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Decision

Matter of: All Native, Inc.
File: B-411693; B-411693.2; B-411693.3
Date: October 5, 2015

Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.
Richard B. Oliver, Esq., J. Matthew Carter, Esq., and Meghan D. Doherty, Esq, Pillsbury Winthrop Shaw Pittman LLP, for Alutiiq Technical Services, LLC, the intervenor.
Amy N. Hanson, Esq., and Charles D. Buskey, Esq., Department of the Navy, Naval Air Systems Command, for the agency.
Brent Burris, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of protester's proposal is denied where the record shows that the evaluation was reasonable and consistent with the solicitation.

DECISION

All Native, Inc. (ANI), of Winnebago, Nebraska, protests the award of a contract to Alutiiq Technical Services, LLC (ATS), of Anchorage, Alaska, under request for proposals (RFP) No. N00421-14-R-0004, issued by the Department of the Navy, Naval Air Systems Command, for technical data management services and products. The protester argues that the agency improperly evaluated its proposal as well as that of the awardee.

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

BACKGROUND

The RFP, issued on May 15, 2014 as a set-aside for small disadvantaged businesses under the Small Business Administration's 8(a) program, contemplated the award of a single indefinite-delivery/indefinite-quantity contract with a 4-year ordering period. Contracting Officer's (CO's) Statement at 1. The RFP provided that task orders would be issued on a fixed-price or cost-plus-fixed-fee basis and

sought contractor support for technical data products related to naval aviation weapons systems. RFP at 6.

The RFP established that award would be made on a best-value basis considering the evaluation factors of technical, past performance, and cost/price. RFP at 91. The technical factor was comprised of the following subfactors, listed in descending order of importance: (1) understanding the work; (2) workforce; and (3) management plan.¹ Id. The RFP provided that the technical factor was more important than past performance and that when combined, the non-cost/price factors were significantly more important than cost/price. Id.

As relevant here, the solicitation advised offerors that the successful contractor would be responsible for employing personnel who met the minimum education and experience levels specified for each labor category identified in the RFP's statement of work (SOW). Id. at 17. The RFP further advised that the agency would evaluate the qualifications of an offeror's proposed personnel to determine how well the offeror was suited to perform the tasks required in the SOW. Id. at 92. In order to facilitate the evaluation of the workforce subfactor, the RFP directed offerors to submit resumes for their proposed key personnel demonstrating the employees' experience and specialized qualifications. Id. at 76.

On June 26, 2014, the Navy received timely proposals from three offerors, including those from ANI and ATS. CO's Statement at 2. Following the Navy's initial evaluation of proposals, the agency conducted discussions with all three offerors. Id. As pertinent here, the Navy informed ANI during discussions that five of its proposed senior logistics managers did not meet the RFP's minimum experience requirements. Agency Report (AR), Tab 14, ANI Discussion Questions, at 1-2. The Navy also informed the protester that the agency considered the proposed personnel's lack of experience to represent a deficiency in ANI's proposal.² Id. at 1.

Following discussions, the agency received final proposal revisions (FPRs) from the three offerors on April 3, 2015. CO's Statement at 2. To address the deficiency cited by the agency during discussions, ANI proposed five new senior logistics managers in its FPR. AR, Tab 7, Consensus Evaluation Report, at 9-11. In reviewing the qualifications of the newly proposed senior logistics managers, the Navy concluded that one of the individuals did not meet the RFP's experience

¹ Under the technical factor, the RFP provided that proposals would be rated as blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable and would also be assigned a technical risk rating of low, moderate, or high. Id. at 96-97.

² The RFP defined a deficiency, in relevant part, as "a material failure of a proposal to meet a Government requirement." RFP at 97.

requirements. Id. at 11. In this regard, the SOW required senior logistics managers to have at least 4 years of Department of Defense (DoD) “acquisition logistics support experience to include specific experience in acquisition planning and management.” RFP at 26. In reviewing the resume of the individual at issue, the agency found that the proposed employee had only 3 years of DoD acquisition logistics experience. As a result, the agency assigned the protester’s proposal a deficiency under the workforce subfactor. AR, Tab 7, Consensus Evaluation Report, at 11.

Based on the agency’s assessment of this deficiency, the Navy rated ANI’s proposal as unacceptable under the workforce subfactor and technically unacceptable overall. Id. at 3. Because the agency rated ANI’s technical proposal unacceptable, the source selection authority did not consider the protester’s proposal when making the best-value tradeoff decision. AR, Tab 17, Source Selection Decision, at 3.

The Navy provided ANI with a debriefing on June 23, 2015, and ANI timely filed the instant protest with this Office on June 25.

DISCUSSION

ANI contends that the Navy erred in assigning its proposal a deficiency with respect to the protester’s proposed senior logistics manager. The protester also alleges that the agency’s evaluation of ANI’s and ATS’s cost/price proposals was flawed. For the reasons discussed below, we deny ANI’s challenge to the Navy’s technical evaluation and dismiss the protester’s arguments regarding the agency’s cost/price evaluation.³

It is well-established that in reviewing challenges to the agency’s evaluation of proposals, we do not reevaluate proposals, but rather, review the agency’s evaluation to ensure that it was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. Philips Med. Sys. N. Am. Co., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. An offeror’s disagreement with the agency’s evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

³ In its initial protest, ANI also contended that the Navy improperly evaluated the protester’s proposal under the understanding the work technical subfactor and failed to conduct meaningful discussions regarding this same subfactor. Protest at 15-18. The agency responded to these arguments in its report, and the protester did not take issue with, or otherwise seek to rebut, the agency’s response in its comments. Comments at 5, n.5; Agency Memorandum of Law at 12-20. Under such circumstances, we view these arguments as abandoned. Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

Here, ANI asserts that the resume for its proposed senior logistics manager disclosed at least 10 years of acquisition logistics experience. Comments at 8. The record reflects, however, that aside from the 3 years of experience credited by the agency, the resume at issue does not clearly demonstrate that ANI's proposed employee performed any other acquisition-related logistics work, let alone the specific functions of acquisition planning and management required by the terms of the solicitation. AR, Tab 21, ANI FPR, at 52. For example, while ANI argues that the resume demonstrated acquisition logistics experience where it provided that the employee "[s]tagged and processed 1,800 equipment assets on a monthly basis with proper documentation for ongoing audits," the agency found that these tasks represented operational logistics that did not relate to the acquisition process. Comments at 8 (citing AR, Tab 21, ANI FPR, at 52); AR, Tab 23, Declaration of Technical Evaluation Team (TET) Chairperson, at 2-3.

Likewise, the protester argues that the resume demonstrated acquisition logistics experience where it provided that the proposed senior logistics manager had "[p]lanned, coordinated and tracked [an] annual budget, [and] attained \$1.5 [million] in unfunded items." Comments at 8 (citing AR, Tab 21, ANI FPR, at 52). The agency, however, found that this statement failed to establish whether the budget-related work performed by the employee was in support of acquisition functions. AR, Tab 23, Declaration of TET Chairperson, at 2. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror that does not affirmatively demonstrate the merits of its proposal risks its rejection. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Based on our review of the record, we have no basis to question the agency's conclusion that ANI's proposal failed to adequately demonstrate that its senior logistics manager had the acquisition logistics experience required by the solicitation.⁴

With respect to ANI's remaining arguments concerning the Navy's cost/price evaluation, we find that the protester is not an interested party to raise these bases of protest. Under our Bid Protest Regulations, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it could not be considered for an award

⁴ ANI also raises several other arguments challenging the Navy's assessment of a deficiency under the workforce subfactor, the primary thrust being that the agency's evaluation was inconsistent with the terms of the RFP. Although we do not discuss them all, we have considered the protester's arguments related to the agency's technical evaluation, and find that they provide no basis to sustain the protest.

if its protest were sustained. See JSF Sys., LLC, B-410217, Oct. 30, 2014, 2014 CPD ¶ 328 at 4.

Since we find that the agency reasonably determined that ANI's proposal was technically unacceptable, it follows that the protester was properly found ineligible for award. As such, the protester is not an interested party to challenge the agency's evaluation regarding its own or the awardee's cost/price proposal. Accordingly, these bases for protest are dismissed. See JSF Sys., LLC, supra (dismissing protester's arguments challenging evaluation of awardee's proposal after finding that agency reasonably concluded protester's proposal was unacceptable).

Finally, we also dismiss the arguments raised in ANI's second supplemental protest, as the protester failed to timely file comments in support of this protest. In this regard, via e-mail dated August 10, 2015, the GAO attorney handling this protest directed the agency to file a report responding to ANI's second supplemental protest by close of business (COB) August 17, and directed the protester and intervenor to file their comments by COB August 24. The protester, however, did not file its comments until August 25. As a general matter, our rules provide for dismissal of a protest where the protester fails to file comments within the timeframes established by our Office. See 4 C.F.R. §§ 21.3(i), 21.10(e); Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 11 n.11 (noting dismissal of supplemental protest where comments were not filed by deadline established by GAO attorney).

In response to the agency's request to dismiss the second supplemental protest, counsel for ANI represented that he was unaware of the due date for the submission of comments because GAO's August 10 e-mail establishing the deadline went to his "spam" e-mail folder rather than his e-mail inbox.⁵ The record reflects that GAO's August 10 e-mail was sent to the e-mail address that was provided by protester's counsel in the initial protest and used by counsel throughout the course of the protest. Protester's counsel represented that no prior e-mails from GAO had been routed to his spam folder.

Where a party provides this Office with an e-mail address for the purpose of receiving communications during the course of a protest, it is the responsibility of that party to ensure its e-mail system is properly configured to receive all e-mails sent by GAO or another party to that address. Since the e-mail from GAO setting the deadline for comments was sent to and received at the correct e-mail address

⁵ It is generally understood that a spam folder, also called a "junk" folder or junk mailbox, is a location in which unwanted e-mails are stored automatically by a computer system.

for protester's counsel, counsel's failure to timely file comments is not excused by the fact that the message was routed to a spam folder.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel