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Decision

Matter of: Professional Service Industries, Inc.

File: B-412721.2; B-412721.3; B-412721.4

Date: July 21, 2016

Adam K. Lasky, Esq., Shaun C. Kennedy, Esq., and Sean P. Dowell, Esq., Oles Morrison Rinker & Baker, LLP, for the protester.

Paul F. Khoury, Esq., and Cara L. Lasley, Esq., Wiley Rein LLP, for Genex Systems, LLC, the intervenor.

Adam Sleeter, Esq., and Anastasiya Sidorova, Esq., Department of Transportation, for the agency.

Katherine I. Riback, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the awardee's program manager, a key personnel position, is sustained where the record demonstrates that the proposed individual did not meet the minimum qualifications of the program manager position.
 2. Protest challenging the agency's technical and past performance evaluation of the protester's proposal is denied where record shows that the evaluations were reasonable and consistent with the stated evaluation criteria.
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DECISION

Professional Service Industries, Inc. (PSI), of Herndon, Virginia, the incumbent contractor, protests the award of a contract by the Department of Transportation, Federal Highway Administration (FHWA), to Genex Systems, LLC, of Hampton, Virginia, under request for proposals (RFP) No. DTFH61-15-R-00023 for new structures laboratory support services. PSI argues that the agency unreasonably evaluated Genex's proposal by finding that its proposed program manager met the solicitation requirements. PSI also argues that the agency did not reasonably evaluate its proposal in multiple areas.

We sustain the protest.

BACKGROUND

The FHWA maintains and operates several structural research laboratories in McLean, Virginia, the purpose of which is to support FHWA's strategic focus on "improving mobility through analytical and experimental studies to determine the behavior of bridge systems under typical and extreme loading conditions." RFP at 11. The data from these studies is used to upgrade national bridge design specifications and improve the safety, reliability, and cost effectiveness of bridge construction in the United States. Id. The structural research laboratories also provide bridge failure forensic investigation services to the National Transportation Safety Board and other organizations. Id.

The solicitation here sought on-site and off-site engineering, technical, logistical, and administrative services to support research activities in the structures research laboratories. The RFP, issued on June 11, 2015, contemplated the award of an indefinite-delivery/indefinite-quantity (IDIQ) contract utilizing fixed-price, or time-and-material/labor-hour task orders or a combination of the two for pricing arrangements.¹ Id. at 70. The RFP provided for award on a best-value basis, based on the factors of technical, past performance and cost/price. Id. at 73. The solicitation provided that the technical factor was more important than past performance, and the two non-price factors combined were approximately equal to price. Id. Elements to be considered under the technical factor were relevant education and experience of staff in conducting the proposed research, technical approach to the work described in the solicitation, and management approach. Id.

The solicitation provided instructions for the preparation of proposals, which stated that "[c]larity and completeness are of the utmost importance in the proposal" and that "[w]ith the exceptions of the responsibility determination and past performance evaluations, only material contained within the proposal will be considered in the source selection evaluation and selection process." Id. at 64. The RFP warned that "[a] proposal receiving an '[u]nsatisfactory' or '[f]ail' rating in one or more factors may be removed from further consideration for award or continued evaluation." Id. at 73.

The RFP specified that the contractor was to provide staff with "the expertise necessary to maintain and operate the laboratories in an efficient, cost-effective, and innovative manner." Id. at 13-14. The RFP listed nine laboratory staff labor categories and included duties and qualifications for each labor category. Id. at 3-10. Of relevance to this protest is the first labor category of program manager. This individual is responsible for oversight of all work under the contract, including

¹ The maximum value of the IDIQ contract is \$18,000,000 and the guaranteed minimum over the five-year period of performance is \$50,000. Id. at 3.

determining staffing needs, providing and supervising personnel, and determining man-hour and, what the agency terms, “hard cost requirements” of all task orders. Id. at 3. The program manager is also responsible for the preparation of all reports, papers, and presentations produced under this contract. Id. Ultimately, the program manager is to be responsible “for all contractor personnel issues including ensuring appropriate staffing levels and effort, performance appraisals, time and attendance, disciplinary actions, and quality of work.” Id. at 4.

Regarding qualifications for the program manager, the RFP stated the following:

Qualifications

The [program manager] shall have, at a minimum, a Master’s degree in Civil/Structural. In addition to the program management, the program manager shall demonstrate knowledge in at least one of the following: 1) Concrete Structures; 2) Concrete Materials; 3) Steel Structures; or 4) Bridge Engineering. The [program manager] shall have demonstrated experience managing structural testing facilities and directing a diverse team of researchers and technicians.

Id. (emphasis added).

The RFP concluded the section identifying the duties and qualifications for the various labor categories with the following instructions:

NOTE: The Contractor shall provide staff with the stated minimum qualifications, [or] else provide the necessary training.

Id. at 10 (emphasis in the original).

Two offerors, PSI and Genex, submitted proposals in response to the RFP. The agency evaluated both proposals, held discussions, and received final proposal revisions (FPRs). Subsequent to the evaluation of the final proposal revisions, the agency made an award to Genex on February 1, 2016. Agency Report (AR) at 6. Both offerors were rated the same technically, Genex had a better past performance rating, and was somewhat less expensive, and was, therefore, judged to be the best value.

PSI filed a protest of that award with our Office, alleging in part that the agency unreasonably determined that Genex’s proposal was technically acceptable when its proposed program manager failed to meet the minimum experience requirements of the RFP, and that the agency unreasonably evaluated PSI’s past performance. PSI Protest (B-412721.1) at 1. In response to PSI’s protest, the agency decided to take corrective action, including reevaluation of the qualifications of both offerors’ proposed program managers and reevaluation of the offerors’ past

performance. AR at 6. As a result, our Office dismissed PSI's protest as academic. PSI, B-412721, Mar. 8, 2016 (unpublished decision).

After the technical evaluators performed their reevaluation and forwarded their findings to the source selection authority (SSA), the SSA again selected Genex for award. In reaffirming his selection of Genex, the SSA noted that in its FPR, "Genex provided a revised and innovative management approach that effectively addressed the weakness related to the limited experience of the Program Manager." AR, Tab 18, Source Selection Decision (Mar. 30, 2016), at 20. After receiving notification of the selection decision, PSI again protested to our Office.

DISCUSSION

Evaluation of Genex's Proposal

PSI argues that the agency unreasonably evaluated Genex's proposal by finding that its proposed program manager met the solicitation requirements. Specifically, PSI argues that Genex's proposed program manager did not meet the requirement for demonstrated experience managing a testing facility and directing a diverse team. PSI Protest (B-412721.2) at 7.

As discussed below, based on our review of the record here, we find that the program manager proposed by Genex failed to meet the solicitation's requirement for management experience. We further find that while Genex proposed to provide additional oversight by another individual, this additional oversight does not meet the solicitation requirements. Accordingly, we sustain PSI's protest on this basis.

The evaluation of an offeror's proposal is a matter within the agency's discretion. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest of an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5.

The resume provided by Genex for the program manager position indicated that its candidate had the following project management experience:

As a lead engineer at [the structures research laboratories], duties involved coordinating efforts of peer engineers and train and supervise technicians in performing testing and other project-related duties.

Developed project plans for engineering research, developed cost estimates, project schedules and oversaw the procurement of materials and equipment required to conduct research projects.

AR, Tab 7, Genex Proposal, Vol. 1, at Appendix A-2.

The original technical evaluation team (TET) report noted the following weakness regarding the past performance of Genex's proposed program manager:

Provided documentation on proposed [program manager's] qualifications do not demonstrate past experience in handling 'personnel issues including ensuring appropriate staffing levels and effort, performance appraisals, time and attendance, disciplinary actions, and quality of work' as required on page 4 of the RFP.

AR, Tab 9, Initial TET Report, at 6. The report stated that award to Genex raised a risk because the "[l]imited experience of [the] proposed [program manager] within responsibilities of defined position creates risk of poor delivery until experience is gained." Id. at 7. The matter was raised with Genex in discussions. Id. at 7; Tab 10, Agency Discussion Email to Genex (Oct. 6, 2015), at 1.

In its FPR Genex stated that its proposed program manager "already provides informal oversight of the current . . . Structures Laboratory contract, where he is well regarded as a mentor and leader for the incumbent team of researchers and technicians." AR, Tab 8, Genex FPR, at 1. In an effort "[t]o mitigate the potential performance risk related to [its candidate's] lack of formal experience performing as the [program manager] for a program of this size," Genex proposed an organizational approach that "undergirds" its proposed program manager with "strong corporate reinforcement," where [DELETED] would "provide corporate oversight of the program and mobilize corporate support and resources as necessary to ensure successful program performance." Id. Genex's FPR noted that [DELETED] had over 20 years of engineering, business, and program management experience in government contracting and that his "commitment to the program extends through his corporate Business Office," where human resource and administrative support are available to the proposed program manager. Id. Genex assured the agency that it would "not let this program or our [program manager] fail," and concluded its technical proposal addendum as follows:

If we determine that the day-to-day technical responsibilities for [the proposed program manager] are too demanding, or that he is not able to successfully apply our management approach, we will work closely with the government to restructure our organization without impacting performance to ensure the program's continued success.

Id. at 2.

The TET Report Addendum concluded that Genex's FPR identified corporate personnel and corporate resources available to the program manager "to streamline the execution of his tasks and cover back office (i.e., contractual support, human resource support) functions that can be acceptably handled off-site." AR Tab 12, TET Report Addendum, at 3. The report noted that the program manager is "the responsible party," but that "an Offeror can create a support system around the program manager so as to cover portions of the required duties and ensure successful delivery of the contracted services." Id. The TET assigned Genex's proposal an overall technical rating of "satisfactory," and assigned a weakness based on the program manager's qualifications.²

As previously noted, the agency took corrective action in response to PSI's initial protest by, among other things, reevaluating the qualifications of Genex's proposed program manager. The reevaluation resulted in both a majority and a minority addendum to the technical evaluation report. AR, Tab 16, TET Majority Report on Reevaluation; Tab 17, TET Minority Report on Reevaluation. The majority report noted that Genex's proposed program manager had 8 years of experience "conducting experimental structural engineering research, [DELETED]." AR, Tab 16, TET Majority Report on Reevaluation, at 3. The majority report authors noted that they had personally observed Genex's proposed program manager leading a diverse team in the subject laboratory, where he currently leads two research programs. Id. While the majority report acknowledged and assessed a risk for the proposed program manager's lack of experience, the report stated that the risk was "mitigate[d] . . . to an acceptable level" by the capabilities and demeanor of Genex's proposed [program manager], and Genex's affirmation of "an empowered, corporate-backed local Program Manager." Id.

In contrast, the minority report, written by the contracting officer's representative, who was also the Chair of the TET, noted that the experience of Genex's proposed program manager was limited to performing research work on one or two specific projects under the task order, and that this individual "did not demonstrate either the necessary knowledge or [program manager] experience to manage the work

² The source selection plan (SSP) defines a rating of satisfactory as:

Proposal meets all solicitation requirements and demonstrates an adequate understanding of the requirements but does not offer advantages to the Government over the minimum solicitation requirements. Proposal may contain weaknesses as long as none are significant. Represents a low risk of unsuccessful contract performance.

AR, Tab 3, SSP, at 3. In addition, the SSP defines a "weakness" as "[a] flaw in the proposal that increases the risk of unsuccessful contract performance." Id. at 2.

outlined in the RFP.” AR, Tab 17, TET Minority Report on Reevaluation, at 2. In this regard, the RFP stated that the proposed program manager was “responsible for oversight of all work under [the] contract,” such as procurement of all necessary materials and equipment, performance appraisals, time and attendance, disciplinary actions, and quality of work of contractor staff. RFP at 3. With respect to Genex’s proposed plan to mitigate the potential risk associated with the proposed program manager’s lack of experience by having [DELETED] provide oversight, the minority report noted that the resume of [DELETED] was not included in the proposal. Id. The TET Chair also noted that Genex’s statement in its FPR that Genex would restructure its organization in the event the proposed program manager did not adequately perform, was not responsive to the RFP’s requirements that Genex demonstrate that its proposed program manager, not other personnel, would perform the required duties. Id. at 2.

The source selection decision acknowledged the majority and minority reports, and noted that a majority of the TET members agreed that Genex’s proposed program manager met the minimum solicitation requirements for the position. AR, Tab 18, Source Selection Decision for the Reevaluation, at 11. The SSA further noted that “[w]hile the minority report describe[d] the proposed Genex Program Manager as nonresponsive, it also point[ed] out Genex’s strategy for providing oversight and resources for this Program Manager to compensate for a lack of experience.” Id. at 12. According to the SSA, this was an approach provided for in the solicitation, which advised that the contractor “shall provide staff with the stated minimum qualifications, [or] else provide the necessary training.” Id.

Based on our review of the record here, we cannot conclude that the agency’s evaluation was reasonable. Rather, we find reasonable the conclusion in the minority report, not adopted by the agency, that the duties that Genex’s proposed program manager performed while running specific projects did not equate to the wide-ranging management responsibilities associated with being the program manager for a structural testing facility. The record shows that PSI employed the proposed program manager on the incumbent contract, and identified him as a project engineer, who, according to PSI, worked exclusively as a research specialist on the incumbent contract, which PSI contends, is not a management job. PSI Protest (B-412721.2) at 7. The TET chair pointed out in the minority report that it was the program manager on the current contract, and the supervisor of Genex’s proposed program manager, that had the responsibility to procure material and equipment to conduct the research projects lead by the Structures Research Program, including those worked on by the proposed program manager. AR, Tab 17, Minority Report on Reevaluation, at 3. Even if we were to conclude that Genex’s proposed program manager did assume a leadership role in his prior position, we see no basis in the record to conclude that this experience equates to “directing a diverse team of researchers and technicians,” as required by the RFP. RFP at 4.

The SSA neither acknowledges nor addresses in his selection decision that the resume of [DELETED] was not part of Genex's proposal. Moreover, the described "corporate oversight" does not address whether Genex's proposed program manager will be trained to eventually assume all of the program manager duties; rather, it appears to provide for certain tasks to be performed by other personnel at Genex. As a result, we do not think that the SSA reasonably concluded that Genex's approach was consistent with the requirements of the solicitation, or the solicitation's exception to the minimum qualification requirements where the agency provided necessary training.

In conclusion, we do not think the agency could reasonably have concluded that Genex's proposed program manager met the solicitation requirement for experience managing structural testing facilities. Accordingly, we sustain the protest on this basis.

Evaluation of PSI's Proposal

The protester also argues that the agency misevaluated its proposal in numerous areas. While we do not address all of the protester's arguments in detail, we have reviewed all of PSI's challenges to the evaluation of its own protest and find no basis to sustain the protest on these issues. We address some of PSI's principal arguments below.

Technical Approach

First, PSI argues that the agency unreasonably assigned its proposal a weakness under the technical approach factor for a lack of on-site program oversight. PSI Protest (B-412721.3) at 5. The protester argues that it is unreasonable to assign a weakness to its proposal for failing to provide for on-site program oversight where the solicitation does not include such a requirement. Id.

The agency responds that PSI was not assigned a weakness for failing to meet a solicitation requirement, but rather, was assigned a weakness for the increased risk resulting from its off-site management approach proposed for its program manager. The agency argues that evaluation of the protester's proposed management plan necessarily required evaluation of its management structure. While the solicitation did not explicitly provide for review of the offeror's management structure, we view that aspect of PSI's proposal as intrinsically related to, and encompassed by, the management plan, which was specifically mentioned in the RFP. See Marine Animal Prods. Int'l., Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 16. Thus, we find that the agency reasonably considered PSI's management structure.

PSI also argues that the agency misevaluated its management plan by failing to consider its proposed use of a Coordinator of On-Site Personnel, who would provide on-site program oversight.

The agency specifically acknowledged that PSI proposed a Coordinator of On-Site Personnel, but concluded that the lack of clearly-defined duties for the Coordinator created a risk that the program manager would lack insight into day-to-day operations. AR, Tab 12, TET Report Addendum, at 4. In our view, PSI's failure to adequately explain the role of its Coordinator of On-Site Personnel within its management structure reasonably led the agency to determine that there was still a risk inherent in PSI's management approach.

Next, PSI argues that the agency unreasonably assigned its proposal a weakness for including dated information despite the fact that it fixed the two examples of outdated information pointed out by the agency during discussions. PSI Protest (B-412721.3) at 6. In response, the agency noted that although PSI fixed the two errors that it had pointed out to PSI, "[n]o other errors were identified or corrected." AR, Tab 12, TET Report Addendum, at 4. Because the proposal continued to include outdated and incorrect information, the agency assigned a weakness. We find no reason to question the agency's evaluation in this regard.

PSI further argues that the agency unreasonably assigned its proposal a weakness for lacking an innovative approach. PSI Protest (B-412721.3) at 6. While the agency recognized that PSI identified "some potential innovative practices that could be implemented," it also noted that PSI's underlying technical approach was the approach used on PSI's incumbent contract, and, thus, was not innovative. AR, Tab 12, TET Report Addendum, at 5. The agency assigned the proposal a risk for its technical approach because the proposal relied on "incumbency and status quo expectations." AR, Tab 9, TET Report, at 10. Although PSI argues that the agency's conclusion was unreasonable, PSI's contention amounts to no more than disagreement with the agency; such disagreement, without more, is inadequate to show that the agency's evaluation was unreasonable. Herman Constr. Group, Inc., B-408018.2, B-408018.3, May 31, 2013, 2013 CPD ¶ 139 at 3.

Past Performance

PSI also takes issue with the evaluation of its proposal under the past performance factor.³ PSI contends that the format of the past performance questionnaires (PPQs) prevented it from receiving fair and consistent ratings among respondents. The protester also disagrees with the agency's overall rating of its past performance. For the reasons explained below, we find no reason to question the agency's evaluation in this regard.

³ PSI withdrew certain arguments relating to the agency evaluation of its past performance. PSI Protest (B-412721.4) at 2.

The evaluation of a firm's past performance, by its very nature, is subjective, and we will not substitute our judgment for a reasonably based evaluation rating, and an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. Short & Assocs., B-406799, B-406799.4, Aug. 31, 2012, 2012 CPD ¶ 251 at 4.

With respect to past performance, PSI argues that the agency's PPQs were flawed and unreliable because they did not include definitions for the 5-point rating system.⁴ PSI Protest (B-412721.4) at 20.

PSI's argument suggests that the individuals completing the PPQs had no way of knowing how to rate the contractor's performance. This is incorrect. The PPQs provided a numerical scale, with a "5" being the highest rating, and "1" being the lowest rating. Supp. AR at 2; Tab 25, Blank PPQ Form. The PPQ form also allowed the references to provide additional information in the comment lines. Id. In the event that references were confused in any way, they were specifically instructed to contact the Contract Specialist. AR, Tab 14, PPQs and Emails Past Performance Reference for PSI.⁵ In our view, the PPQ form provided sufficient guidance to the respondents so that the completed PPQs provided consistent ratings between different respondents and were a reliable source of past performance information for the agency.

PSI next argues that given the scores on its PPQs and contractor performance assessment report, it was unreasonable for the agency to assign its proposal a past performance rating of merely satisfactory.

PSI received "4" and "3" ratings on a "5" tier scale for the PPQs, and "satisfactory" and "very good" ratings on the contractor performance assessment report report. The Source Selection Decision explained that "[w]ith the preponderance of Very Good, or '4' ratings on the 5-tier questionnaire rating scale, and the comments received for past performance reviewed on contracts found to be relevant . . . PSI was rated Satisfactory overall for Past Performance." AR, Tab 18, Source Selection Decision (Mar. 30, 2016), at 17. The protester has failed to show that the SSA's judgment in this regard was unreasonable or contrary to the terms of the solicitation.

⁴ The protester noted that the solicitation did not include the PPQ form, nor were the offerors responsible for obtaining the PPQs from their references. PSI Protest (B-412721.4) at 19.

⁵ The agency notes that no reference contacted it concerning the layout of the PPQ form. Supp. AR, Tab 24, Decl. of Contract Specialist at 1.

CONCLUSION AND RECOMMENDATION

While, based on our review of the record, we find no basis to question the reasonableness of the agency's evaluation of PSI's proposal under the technical approach and past performance evaluation factors, we sustain the protester's challenge to the agency's conclusion that Genex's proposed program manager met the terms of the solicitation requirements.

We recommend that the agency reevaluate proposals in accordance with the evaluation criteria set forth in the RFP. In the event that the agency concludes that the solicitation, as written, does not accurately reflect its needs, we recommend that the agency amend the solicitation, solicit revised proposals, and evaluate them. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling
General Counsel