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Decision

Matter of: Coburn Contractors, LLC

File: B-408279.2

Date: September 30, 2013

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DIGEST

1. Protest that agency used unstated evaluation criteria in assessing a weakness in protester's proposal for failure to submit a list of subcontractors is sustained where the solicitation did not require offerors to identify proposed subcontractors.
 2. Protest of awardee's technical evaluation is denied where, consistent with the solicitation, awardee met an office location requirement prior to contract award.
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DECISION

Coburn Contractors, LLC, of Montgomery, Alabama, protests the award of a contract to Abrams Group Construction, LLC, of Pace, Florida, under request for proposals (RFP) No. VA-247-11-RP-0508, issued by the Department of Veterans Affairs (VA), for construction and maintenance services for the Central Alabama Veterans Health Care System (CAVHCS) medical centers in Tuskegee and Montgomery. The protester challenges the agency's technical evaluations and selection decision.

We sustain the protest in part and deny it in part.

BACKGROUND

The RFP was set-aside for service-disabled, veteran-owned small businesses and provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year and 4 option years. RFP at 1, 5-6, 22-23. The solicitation stated that award would be made on a best value basis considering experience/capability, past performance, and price. Id. at 9. The RFP also stated that price was

not significantly more important than the non-price evaluation factors, which were approximately equal in weight. Id.

With respect to the experience/capability factor, the RFP identified what would be evaluated by listing detailed items that the offerors were to provide in their technical proposals. Id. at 10. For example, offerors were to describe their experience managing construction projects and their current workload; identify proposed key personnel; and submit staffing, quality control, and safety plans, among other things. Id. Significantly, however, neither this evaluation factor, nor any other evaluation factor, required that offerors submit a list of proposed subcontractors with their proposals; instead, the RFP stated that the selected “[c]ontractor shall submit a list of subcontractors to be used on each individual task order.” Id. at 17. The solicitation also required--prior to contract award--that the contractor be located within an area permitting a maximum 2-hour response time to the CAVHCS medical centers, either through a main or satellite office. RFP, attach., General Requirements, § 1.2(c).

The agency received proposals from 15 offerors, including Coburn Contractors and Abrams Group, which were evaluated as follows:

	Abrams Group	Coburn Contractors
Experience/Capability	Good	Satisfactory
Past Performance	Very Low Risk	Average Risk
Overall Technical Rating	Good	Satisfactory
Average Price Coefficient¹	1.15	1.09

Agency Report (AR), Exh. 9, Price Negotiation Memorandum, at 2-3.

A source selection evaluation board (SSEB) evaluated and rated offerors’ technical proposals, identifying strengths and weaknesses under each non-price factor. See AR, Exh. 7, SSEB Report. As relevant here, under the experience/capability factor, the evaluators found that Coburn’s proposal demonstrated an understanding of the requirement and met performance standards, and the SSEB

¹ Offerors were required to propose price coefficients for normal working hours and “other-than-normal” working hours for each performance period, and an overall price coefficient for overhead and profit for all performance periods. RFP at 5, 8, 12, 20. The RFP indicated that the selected contractor’s coefficients would be multiplied by unit prices in the *RS Means Facilities Construction Cost Data Book*, a trade publication, to calculate a price for individual task orders. See id. at 12-15.

identified a number of strengths in that regard.² Id. at 6. The SSEB identified only one weakness under the experience/capability factor--that Coburn's proposal did not include a list of subcontractors. Id. The SSEB rated Coburn's experience/ capability as "satisfactory," rated its past performance as "average risk," and, based on those two ratings, rated Coburn's technical proposal satisfactory overall.

The evaluators found that Abrams's technical proposal demonstrated a good understanding of the requirement and that its approach exceeded performance standards. Id. at 5. The SSEB identified no weaknesses in Abrams' proposal under the experience/capability factor, and assessed three strengths under that factor, including that Abrams effectively described the availability of key personnel and subcontractors. See id. The SSEB rated Abrams' experience/capability as "good," rated its past performance as "very low risk," and rated Abrams's technical proposal "good" overall.

The contracting officer, who was the source selection authority (SSA) for this procurement, reviewed and agreed with the SSEB's evaluations, and she conducted price evaluations. See AR, Exh. 3, Source Selection Plan, at 4; Exh. 9, Price Negotiation Memorandum. While she acknowledged that Coburn's price coefficient was lower than Abrams' price coefficient, the contracting officer found that the slight price difference (.06 percent) did not warrant accepting Coburn's lower-rated, higher risk proposal. See AR, Exh. 9, Price Negotiation Memorandum, at 3. She acknowledged that Abrams' proposal received the highest overall technical rating of all offers, and determined that its technical superiority was worth the slight price premium to lessen the risk of disrupting hospital operations and impacting patient care and safety. See id. The contracting officer concluded that Abrams' proposal presented the best combination of experience and past performance, and offered the best value to the government. Id. Award was made to Abrams Group and this protest followed.

DISCUSSION

Coburn Construction protests its technical evaluation, as well as the awardee's technical evaluation, and the VA's source selection decision. As discussed below, we sustain Coburn's protest of its technical evaluation. However, we find that the protest of the awardee's technical evaluation lacks merit, and we deny that aspect of Coburn's protest.

² Specifically, the SSEB assessed as strengths that Coburn is currently working on an ID/IQ task order, that it has successfully completed projects for CAVHCS, and that its key personnel have experience directly related to the requirement. AR, Exh. 7, SSEB Report, at 6.

Coburn Evaluation

Coburn asserts that the VA improperly evaluated Coburn's experience/capability based on an unstated evaluation criterion. Protest at 8-9. The protester argues that the RFP did not require offerors to submit a list of subcontractors, but that the RFP only requires the successful contractor to submit a list of subcontractors for each individual task order. Id. The protester points out that failure to submit a subcontractor list was the sole weakness assessed against Coburn's proposal under the experience/capability factor, and it argues that, but for this improper assessment, Coburn would have received a higher rating under that factor, and overall, because the agency identified other strengths in Coburn's proposal. Comments at 5. Coburn contends that the VA's best value determination and source selection decision was flawed because it was based on improper technical evaluations. Id. at 2-4; Protest at 9-10.

The VA concedes that the RFP did not identify submission of a subcontractor list as an evaluation criterion. AR at 7-8; Contracting Officer's (CO) Statement at 1. However, the agency argues that, contrary to the protester's belief, Coburn's negative past performance rating, not its failure to include a subcontractor list, contributed to Coburn's overall satisfactory rating. The agency suggests that the protester was not prejudiced by the SSEB's assessment of a weakness under the experience/capability factor, because it was not assessed as a "significant weakness" and because it did otherwise impact Coburn's overall rating. See AR at 7-8, 11.

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

Here, the RFP explicitly stated that "[t]he contractor shall submit a list of subcontractors to be used on each individual task order." RFP at 17 (emphasis added). As the protester points out, and the agency acknowledges, the RFP did not require offerors, in their proposals, to list their proposed subcontractors.³ Nor did the RFP state that the agency would evaluate proposals in that regard. As described above, the solicitation indicated that the agency would evaluate a list of items that

³ The terms "offeror" and "contractor" are not used interchangeably throughout the RFP, but are consistently used in provisions and requirements that apply, respectively, to those submitting proposals versus the anticipated contract awardee. See generally RFP.

offerors were to provide in their technical proposals. Id. at 9-11. Specifically, the RFP enumerated six criteria under the experience/capability evaluation factor that offerors were to address in their proposals: experience and capability managing construction projects; proposed key personnel; current workload and staffing; quality control; infection control; and safety. Id. at 10. Nowhere does the RFP instruct or otherwise suggest that offerors were to identify or list proposed subcontractors, either under the experience/capability evaluation factor, or the past performance and price factors.

Contrary to the agency's arguments, it is uncertain whether Coburn's experience/capability rating, and ultimately Coburn's overall rating, would have remained the same, where only one weakness was assessed, improperly, against Coburn's proposal, and where it was otherwise assessed multiple strengths. In other words, we have no basis--and we decline the VA's invitation--to speculate about how the SSA would have viewed the relative merits of Coburn's and Abrams' proposals; we cannot conclude that the agency's source selection decision would not have proceeded differently given the paucity of information in the contemporaneous record regarding the agency's cost/technical trade-off.⁴ Since we resolve any doubts regarding competitive prejudice in favor of the protester, and since the protester has shown a reasonable possibility that it was prejudiced by the VA's action, we sustain Coburn's protest that the agency applied an unstated evaluation criterion in evaluating the protester's technical proposal. See Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5.

Abrams Evaluation

Coburn also argues that the VA should have rejected Abrams' proposal, because its office locations did not permit Abrams' personnel to arrive at CAVHCS medical centers within 2 hours, as required by the RFP, according to the protester, at the time of proposal submission. Protest at 6-8, citing RFP at 7, 10; Comments at 7. This argument lacks merit.

As noted above, the RFP explicitly provides that the contractor must be located, either by virtue of its main office or a satellite office, within an area permitting a maximum 2-hour response time to the medical centers, and that the "office must be

⁴ We recognize that we denied an earlier protest of the contract award in this procurement by another protester. United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150. In that case, however, the record showed that the agency reasonably assessed multiple weaknesses in that protester's proposal for failing to comply with the RFP's explicit requirements and evaluation provisions regarding offerors' ID/IQ contractor experience, key personnel workload, and past performance magnitude. Id. at 4-5.

operational prior to award of the contract.” RFP, attach., General Requirements, § 1.2(c) (emphasis added). The record here shows that Abrams notified the VA on February 27, 2013, of Abrams’ new central Alabama office, and award was made to the firm on April 5. AR at 6; Exh. 10, Award Notification; Exh. 14, Awardee’s Local Address. In other words, Abrams met the 2-hour location requirement in advance of contract award, consistent with the terms of the RFP. Accordingly, this protest ground is denied.

RECOMMENDATION

We recommend that the agency reevaluate Coburn’s technical proposal under the experience/capability evaluation factor consistent with our decision, and make a new source selection determination if necessary. We also recommend that Coburn be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2013). Coburn should submit its certified claims for costs directly to the contracting agency within 60 days after receipt of this decision. Id., § 21.8(f)(1).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel