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Decision

Matter of: McLaurin General Maintenance, Inc.

File: B-411443.2; B-411443.3

Date: January 14, 2016

Lawrence J. Sklute, Esq., and Ethan Brown, Esq., Sklute & Associates, for the protester.

Captain Meghan E. Mahaney, Major James P. Leary, Scott N. Flesch, Esq., Department of the Army, for the agency.

Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the technical acceptability of the awardee's proposed staffing is denied where the agency reasonably evaluated the awardee's quotation in accordance with the solicitation's terms.
 2. Protest that the agency improperly awarded the contract to a firm that lacked the required license to perform the work at the time of quotation submission is denied where the solicitation provision is a performance requirement, which offerors were not required to satisfy prior to award, and which this Office will not review.
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DECISION

McLaurin General Maintenance, Inc., of Eastover, North Carolina, a small business, protests the award of a contract to Tekton Construction Company, of Forest Hill, Maryland, also a small business, under request for quotations (RFQ) No. W91247-15-T-0001, which was issued by the Department of the Army, Mission and Installation Contracting Command Center, Fort Bragg, North Carolina, for kitchen equipment and maintenance. McLaurin challenges the Army's evaluation of the awardee's quotation as technically acceptable.

We deny the protest.

BACKGROUND

On November 7, 2014, the Army issued the RFQ as a combined synopsis/solicitation under the commercial item and simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 12.6 and 13.5.¹ RFQ at 1. The RFQ, which was set aside for small businesses, required the contractor to provide the “labor, supplies, and equipment required to perform maintenance, repairs, installation, and removal of kitchen equipment” in accordance with the performance work statement (PWS). Id. at 2. The solicitation contemplated the award of a fixed-price contract for a base year and four 1-year options. Id. at 5, 11.

The RFQ provided for award on a lowest-priced, technically acceptable basis, considering two factors: (1) technical capability, and (2) price. Id. at 6. The technical capability factor consisted of two subfactors: (1) mission capability, and (2) organizational structure. Id. The RFQ stated that proposals would be evaluated as either technically acceptable or technically unacceptable, and that in order to be considered technically acceptable, the proposal “must demonstrate an understanding of the requirements for all task areas described in the PWS,” as well as “a practical/functional technical approach that meets the needs of the Solicitation.” Id. The solicitation also stated that, “[f]ailure to meet the criteria will render the proposal to be technically unacceptable and [the proposal] will not be considered for award.” Id.

As relevant here, the organizational structure subfactor stated that the Army would evaluate “whether the Offeror has all the necessary personnel qualifications, processes and plans in effect to ensure contract performance in accordance with the requirements of the PWS.” RFP at 7. The PWS stated that the contractor “shall provide resumes of proposed personnel with [its] proposal for evaluation by the Government.” PWS at 3.

The Army received two proposals, from McLaurin and Tekton, by the RFQ’s initial closing date of December 10. Contracting Officer (CO) Statement at 1. After an initial review of proposals, the contracting officer conducted discussions with both offerors, and thereafter received revised proposals. Id. After evaluating the revised proposals, the agency found that Tekton submitted the lowest-priced, technically acceptable proposal. The agency made award to Tekton on April 2, 2015, and McLaurin filed a protest with our Office on April 16. Id. The agency decided to take corrective action in response to the protest based on its determination that “[n]either

¹ Although the solicitation was an RFQ, the evaluation record and the agency’s response to the protest refers to both “offerors” and “proposals” as well as to “vendors” and “quotations.” Because the distinction between a quotation and a proposal has no bearing on our analysis in the protest, references herein are considered interchangeable.

offeror had submitted resumes in accordance with the solicitation,” and therefore, “the technical evaluations were flawed.” Id. at 2. Accordingly, our Office dismissed the protest as academic.

The Army conducted additional discussions with both offerors, and both offerors submitted final revised proposals. Id. The agency concluded that both offerors’ proposals were technically acceptable; the agency selected Tekton’s proposal for award because its proposed price of \$4,575,000 was lower than McLaurin’s proposed price of \$4,921,231. Id.; Agency Report (AR), Tab 7.1, Award Decision Document, at 6-7. This protest followed.

DISCUSSION

McLaurin challenges the technical acceptability of Tekton’s quotation. Specifically, the protester argues that three of the awardee’s proposed personnel, including the project manager, failed to meet the solicitation’s qualifications requirements. McLaurin also asserts that the awardee did not hold the required state refrigeration license at the time of proposal submission.² For the reasons discussed below, we conclude that the Army reasonably found that Tekton’s quotation was technically acceptable, and therefore find no basis to sustain the protest.

As noted above, the Army conducted this procurement using simplified acquisition procedures for commercial items. Simplified acquisition procedures are designed, among other things, to reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002; 41 U.S.C. § 3305. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4. In reviewing protests of an allegedly improper simplified acquisition evaluation, our Office examines the record to determine whether the agency met this standard and executed its discretion reasonably. Computers Universal, Inc., B-297552, Feb. 14, 2006, 2006 CPD ¶ 42 at 4-5. An offeror’s disagreement with an agency’s evaluation is not sufficient to sustain the protest. See Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

² While we do not address in detail all of the arguments raised by McLaurin in its protest, we have reviewed each, and conclude that none of these other protest grounds provides a basis to sustain the protest. McLaurin also challenged the contracting officer’s affirmative determination of responsibility, but withdrew this allegation. See Comments (Nov. 19, 2015), at 2 n.1.

Evaluation of Tekton's Personnel

McLaurin first argues that Tekton's proposed project manager failed to meet the PWS requirement to have a minimum of 3 years of experience "in the supervision of repair personnel in the related areas of food service equipment and support, small appliances, and refrigeration/freezer equipment." PWS § 1.3.1. As discussed above, the organizational structure subfactor stated that the agency would evaluate "whether the Offeror has all the necessary personnel qualifications, processes and plans in effect to ensure contract performance in accordance with the requirements of the PWS." RFP at 7. With regard to the experience of the project manager, the PWS stated that the proposed individual "shall have a minimum of three (3) years within the last two (2) years in the supervision of repair personnel in the related areas of food service equipment and support, small appliances, and refrigeration/freezer equipment." PWS at 1. The PWS also stated that the contractor "shall provide resumes of proposed personnel with [its] proposal for evaluation by the Government." Id. at 3.

Tekton provided the following resume of its proposed project manager in its revised proposal, which, as relevant here, stated:

RELEVANT SKILLS & ABILITIES

Over 35 years of experience in commercial refrigeration, electrical, HVAC, plumbing, and mechanical maintenance and installation service.

* * * * *

Managed and oversaw maintenance and repair projects that included:

Diagnose and repair malfunctions in various types of food service (kitchen) and refrigeration systems; Install new food service (kitchen) and refrigeration equipment and systems; Repair, replace, or calibrate controls, thermostats, switches, fuses, and electrical wiring; Fabricate, assemble, and install electrical wiring, controls and piping according to specifications and code; Wire and connect motors, compressors, temperature controls, and humidity controls according to wiring schematics; Perform all scheduled preventative maintenance and cleaning on all food service (kitchen) and refrigeration equipment; Inspect jobs upon completion and ensure areas are clean.

WORK HISTORY

* * * * *

Commercial Equipment and Freezer Technician (1990-Present)

Project Leader/Technician (FY2014-15)

AR, Tab 5, Tekton Technical Proposal, at 4.

The agency's technical evaluator concluded that Tekton's proposed project manager met the PWS requirement for 3 years of supervision of repair personnel in the related areas of food service equipment, small appliances, and refrigeration/freezer equipment. Specifically, the evaluator stated: "[T]he Project Manager has over 35 years of experience in commercial refrigeration, electrical, HVAC, plumbing, and mechanical maintenance installation service," and also has "the ability to troubleshoot refrigeration equipment such as walk-in freezers, beverage systems, ice machines and other related equipment." AR, Tab 6, Tekton Technical Evaluation, at 2. The evaluator also stated that the proposed project manager "has experience in overseeing repair projects to diagnose, repair and install kitchen equipment and refrigeration systems as well as performing scheduled preventive maintenance." Id.

McLaurin contends that the Army unreasonably concluded that the project manager had 3 years of experience supervising personnel because the resume stated that the proposed project manager was a project leader/technician only from "FY2014-15," which the protester asserts, reflects, at best, 1 year of experience as a project leader/technician, and therefore, that the resume failed to reflect the 3 years of supervisory experience required by the PWS.

In response to questions from our Office concerning the evaluation of the awardee's project manager's resume, the technical evaluator and contracting officer state that they interpreted a reference to supervisory experience in "FY2014-2015" to mean government fiscal years 2014 and 2015, which they counted as 2 years of experience. AR (Dec. 14, 2015), at 2; Declaration of Tech. Evaluator (Dec. 14, 2015), at 1. Also, the contracting officer states that "[a]fter reviewing the resume of Tekton's proposed project manager, [he] concurred with the evaluation of the technical review board that [the project manager] met the requirements of PWS" because "[the] resume reflected that for the last two years [the project manager] has been working as a supervisor for Tekton Co. (Project Leader/Technician for FY2014-15)." Declaration of CO (Dec. 14, 2015), at 1.

The technical evaluator and contracting officer also explain that they found that other information in the project manager's resume demonstrated a third year of supervisory experience. Declaration of Tech. Evaluator (Dec. 14, 2015), at 1; Declaration of CO (Dec. 14, 2015), at 1. For example, the technical evaluator states that she "looked to the portion of [the] resume that described [the project manager's] 35 years of work experience in order to determine whether [he] had at least one more year of experience in the supervision of repair personnel."

Declaration of Tech. Evaluator (Dec. 14, 2015), at 1. The technical evaluator further explains that, “[u]pon further review of [the] resume, I found information which allowed me to conclude that [Tekton’s proposed project manager] met the minimum 3 year requirement for supervisory experience.” Id. at 2. Specifically, the technical evaluator states that “[t]he resume states that [the project manager] has over 35 years of experience in commercial refrigeration, electrical, HVAC, plumbing and mechanical maintenance and installation,” and “reflects that he has experience managing overall operations and optimizing organizational processes as well as experience leading numerous projects from initial conception to completion.” Id. In addition, she states that “[t]he resume also states that [he] managed and oversaw maintenance and repair projects.” Id. The technical evaluator concluded that, “[b]ased on the nature of the projects that [he] has overseen and managed, I determined that they reflected the supervision of repair personnel [required by] the PWS.” Id.

Based on our review of the record, we find nothing unreasonable regarding the agency’s evaluation. Although the protester argues that the agency’s interpretation of “FY2014-2015” as reflecting 2 fiscal years was unreasonable because, as stated in the resume, “FY2014-2015” clearly meant a single fiscal year of experience that began in 2014 and ended in 2015, we do not agree with the protester that its interpretation of “FY2014-2015” was the only reasonable interpretation of this language, or that the agency’s interpretation conflicts with the plain language of the resume, as the protester asserts. To the extent McLaurin disagrees with the agency’s evaluation of the project manager’s resume, the protester’s disagreement with the agency’s evaluation fails to render the agency’s evaluation unreasonable or provide a basis to sustain the protest. See Ben-Mar Enters., Inc., supra.

McLaurin also argues that the Army failed to adequately document its evaluation, and asserts that our Office should afford little weight to the post-protest statements of the technical evaluator and contracting officer. As discussed above, for procurements conducted under simplified acquisition procedures for commercial items, such as this one, limited documentation of the source selection is permissible, as long as the agency provides a sufficient record to show that the source selection was reasonable. FAR § 13.303-5(e). Although the protester claims that we should give no weight to the technical evaluator’s and contracting officer’s statements, our Office generally considers post-protest explanations, such as these, where the explanations provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 6. Here, the technical evaluator’s and contracting officer’s statements are consistent with, and provide a more detailed explanation of their evaluation in the contemporaneous record. Accordingly, while the contemporaneous record here may be limited, based on our review of the record and the agency’s explanation, as discussed previously, we find nothing unreasonable regarding the agency’s evaluation.

Next, McLaurin argues that the Army failed to evaluate whether Tekton's other proposed personnel met the minimum qualifications required under the PWS, and asserts that two of these personnel, in fact, failed to satisfy the PWS's minimum qualifications.³ Specifically, McLaurin asserts that the resumes of these proposed personnel failed to demonstrate how the proposed individuals were "qualified in the installation and repair of refrigeration, food service equipment, and food service support equipment." PWS § 1.3.2.5.3. For the reasons discussed below, we conclude that the agency's evaluation was reasonable.⁴

³ McLaurin also argues that the record reflects that the Army improperly evaluated "whether the 'labor categories' listed in the Technical Summary section of Tekton's proposal [were] compliant with the PWS," rather than whether Tekton's personnel met the qualification requirements in the PWS. Comments (Dec. 8, 2015), at 15. Based upon our review of the record, however, we find no merit to the protester's argument. Although the evaluation record includes discussion of the labor categories proposed by Tekton, it also specifically states that "Tekton's Revised proposal . . . , Section 1, Organizational Structure, includes an organizational chart with a detailed explanation of its organizational structure, number of personnel, license and certifications, position title, and years of applicable education and work experience." AR, Tab 6, Technical Evaluation, at 2. It also states that Tekton's "Organizational Structure demonstrates that TEKTON has all the necessary personnel qualifications, processes and plans in effect to ensure contract performance in accordance with the requirements of the PWS." *Id.* at 2-3. The organizational structure section of Tekton's revised proposal also included the resumes for Tekton's proposed personnel. Accordingly, we believe the record reflects that the agency evaluated the qualifications of Tekton's proposed personnel as required by the PWS. As such, we find no basis to sustain the protest.

⁴ McLaurin also points to a staffing chart in the awardee's proposal, and argues that the agency should have interpreted a label to this chart which stated--"Proposed Refrigeration Service Personnel"--as an indication that the awardee's proposed technical approach "consists of limiting its proposed personnel . . . to performance of [r]efrigeration [s]ervice," and therefore that, the awardee was under the fundamental misconception that the procurement is solely for refrigeration work. Comments (Dec. 8, 2015), at 4, 7. In response, the agency notes that, despite the chart's label, the actual positions proposed by the awardee in the chart covered all of the work required by the PWS, not solely refrigeration work. AR (Dec. 2, 2015), at 3. For example, the awardee proposed [DELETED] project manager, [DELETED] assistant project manager, [DELETED] plumber and steam technicians, [DELETED] electrician and electrician apprentices, [DELETED] general labor technicians, and [DELETED] administrative assistant. AR, Tab 5, Tekton Technical Proposal, at 3. Accordingly, the agency contends that the technical evaluators reasonably determined that Tekton's proposed staffing was "adequate to support the requirements of the PWS." AR, Tab 6.1, TEB Report, at 2. Based on our review of the record, we find nothing unreasonable regarding the agency's

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With regard to the first individual, McLaurin asserts that the resume failed to demonstrate whether the proposed individual had repaired kitchen equipment. As relevant here, the resume for the individual stated, in relevant part, the following:

Installed pipe assemblies, fittings, valves, and appliances such as dishwashers, water heaters, and refrigerator boxes.

Installed fixtures such as sinks, faucets, water filters, well pumps, well tanks and pressure switches.

Repair and replace steam to hot water exchanges for major building heating systems.

AR, Tab 5, Tekton Technical Proposal, at 5; AR (Dec. 2, 2015), at 5.

The Army contends that the above-quoted language from the resume reflected the individual's experience with kitchen equipment, which the agency found "met the qualifications and minimum requirements for job standards," and was "adequate to support the requirements of the PWS." AR, Tab 6 Technical Evaluation, at 2. We note that the PWS did not require individuals to demonstrate a minimum number of years experience repairing kitchen equipment; rather, the PWS required offerors to propose personnel qualified to perform the work. See PWS § 1.3.2.5.3 ("Contractor personnel performing the repair and installation must be qualified in the installation and repair of refrigeration, food service equipment, and food service support."). While McLaurin disagrees with the Army's evaluation in this regard, we find reasonable the agency's assessment that the resume met the PWS requirement to be qualified in installation and repair. On this record, we find no basis to conclude that the agency's evaluation was unreasonable.

As for the second of Tekton's proposed personnel challenged by McLaurin, the protester contends that, because this individual's resume reflects experience only with electrical wiring, fire alarms, and security systems, it fails to meet the PWS requirement that this individual be qualified "in the installation and repair of refrigeration, food service equipment, and food service support equipment." PWS § 1.3.2.5.3. In response, the agency contends that this PWS requirement applied only to contractor personnel proposed to perform "repair and installation," PWS § 1.3.2.5.3, and that the PWS also included other requirements, such as a requirement to provide "minor plumbing and electrical support to ensure proper

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evaluation. To the extent McLaurin argues that its interpretation of the awardee's proposal is reasonable, we note that a protester's disagreement with an agency's evaluation, without more, does not render the evaluation unreasonable or otherwise provide a basis to sustain the protest. See Ben-Mar Enters., Inc., supra.

operation and service.” PWS at 1. In this regard, the agency contends that Tekton properly proposed this individual--with experience as an electrician’s apprentice, and knowledge in fire alarm wiring and industrial electrical wiring--to provide the plumbing and electrical support required by the PWS, rather than for repair and installation.

We conclude that the Army’s evaluation was reasonable. As an initial matter, we agree with the agency that the PWS did not require that all personnel had to be qualified “in the installation and repair of refrigeration, food service equipment, and food service support equipment.” Rather, it stated: “Contractor personnel performing the repair and installation must be qualified in the installation and repair of refrigeration, food service equipment, and food service support equipment.” PWS § 1.3.2.5.3. There is no indication from Tekton’s proposal that this individual was proposed to perform repair and installation. In addition, the record reflects that, in evaluating Tekton’s revised proposal, the agency considered whether Tekton’s proposed personnel would provide all of the skills necessary to support the requirements of the PWS, which included, as relevant here, the skills of an electrician. See AR, Tab 6, Technical Evaluation, at 2. On this record, we find no basis to sustain the protest.

Evaluation of Tekton’s North Carolina Refrigeration License

Finally, McLaurin argues that Tekton did not have a North Carolina refrigeration license at the time of proposal submission, and therefore, that the agency should have rejected its quotation as unacceptable. As discussed below, we find no merit to the protester’s argument.

As relevant here, the PWS stated that “[t]he contractor shall have [a North Carolina Refrigeration Contractor’s License] . . . on record with the [contracting officer] and [contracting officer representative] prior to performance start and as changes occur.” PWS § 1.3.2.5. A provision of the type included here that requires the contractor to obtain all necessary licenses, permits, or certifications needed to perform the work establish performance requirements that must be satisfied by the successful offeror during contract performance; as such, offerors are not required to satisfy the requirements prior to award, and they do not come into play in the award decision, except as a general responsibility matter. See United Segurança, Ltda., B 294388, Oct. 21, 2004, 2004 CPD ¶ 207 at 4. Our Bid Protest Regulations generally do not provide for our review of a contracting officer’s affirmative determination of an offeror’s responsibility, absent the applicability of exceptions not alleged here. Bid Protest Regulations, 4 C.F.R. § 21.5(c).

Here, the PWS did not require offerors to submit evidence of licenses. Rather, they were required to have them “on record . . . prior to performance start” PWS § 1.3.2.5. We think the plain language of this provision clearly articulated that the

agency would not be evaluating the contractor's license at the time of quotation submission.

McLaurin nonetheless argues that this PWS provision, when read in conjunction with the RFQ's organizational structure evaluation factor, required the contractor to submit its North Carolina Refrigeration Contractor's License with its quotation. In support of this interpretation, the protester notes that the organizational structure evaluation factor required evaluation of whether the contractor's personnel were qualified in accordance with the PWS requirements, which the protester asserts, "necessarily means that the offeror must possess the North Carolina Refrigeration Contractor's License at the time offers are submitted" because "contractor personnel may not be considered qualified if the contractor lacks the [license]." Comments (Nov. 19, 2015), at 20.

The Army disagrees with McLaurin's interpretation that the PWS, in conjunction with the RFQ, required that the contractor have and submit the license at the time of quotation submission. Rather, the agency contends that the plain language of the PWS required only that the contractor provide its license prior to the start of performance.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

We conclude that the agency's interpretation of the RFQ, when read as a whole, is reasonable, and the protester's interpretation is not reasonable. With regard to the protester's assertion that the contractor must have its license at the time of quotation submission, we note that the PWS included separate license and certification requirements for the personnel. For example, the PWS required that certain personnel proposed for the contract possess a North Carolina electrician certification, or a North Carolina refrigeration license. See PWS § 1.3.2.5. The resumes for Tekton's proposed personnel included information regarding their certifications and licenses, see AR, Tab 5, Tekton Technical Proposal, at 2-8, and the record reflects that the agency evaluated this information. Accordingly, we find no merit to the protester's argument in this regard. On this record, we conclude that the Army's interpretation of the RFQ requirement was reasonable.

The protest is denied.

Susan A. Poling
General Counsel