



Decision

Matter of: Piton Science and Technology

File: B-414634

Date: July 28, 2017

William S. Murphy, Piton Science and Technology, for the protester.
Devon E. Hewitt, Esq., ProTorae Law PLLC, for Beshenich Muir & Associates, LLC, an intervenor.

Major Christopher M. Coy, Scott N. Flesch, Esq., and Major Stephen P. Smith, Department of the Army, for the agency.

Lois Hanshaw, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to engage in meaningful discussions with the protester is denied where record shows that the agency adequately led the protester into the areas requiring revision.

DECISION

Piton Science and Technology (Piton), of Oakton, Virginia, protests the contract awards to ten awardees pursuant to request for proposals (RFP) No. W911S0-16-R-0002 issued by the Department of the Army, Army Materiel Command, for support services for the U.S. Army Combined Arms Center (USCAC) at Fort Leavenworth, Kansas.

We deny the protest in part, and dismiss it in part.

BACKGROUND

On September 30, 2016, the agency issued the RFP on an unrestricted basis seeking contractors to provide non-personal services to help the USCAC develop and produce education strategies and training for the U.S. Army. RFP at 1, 2. The RFP stated that the government would award approximately nine fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts on a lowest-priced, technically-acceptable (LPTA)

basis considering price and non-price factors.¹ Id. at 2, 75. The RFP also reserved approximately six awards for small business concerns. Id. at 75. Additionally, the RFP stated that the agency intended to evaluate proposals without discussions, but reserved the right to conduct discussions if determined to be necessary by the contracting officer. Id.

For the price factor, offerors were required to complete a pricing worksheet that provided their fully-burdened hourly rate, inclusive of profit, for each labor category listed in the pricing worksheet. Id. at 73. As relevant here, the RFP stated that an offeror's total evaluated price would be evaluated in accordance with Federal Acquisition Regulation (FAR) § 15.404-1(b) to determine whether prices were reasonable, complete, and accurate. Id. at 77-78.

In response to the solicitation, the agency received proposals from 26 offerors, including Piton. Agency Report (AR), Tab 8, Abstract of Offerors, at 1. After evaluating proposals, the agency established a competitive range and engaged in discussions with certain offerors, including Piton, whose technical proposal was evaluated as acceptable.² AR, Tab 11, Competitive Range Determination, at 7-8. The Army provided a discussion question to Piton that stated, “[y]our total price appears to be high. . . . Recommend looking at your proposed pricing.” AR, Tab 13, Agency Discussions with Piton, at 3. The discussion question also identified a labor category that appeared to be significantly high. Id. In response, Piton lowered its price. AR, Tab 28, Price Negotiation Memorandum, at 54.

After receiving and evaluating final proposal revisions (FPR), the Army made award to the ten LPTA offerors whose prices were determined to be fair and reasonable. AR, Tab 27, Source Selection Decision Document (SSDD), at 11. Five of the awardees were small businesses, and the other five were large businesses.³ Id. at 10.

On April 19, the agency notified Piton of award and simultaneously provided a debriefing. This protest timely followed.

¹ The non-price factors required an offeror to provide a staffing, recruitment, and retention plan; management approach; specialized experience; and past performance. RFP at 75.

² Piton was not represented by counsel who could obtain access to non-public information (such as an unredacted version of the competitive range determination) pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

³ Although Piton's proposal offered the sixth lowest-priced proposal from a small business, it was not the next lowest-priced unrestricted proposal. AR, Tab 26, Fair and Reasonable Price Determination, at 2.

DISCUSSION

Piton raises various challenges to the agency's conduct of discussions and its evaluation of price. While our decision here does not specifically discuss each and every argument, and/or variation of the arguments, we have considered all of the protester's assertions and find none furnishes a basis for sustaining the protest.

We first address Piton's contentions that discussions were misleading, and not meaningful. In this regard, the protester essentially argues that it was unreasonable for the agency to fail to disclose during discussions that it considered Piton's price to be not fair and reasonable, and improper for the agency to ultimately conclude that Piton's price was not fair and reasonable after Piton reduced its price in response to the agency's discussion question. Protest at 8; Comments at 5.

When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); WinStar Fed. Servs., B-284617 et al., May 17, 2000, 2000 CPD ¶ 92 at 10. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area where the proposal could be improved. FAR § 15.306(d)(3); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12.

We find no merit to the protester's arguments. The record shows that the agency clearly led Piton to the area of its proposal needing revision by indicating that Piton's total price, as well as its price for a particular labor category, were high. AR, Tab 13, Agency Discussions with Piton, at 3. As such, the agency fulfilled its obligation to conduct meaningful discussions. Additionally, contrary to the protester's assertions, the record also shows that the agency only concluded that Piton's price was not fair and reasonable after evaluating FPRs.⁴ AR, Tab 13, Agency Discussions with Piton, at 1; Tab 27, SSDD, at 10. Although Piton asserts that it should have received an award because it lowered its pricing in response to the discussion question, the record shows that other proposals from technically-acceptable offerors received awards because they offered lower prices. In light of the record here, the protester has not shown that the agency's conduct of discussions was unreasonable.⁵

⁴ In this regard, the agency's source selection decision stated that Piton's proposed price was "34% higher than the mean of the ten lowest priced acceptable offers . . . [and] 19% higher than the tenth lowest priced offeror." AR, Tab 27, SSDD, at 9.

⁵ The protester's challenge to the agency's conduct of discussions also raised various challenges that fail to state a valid basis of protest. For example, the protester contends that during discussions, the agency conducted "improper tradeoffs," which were designed to allow unacceptable offerors to "rehabilitate" deficiencies in their proposals. Protest at 5; Comments at 5. The protester's contentions fail to recognize one of the
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The protester's remaining challenges to the agency's evaluation of price are either untimely or lack a valid basis for protest. For example, the protester asserts that the agency's price evaluation was unreasonable because the final solicitation failed to include labor categories that were included in the draft solicitation. Protest at 10. In support of this argument, the protester references the draft solicitation, issued on August 17, rather than the final solicitation, which was issued on September 30.

We view this as an untimely challenge to the terms of the solicitation. Our Bid Protest Regulations specifically require that a protest based on alleged improprieties in a solicitation that are apparent prior to the time set for submission of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1). If the protester objected to the labor categories included in the final solicitation--or more precisely, believed that the solicitation improperly omitted certain labor categories included in the draft solicitation--it was required to raise this challenge prior to the time set for receipt of proposals. Its failure to do so until after award renders this protest untimely. Accordingly, we dismiss this ground.

Additionally, to the extent Piton contends that the Army did not conduct a required price realism analysis, and alleges that various flaws in the evaluation resulted from the agency's failure to conduct a price realism evaluation, see e.g., Comments at 5, we find that this argument fails to state a valid basis of protest. 4 C.F.R. § 21.5(f). Here, the RFP called for proposed prices to be analyzed only for reasonableness, completeness, and accuracy. RFP at 77-78. Because the RFP did not require the analysis that Piton claims the agency failed to perform, we have no basis to review the argument, and therefore dismiss this ground of protest.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel

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basic principles behind discussions--i.e., discussions, when conducted, must identify proposal deficiencies and significant weaknesses that reasonably could be addressed in order to materially enhance the offeror's potential for receiving award. FAR 15.306(d)(3); Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15. Accordingly, we find nothing objectionable about the agency identifying deficiencies in proposals and inviting offerors to submit revised proposals.