation

The protester argues that the agency unreasonably evaluated its technical proposal in a number of areas. For example, eVETS challenges the agency's evaluation of its proposal under the operational approach technical subfactor as unreasonable and inconsistent with the RFP's evaluation criteria. Protest at 8-10; Supp. Protest at 9-12. Specifically, eVETS contends that the agency improperly assigned a significant weakness to its proposal for understaffing the Texas service center for the file operations work. Protest at 10-14.

We review challenges to an agency's evaluation only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. PharmChem, Inc., B-291725.3 et al., July 22, 2003, 2003 CPD 148 at 3. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3. Based on our review of the record, we find the agency's evaluation of eVETS's technical proposal to be reasonable.

Here, eVETS argues that because RFP amendment 6, attachment 1, which was issued three weeks before FPRs were due, did not list ELIS visa packet processing work, eVETS concluded that this work had been eliminated from the RFP. Protest at 10; Supp. Protest at 4. eVETS argues that it reduced its file operations workforce based upon its reading of this attachment. Id. The protester also asserts that its reduced number of FTEs should be viewed as sufficient because it was consistent with [deleted]. Id. at 11.

The agency responds that eVETS, in making its unilateral decision to drop more than [deleted] FTEs from its previously-proposed file operations staff, ignored information in the RFP that affirmatively and directly addressed visa packet

processing.⁹ CO Statement at 10; Agency Memorandum of Law at 5. The CO also notes that visa processing had never before been performed under file operations, and that under prior contracts, visa processing had been included under data collections. Therefore, the file operations workload data in Attachment 1 did not include visa packet processing because the agency had no historical workload data to provide for this work as part of file operations.¹⁰ Id.

Even if Attachment 1 were also susceptible to the interpretation advanced by eVETS, that is, that it eliminated altogether the requirement to staff visa packet processing, the RFP would be, at best, ambiguous on its face. Offerors have an affirmative obligation to seek clarification prior to the first due date for submission of proposals following introduction of an ambiguity into a solicitation. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Here, that would have been before submission of FPRs.

In cases where a dispute exists between the parties as to the actual meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with such a reading. Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17; The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 34. Here, in numerous places, the RFP indicates that visa packet processing, which requires significant staffing, is now considered to be a part of file operations. Given this information, and the fact that eVETS never sought clarification of this issue, we find the protester's assumption that visa packet processing had been eliminated from the RFP by amendment 6 was unreasonable.

eVETS also argues that the agency's assignment of a significant weakness to its proposal under the operational approach technical subfactor was unreasonable because the reduced number of file operations FTEs eVETS proposed in its FPR

⁹ For example, as noted above, the RFP states that the Texas service center currently processes approximately 40,000 visa packets each month. RFP at 14-16.

¹⁰ The protester also contends that RFP amendment 6 superseded the agency's answers to discussion questions. Protester's Comments at 15. We find no merit to eVETS's argument. Amendment 6 makes no assertion that it changes any of the requirements in amendment 1. We find unreasonable the conclusion that Attachment 1's failure to list a subsequently-defined requirement somehow eliminated that requirement.

was consistent with the current level of FTEs performing the incumbent contract at the Texas service center.¹¹ Protest at 11; Supp. Protest at 13.

The agency rejects this assertion, pointing out that the FTE levels for file operations on the incumbent contract are essentially irrelevant, since those numbers did not include FTEs for processing visa packets. Again, visa processing had never before been performed under file operations, either under prior contracts or the contract currently being performed at the Texas service center. CO Statement at 11.

As noted above, in reviewing protests challenging the evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation. PharmChem, Inc., supra.

Here, RFP amendment 1 indicated that visa packet processing was now to be included as a file operation under a labor hour CLIN. CO Statement at 9-10; RFP, amend. 1, Answers to Questions, Question No. 24. Accordingly, we find unreasonable eVETS's reliance on historical FTE numbers that did not include visa packet processing as a part of file operations, and find no basis to question the reasonableness of the agency's evaluation.

Regarding eVETS's protest that the agency did not evaluate proposals consistently with the evaluation criteria, eVETS's main complaint is that the agency assigned too much weight to one technical subfactor that was listed as being equal to other subfactors. Protest at 9; Supp. Protest at 9-12. Specifically, eVETS contends that its marginal rating for operational approach should not have resulted in an overall technical rating of marginal, but instead should have been offset by better ratings in other subfactors.

The agency's evaluation approach in this regard was consistent with the source selection plan for this procurement, which provided for a marginal rating where a proposal demonstrates a marginal solution and approach and contains a significant weakness in any factor or subfactor. AR, Tab 5, Source Selection Plan, at 12. Moreover, we find incorrect the protester's premise that the RFP required the agency to arrive at its rating for the technical factor by mechanically combining the adjectival ratings assigned to the technical subfactors.

It is well-established that adjectival ratings are merely guides for intelligent decision-making in the procurement process. Env't'l Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. The essence of an agency's evaluation is reflected in the evaluation record--the underlying merits of particular strengths and the proposal

¹¹ Outside of its reliance upon the lack of any reference to visa packet processing in Attachment 1, this is eVETS's sole explanation concerning the sufficiency of its reduced staffing levels for file operations. AR, Tab 27, eVETS's FPR, at 29-30.

as a whole--rather than a comparison of the adjectival ratings. URS Federal Servs., Inc., B-408893, B-408893.2, Dec. 23, 2013, 2014 CPD ¶ 14 at 4. Here, the record demonstrates that the SSA looked beyond the adjectival ratings, and independently determined that the risk posed by eVETS's significant understaffing for file operations was not merely inadequate, it was unacceptable. AR, Tab 34, SSD, at 7.

Best Value Determination

eVETS also challenges the agency's best value tradeoff because it did not include consideration of eVETS's lower-priced proposal. Protest at 7-8; Supp. Protest at 7-9. Specifically, eVETS contends that the agency improperly performed a tradeoff only between CRI's and [Deleted]'s higher-rated, higher-priced proposals. Id. eVETS argues that even a marginally-rated technical approach should not have disqualified its proposal for award. Supp. Protest at 9.

The agency responds that eVETS's proposal was not considered in the best value determination because it was found to be technically unacceptable, not merely marginal. Supp. AR at 20. We agree with the agency.

As discussed above, the SSA discussed in detail in the SSD the effect of eVETS's decision to understaff the file operations area. The SSA concluded that this area was significant to the successful performance of the contract. Further, the SSA considered the impact of both technical and price-related risks, stating, for example:

The contract will include a ceiling on Labor Hour CLINs which a contractor exceeds at its own risk, but the negative impacts if a contractor reaches its ceiling because of insufficient initial proposed file operations staffing are severe. If the contractor reduced or stopped performance because, as a [service-disabled, veteran-owned small business], it could not afford to absorb the increased costs, it would force USCIS to increase the ceiling to prevent the negative impacts. Given the likelihood of this occurring, this is an unacceptable risk to me.

AR, Tab 34, SSD, at 7. In short, the SSA concluded that the risks inherent in eVETS's approach rendered its proposal not merely marginal, but unacceptable.

The protester also argues that the RFP did not warn offerors that insufficient staffing in any functional area could result in the rejection of a proposal. The protester contends that therefore, despite the SSA's findings, the agency was required to consider eVETS's proposal in the best value determination. Supp. Protest at 11. This protest argument is without merit.

The responsibility for submitting a well-written proposal--with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a

meaningful review by the procuring agency--lies first and foremost with the offeror. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

In a negotiated procurement such as this, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. Manthos Eng'g, LLC, B-401751, Oct. 16, 2009, 2009 CPD ¶ 216 at 2.

Here, the RFP specifically required offerors to submit proposals that provided staffing as part of their operational approach, and also informed them that their proposals would be evaluated as to the sufficiency of their proposed staffing. RFP at 137. While the file operations area may have been only part of the operational approach subfactor, the SSA discussed at length its significance in successful contract performance, and why he considered understaffing in this area to be an unacceptable risk. AR, Tab 34, SSD, at 7. In light of the SSA's documented analysis, we find no reason to question the reasonableness of his conclusion that eVETS's proposal was not eligible for award. Manthos Eng'g, LLC, supra.

eVETS challenges other parts of the agency's evaluations of both its and the awardee's proposals. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See 4 C.F.R. § 21.0(a)(1). Since, as discussed above, we have concluded that the SSA's determination concerning the acceptability of eVETS's proposal was reasonable, the protester's proposal was ineligible for award. The agency received at least one other proposal that was evaluated as acceptable or better, therefore, eVETS is not an interested party to further challenge the procurement. Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2010 CPD ¶ 7 at 6. Accordingly, we dismiss the remaining protest grounds.

The protest is dismissed in part and denied in part.

Susan A. Poling
General Counsel