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Decision

Matter of: Federal Acquisition Services Alliant Joint Venture

File: B-411842.2

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DIGEST

Protest that agency improperly excluded protester's proposal from the competitive range is denied where the record shows that the agency reasonably concluded that protester's proposal was not among the most highly rated proposals.

DECISION

Federal Acquisition Services Alliant Joint Venture (FASA), of Bowie, Maryland, protests the exclusion of its proposal from the competitive range by the General Services Administration (GSA), Information Technology Service, under solicitation No. ID05140054, issued under the GSA's Alliant Small Business government-wide acquisition contract, for information technology support for the United States Department of Agriculture's National Information Technology Center (NITC). FASA contends that the agency erred in rating its proposal unacceptable.

We deny the protest.

BACKGROUND

The GSA issued the solicitation on December 19, 2014, seeking proposals for the performance of a single-award task order for one base year and four one-year option periods, to provide a wide range of information technology support services

to NITC.¹ The solicitation advised that the selection decision would be made on a best-value basis considering three evaluation factors, listed in descending order of importance: (1) technical capability, (2) past experience and performance, and (3) price. Agency Report (AR), Tab 4(a), Solicitation, at 11. The technical capability factor consisted of three sections, which were not separately rated: technical approach, quality control plan, and staffing approach/plan. Id. The solicitation provided that under the technical capability factor, the agency would evaluate “breadth, depth and scope of the contractor’s understanding of the requirements . . . [and] the relative quality and viability of the proposed staffing/labor mix/level of effort.” Id.

The proposal content instructions advised that:

Each proposal shall clearly demonstrate that the contractor understands the [performance work statement (PWS)]. The failure to explain the contractor’s ability to meet all requirements may result in the contractor’s proposal not being considered. Clarity and completeness of proposals are of the utmost importance. Therefore, proposals must be written in a practical, clear and concise manner.

Id. at 6. The solicitation also cautioned that proposals that fail to meet the minimum requirements, including the requirements of the solicitation’s instructions, may be eliminated. Id. at 4. Finally, the solicitation provided that the government intended to issue a task order without discussions, but reserved the right to conduct discussions if it was in the government’s best interest. Id. at 11-12.

As relevant, for the technical approach section of the technical factor, the solicitation instructions provided that the contractor was to address its understanding of the requirements and methodology utilized to guide the management of contract performance, and should “include a description of how the technical approach (i.e., description of the tasks to be performed) and analytical techniques will be applied to accomplish each of the requirements identified in the PWS.” Id. at 7. The technical approach proposal was also to address the contractor’s implementation plan, including a “phase-in plan to address the overall transition.” Id. The proposal instructions advised that detailed requirements for the phase-in plan were identified in the PWS, and that “[i]f applicable, the phase-in plan shall clearly describe the contractor’s proposed transition period, as defined in PWS paragraph 8.7.1, to include the following: specific duration of the transition period; detailed description

¹ The estimated value of the task order is greater than \$100 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery/indefinite-quantity contracts valued in excess of \$10 million. 10 U.S.C. § 2304c(e)(1)(B); 41 U.S.C. § 4106(f)(1).

of the proposed tasks to be completed during the transition period; and the identification of the resources proposed to complete such tasks during the transition period.” Id.

Also as relevant, concerning the staffing approach/plan, the instructions provided that the proposals were to include an organizational chart; resumes for all proposed key personnel (to be identified by the contractor); and identification of all proposed labor categories with skill level descriptions from the Alliant Small Business contract and any additional task-specific supplemental requirements in terms of expertise and experience. Id. at 7-8. With respect to the organizational chart, the instructions required depiction of “the complete staffing approach/plan and structure from the head of the company to all individual performers/positions (including key positions and non-key positions).” Id. at 7 (emphasis original). The organizational chart was also to illustrate the operational relationships and task leadership, identify key personnel positions and the United States citizenship status of known individuals proposed, and to provide “the overall percentage, in numerical format, of proposed U.S. citizens and non-U.S. citizens.” Id. at 7-8 In this regard, the PWS required that, “[n]o less than 75% of the contractor personnel assigned to this task, specifically to provide direct CLIN support, shall be United States citizens.” AR, Tab 4(b), PWS § 11.1.

The GSA received 18 proposals in response to the solicitation. After an initial evaluation, the agency concluded that 16 of the 18 proposals, including FASA’s proposal, were technically unacceptable, and that the remaining 2 proposals were rated as marginal. The agency then concluded that it was in the best interests of the government to conduct discussions with the offerors whose proposals were most highly rated, and established a competitive range consisting of the two marginally-rated proposals. The agency notified FASA that its proposal was excluded from the competitive range on July 21, 2015. FASA then received a debriefing, informing it that its proposal was excluded from the competitive range due to an unacceptable rating under the technical capability factor. This protest followed.

DISCUSSION

FASA protests the exclusion of its proposal from the competitive range, arguing that it was unreasonable for the agency to evaluate its proposal as so deficient as to be unacceptable. According to FASA, its unacceptable rating was based on erroneous weaknesses and deficiencies that were inconsistent with the solicitation’s stated evaluation criteria.²

² FASA also attributes a variety of informational inadequacies in its proposal to the solicitation’s 45-page technical proposal page limit. We dismiss this basis of FASA’s protest as untimely. Our Bid Protest Regulations contain strict rules for the
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We disagree. While FASA's protest does identify certain mistaken findings in the agency's evaluation, our review of the evaluation record and FASA's proposal demonstrates that the agency reasonably concluded that the proposal was unacceptable, where the proposal omitted required information, took exception to PWS requirements, and otherwise failed to clearly demonstrate its understanding of the PWS.³

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. Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 3. In this regard, contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated. Federal Acquisition Regulation § 15.306(c); Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. American Med. Depot, B-285060 et al., July 12, 2000, 2002 CPD ¶ 7 at 6-7. An offeror must submit an initial proposal that is adequately written and that affirmatively states its merits, or run the risk of having its proposal rejected as

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timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). If FASA wished to challenge the agency's imposition of a 45-page limit on the technical proposals, the time to do so was prior to the initial closing time of the solicitation.

³ In its protest and comments, FASA challenges essentially every criticism of its proposal set forth in the agency's evaluation. We do not discuss each of FASA's challenges in this decision, however, we have reviewed all challenges and conclude that none provides a basis on which our Office would sustain the protest. More specifically, although FASA has identified errors concerning several weaknesses assessed against its proposal, our review of the record reveals that multiple omissions, inconsistencies, and exceptions to the requirements in FASA's proposal support the agency's conclusion that the proposal was unacceptable. Thus, although minor errors in the evaluation exist, we cannot conclude that FASA was prejudiced. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7.

technically unacceptable. Global Eng'g & Constr. Joint Venture, B-275999.4, B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 3.

Proposal Quality

FASA first challenges the agency's determination that its proposal was "riddled with grammatical errors . . . lack of contractor vs. government identification; spelling errors; lack of acronym identification, consistency and accuracy; inconsistent reference and terminology; and punctuation errors." AR, Tab 5, Technical Report, at 1. The evaluation report explains that based on these errors, the agency was unable to clearly interpret a significant amount of the proposal, which was considered to "present performance risk in terms of quality control execution, which, combined with the inability to interpret the proposal in its entirety, resulted in the proposal being rendered unacceptable." Id. In its protest, FASA argues that the agency's conclusion was unreasonable because the quality of a proposal's language or grammar was not identified among the solicitation's evaluation factors, and therefore represented the application of an unstated evaluation criteria. FASA also asserts that the evaluation indicated a bias against non-native English speakers.

We disagree, and conclude that the agency's findings were consistent with the evaluation criteria and PWS, and not unreasonable. As addressed above, the solicitation instructions advised that "proposals must be written in a practical, clear and concise manner," and "clearly demonstrate that the contractor understands the PWS;" further, the solicitation cautioned that failure to comply with the instructions might result in elimination of a proposal. Accordingly, where issues with the writing and clarity of FASA's proposal were an impediment to the agency's evaluation, the agency was permitted to consider elimination of the proposal on that basis. Offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Group, LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9.

Further, under the technical approach factor, the agency was to evaluate the "breadth, depth and scope of the contractor's understanding of the requirements." AR, Tab 4(a), Solicitation, at 11. In this case, the requirements, as described in the PWS, contained minimum standards for English language ability and the quality of written products. First, the PWS general requirements specified that all contractor employees shall possess "[s]trong written and oral communication skills in the English language." AR, Tab 4(b), PWS, at 7. Second, many of the contract line item numbers [CLINs] for specific services contained reporting requirements, for which grammatical errors constituted violations of the performance requirement's acceptable level of quality. See e.g. AR, Tab 4(c), PWS Attachment A, CLIN 001, at 3-4.

In this context, we cannot conclude that it was inconsistent with the solicitation or unreasonable for the agency to evaluate the quality of writing, or clarity, of the protester's proposal, either as a matter of compliance with the solicitation's instructions, or as it concerned understanding of PWS requirements under the technical approach criteria of the technical factor.⁴ Nor can we conclude that the evaluation demonstrated a bias in favor of native English speakers, where the PWS specifically required that all contractor employees possess "[s]trong written and oral communication skills in the English language." Id. AR, Tab 4(b), PWS, at 7.

In addition to the language and grammar issues, the agency's general criticism of the quality of FASA's proposal reflects the agency's determination that it was unable to interpret various elements of the proposal, which contributed to the unacceptable rating. We have reviewed the record here and find no basis to question the agency's difficulty in interpreting the proposal. As set forth below, our review of the proposal demonstrates that omissions, inconsistencies, and exceptions to the requirements in multiple areas of FASA's proposal support the agency's conclusion that the proposal was unacceptable.

Implementation Plan

For example, the agency concluded that there were a significant number of issues with FASA's implementation plan, which resulted in the determination that the proposal was unacceptable. Specifically, the evaluation recorded, among other issues, that FASA's proposal failed to adequately address or omitted the "distinction between phase-in and transition; milestone identification; [and] deliverable identification." AR, Tab 5, Technical Report, at 3. In its protest, FASA argued that the solicitation instructions did not define "phase-in" as opposed to "transition," and required only a general phase-in plan to address the overall transition. Protest at 15.

⁴ FASA also contends that, even if the evaluation of the quality of writing in the proposal was consistent with the solicitation, the agency's conclusions were erroneous. Specifically, FASA asserted in its protest that its use of undefined acronyms was limited to commonly understood terms and could not have impacted the agency's ability to understand its proposal. In its agency report, the GSA identified the acronym "AWS" as an undefined acronym in FASA's proposal that was unknown to the agency evaluators. However, the record confirms that the acronym "AWS" was defined as "Amazon Web Services" within FASA's proposal. Accordingly, we conclude that the agency's criticism of FASA's use of unidentified acronyms was unsupported. Nonetheless, we conclude that FASA was not prejudiced by this error where omissions, inconsistencies, and exceptions in FASA's proposals, identified by the agency, were sufficient to support the conclusion that the proposal was unacceptable.

As set forth above, however, the solicitation instructions provided that “detailed requirements for the phase-in plan were identified in the PWS.” AR, Tab 4(a), Solicitation, at 7. Contrary to FASA’s argument, the detailed phase-in plan requirements in the PWS did distinguish the overall phase-in plan from the transition period, which was defined “as the period of time (during Phase-In) when the new contractor and the incumbent contractor will both be providing support to the client as required to support the transition.” AR, Tab 4(b), PWS § 8.7.1. The PWS explained that proposal of a separately-priced transition period was optional, and the duration of any transition was to be determined by the contractor but was not to exceed 30 days. The PWS requirements also included instructions concerning phase-in milestones and the development and submission of deliverables, among other phase-in plan details. Our review of the record in this case confirms that FASA’s proposal did not identify whether its phase-in plan included a transition period, did not identify phase-in milestones, and did not discuss the development and submission of deliverables. As a result, we see no error in the agency’s evaluation.⁵

Staffing Approach/Plan

The agency also identified serious issues with FASA’s proposed staffing approach/plan, including its key personnel, labor categories, and organizational chart. First, despite references to multiple key personnel in its transition plan, as well as its references to division leads and inclusion of [DELETED] program manager positions in its proposed labor categories, FASA identified only one key personnel position for this effort--its [DELETED]. The agency criticized FASA’s inconsistent references, and concluded that the identification of only a single key personnel position for a staffing plan including [DELETED] full time equivalents (FTEs) was inadequate and constituted a risk.

Also concerning the labor categories and key personnel, the labor category skill level descriptions in FASA’s proposal specified [DELETED] certification for the project manager labor categories proposed under CLINs 009 and 010. However, inconsistent with these descriptions, the resume of the proposed key personnel [DELETED]--who was proposed to fill a project manager labor category under CLIN 010--did not reflect [DELETED] certification.

⁵ Additionally, we see nothing unreasonable in the agency’s assessment of weaknesses against FASA’s implementation plan for its failure to explain its selection of incumbent personnel identified as “core,” its inconsistent references to the extent of planned incumbent capture, and its references to key personnel “[DELETED],” which was inconsistent with FASA’s identification of only one key personnel position in its staffing plan.

Finally, both the labor category descriptions and the organizational chart omitted staffing for CLINs 012, 017, and 025, and the organizational chart provided a non-compliant citizenship ratio. In the latter regard, both the staffing plan narrative and organizational chart took exception to the PWS requirement that at least “75% of the contractor personnel assigned . . . shall be United States citizens.” AR, Tab 4(b), PWS § 11.1. Instead, the staffing plan narrative stated the citizenship of the proposed personnel as “approximately 60% US,” while the organizational chart specified “US Citizen, currently >60%.” AR, Tab 1B, Proposal, at 31-32.

FASA protests that the agency’s conclusions are flawed for several reasons. FASA argues that the solicitation did not specify a required number of key personnel, but instead required the contractor to identify the number of key personnel. FASA also argues that the solicitation did not require [DELETED] certification for the CLIN 010 [DELETED], but only for the CLIN 009 program manager.

Concerning CLINs 012, 017, and 025, FASA asserts that its technical proposal explained that these CLIN tasks would be performed within other service areas. For example, CLIN 012 relates to tasks for a technical writer. FASA’s proposal states as follows:

[DELETED]

AR, Tab 1(b), Proposal, at 20. Finally, concerning the citizenship ratio, FASA argues that the agency misread FASA’s proposal because “the organizational chart itself shows that [a] total of [DELETED] proposed personnel were marked as United States ‘citizens’ out of a total of [DELETED] positions,” which exceeds 75 percent. Comments at 16.

We have reviewed the record and conclude that each of FASA’s arguments is unavailing. First, although FASA is correct that the solicitation did not require the contractor to identify more than one key person, we see nothing unreasonable in the agency’s conclusion that the identification of only one key person for a staffing plan comprised of [DELETED] FTEs was inadequate, especially where other areas of the proposal referenced multiple key personnel, divisions leads, and included [DELETED] FTEs of program manager personnel.

Second, we also see nothing unreasonable in the agency’s conclusion that FASA’s one key person did not meet the labor category skill level requirements. While the solicitation did not require the [DELETED] under CLIN 010 to possess [DELETED] certification, FASA’s own description of the labor category skill levels specified [DELETED] certification for all individuals in the program manager labor category, including the [DELETED] under CLIN 010. The record reveals that the resume for FASA’s one key person does not reflect [DELETED] certification, as required for the labor category as described in the proposal.

Third, though FASA's technical approach references required tasks under CLINs 012, 017, and 025, nothing in the technical approach explains why no personnel were assigned to these CLINs. Concerning the technical writer requirement of CLIN 012, FASA argued that the tasks would be completed by personnel in the [DELETED] division. However, the organizational chart shows that the [DELETED] division is comprised of only one individual who is tasked to CLIN 002, and although the staffing approach labor category descriptions do contain a technical writer labor category, the labor category shows a staffing level of zero FTEs. Similarly, the organizational chart reflects no personnel assigned to CLINs 017 or 025, and the labor category descriptions for the labor categories assigned to those CLINs demonstrate a staffing level of zero FTEs. On the basis of this record, we see no error in the agency's conclusion that FASA failed to demonstrate staffing to complete the requirements of these CLINs.

Finally, our review of the record confirms that FASA's proposal was noncompliant with the PWS citizenship ratio. As set forth in the instructions, the organizational chart was required to include "the identification of the overall percentage, in numerical format, of proposed U.S. citizens and non-U.S. citizens." AR, Tab 4(a), Solicitation, at 7. FASA's organizational chart identified the overall percentage as "US Citizen, currently >60%," which is below the PWS requirement of 75 percent. Further, FASA's response that [DELETED] of [DELETED] proposed personnel were United States citizens ([DELETED] percent), is contradicted by the organizational chart itself. AR, Tab 1(b), Proposal, at 32. In this regard, the organization chart sets forth [DELETED], not [DELETED], total personnel, [DELETED] of which are designated as United States citizens--resulting in a ratio of under 70 percent.⁶

Where FASA's organizational chart demonstrates that it proposed a noncompliant ratio of United States citizens, in conjunction with the other omissions and inconsistencies addressed above, we have no objection to the agency's conclusion that FASA's proposal was technically unacceptable. In turn, we see nothing unreasonable in the agency's conclusion that FASA's technically unacceptable proposal was not among the most highly rated proposals in the competition, and should not be included in the competitive range.

⁶ The [DELETED] FTE staffing level is confirmed by FASA's staffing plan narrative, and the agency's evaluation. AR, Tab 1(b), Proposal, at 31-32; Tab 5, Technical Report, at 4. Further, [DELETED] personnel included in the organizational chart are identified as "TBD," [DELETED] of which are designated as United States citizens. AR, Tab 1(b), Proposal, at 32. In the event that fewer than [DELETED] of the "TBD" personnel are United States citizens, FASA's citizenship ratio will worsen. Moreover, even in the event that all "TBD" personnel were United States citizens, FASA's citizenship ratio would not meet the requirement of 75% United States citizens.

The protest is denied.

Susan A. Poling
General Counsel