



Decision

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Matter of: FreeAlliance.com, LLC

File: B-414531

Date: June 19, 2017

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Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal as technically unacceptable is denied where record shows the agency's evaluation was reasonable and in accordance with the terms of the solicitation, as well as applicable statutes and regulations.

DECISION

FreeAlliance.com, LLC, of Washington, D.C., protests the rejection of its proposal by the Department of the Army under request for proposals (RFP) No. W912CN-16-R-0026, issued to acquire information technology (IT) and visual information (VI) services. The protester argues that the agency miscalculated its proposal and improperly found it ineligible for award.

We deny the protest.

BACKGROUND

The RFP, issued on December 30, 2016, as a competitive 8(a) set-aside, contemplated the award of a fixed-price contract for a 6-month base period, with one 6-month option period and two 1-year option periods, for IT and VI services at the Tripler Army Medical Center (TAMC) in Oahu, Hawaii. RFP at 1, 123. Award was to be made to the lowest-priced, technically acceptable proposal. RFP at 137.

Proposals were to be evaluated under three factors: technical capability, past performance, and price. RFP at 138. The technical capability factor was further divided into three subfactors: (1) understanding and compliance with requirements; (2) certification; and (3) management and staffing plan. Relevant here, under subfactor 1, understanding and compliance with requirements, proposals were required to “address each work area in sufficient detail to demonstrate a clear understanding” of the Performance Work Statement (PWS). RFP at 138 (emphasis added). The RFP also noted that, in evaluating proposals, the agency would assess whether the proposal described “a sound technical approach” as to “how the offeror will fulfill each requirement in the PWS.” Id. (emphasis added).

As relevant here, PWS § 3.4.2 required offerors to provide a lead audiovisual (AV)/VI technician who would supervise AV/VI technicians. PWS § 3.4.2, at 28-29. The section listed six work areas for the lead technician to complete or supervise: (1) maintain a directory of link and alternate site videoteleconference (VTC) rooms; (2) provide VTC scheduling, coordination, troubleshooting, and presentation, as well as install equipment when required; (3) perform equipment surveys for all TAMC VTC equipment and update the TAMC VTC directory (4) ensure equipment in all TAMC VTC rooms are in operational order; (5) ensure the provision of VTC services outside of core hours; and (6) create and maintain standard operating procedures documentation. Id.

Also relevant here, PWS § 3.5.1 sought administrative support in processing IT equipment for disposal. The section listed five work areas: (1) provide technical and administrative support for processing government-determined excess IT equipment, including its tracking and disposal; (2) input data for tracking tools; (3) prepare documentation for excess equipment disposition; (4) provide monthly reports of IT equipment store in the warehouse; and (5) assist with the TAMC end user device program. PWS § 3.5.1, at 31-32.

Under the non-price factors and subfactors, proposals were to be rated acceptable, unacceptable, or neutral. RFP at 138. A rating of “unacceptable” under any factor, or subfactor, would render the proposal ineligible for award. Id. The RFP defined “unacceptable” as the “[p]roposal does not meet the minimum requirements of the solicitation. The Government has no reasonable expectation that the offeror will be able to successfully perform the required effort.” Id. at 139.

The agency received several proposals in response to the solicitation. Contracting Officer’s Statement (COS) at 2. The agency found FreeAlliance’s proposal technically unacceptable under subfactor 1, based on its conclusion that the firm did not propose an adequate technical approach to PWS §§ 3.4.2 and 3.5.1. Agency Report (AR), Tab 5, Technical Evaluation Report, at 2-3. Accordingly, and consistent with the solicitation’s terms, FreeAlliance’s proposal was deemed ineligible for award. AR, Tab 2, COS at 2. Award was made to Kupono Government Services, LLC, of Honolulu, Hawaii, at a price of \$7,824,005.64, as the firm submitting the lowest-priced, technically acceptable proposal. AR, Tab 6, Source Selection Decision, at 3.

DISCUSSION

FreeAlliance challenges the agency's conclusion that it failed to provide an adequate technical approach under PWS §§ 3.4.2 and 3.5.1. Protest at 9-12. The protester also asserts that, even if its proposed approach was inadequate, the agency unreasonably concluded that its proposal was technically unacceptable and ineligible for award. Protest at 12-13. For the reasons discussed below, we find that the agency reasonably evaluated FreeAlliance's proposal in accordance with the solicitation.¹

The evaluation of proposals is a matter within the discretion of the procuring agency. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We also point out that it is an offeror's responsibility to submit an adequately written proposal that establishes the technical acceptability of its proposed approach, and allows for a meaningful review by the agency. Verizon Fed. Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4.

Again, PWS § 3.4.2 required offerors to provide a lead audio visual (AV)/VI technician who would supervise AV/VI technicians and ensure full coverage for photography, AV, and VI services, and specified six work areas, including the provision of VTC scheduling and the performance of equipment surveys. PWS § 3.4.2, at 28-29.

In responding to this section, FreeAlliance's proposal offered the following:

[FreeAlliance] employs and has a commitment from the current Lead AV/VI Technician, . . . who [DELETED] brings the direct knowledge, capability, and expertise to most effectively support the requirements in this area.

AR, Tab 4, FreeAlliance Proposal, Technical Capability Volume, § 1.5.2.

¹ FreeAlliance also initially argued that the Army evaluated offerors unequally. Protest at 13. The firm asserted that while the Army "required perfection by FreeAlliance," it held Kupono to a lower standard when evaluating its technical proposal because, it alleged, Kupono lacks experience in providing the services contemplated by the solicitation, did not meet the solicitation requirements, and lacks relevant past performance. Id. We granted the Army's request for partial dismissal on this ground for failure to state a legally and factually sufficient basis. Email from GAO to Parties, May 12, 2017, 2:41PM; see 4 C.F.R. § 21.1(c)(4). We also note that the protester raised other collateral arguments not discussed in this decision. We have reviewed all of the allegations and conclude that none provide a basis to sustain the protest.

The Army concluded that FreeAlliance's proposal lacked an approach and "sufficient detail to demonstrate a clear understanding of the PWS. [FreeAlliance] provided evidence of available resources only of the LEAD IV Tech. This appears to be a staffing approach vs an understanding of the requirement." AR, Tab 5, Technical Evaluation Report, at 2.

The protester acknowledges that its proposal for satisfying PWS § 3.4.2 "may have been a shorthand way to demonstrate understanding of the PWS." Protest at 9. It argues, however, that because it proposed the incumbent staffer to perform the same tasks as sought in the PWS, the proposal "clearly provides the reasonable expectation of successful performance." Protest at 10. FreeAlliance also points out that its proposal includes the resume of the incumbent staffer, which indicates that he has the skills necessary to satisfy the work requirements of PWS § 3.4.2. Id.

Based on this record, we find nothing unreasonable about the agency's evaluation of FreeAlliance's proposal under PWS § 3.4.2. FreeAlliance had the responsibility to submit an adequately written proposal that established the technical acceptability of its proposed approach. Verizon Fed. Inc., supra, at 4. Again, offerors were responsible for "address[ing] each work area in sufficient detail to demonstrate a clear understanding of the PWS." RFP at 138. Rather than articulate an approach that addressed the work areas in PWS § 3.4.2, FreeAlliance only proposed a particular individual to staff the requirement. Even if the individual had the requisite skills to complete the different work areas, FreeAlliance's proposal did not include a technical approach as to how it would address each of the work areas, as was expressly required by the solicitation. Accordingly, the agency reasonably found that FreeAlliance failed to propose an adequate technical approach to satisfy the requirements of PWS § 3.4.2.

In its comments on the agency report, FreeAlliance challenges the evaluation of its proposal under PWS § 3.4.2 on the basis that it interpreted the RFP to have "asked for a technician, not services." Comments at 5, n.5. FreeAlliance further argues that the agency's position that the RFP contemplated "services rather than staff is either a *post hoc* rationalization for departing from the terms of the Solicitation or an admission that the Solicitation was latently ambiguous to its needs." Id.

We find no merit to either allegation. The RFP expressly required offerors to propose "a sound technical approach" as to "how the offeror will fulfill each requirement in the PWS. RFP at 138 (emphasis added). As a result, in addition to providing a lead technician to staff the requirement, offerors needed to articulate how that technician would complete, or supervise the completion of, the work areas under PWS § 3.4.2. See PWS § 3.4.2, at 28-29. Moreover, the contemporaneous record demonstrates that the agency evaluated FreeAlliance's proposal consistent with this understanding of the RFP's requirements. See AR, Tab 5, Technical Evaluation Report, at 2-3.

FreeAlliance also challenges the evaluation of its technical approach under PWS

§ 3.5.1, which sought administrative support in processing IT equipment for disposal. The agency found that the firm failed to demonstrate an adequate technical approach to this requirement because it proposed services that existed in the predecessor contract that were not contemplated by the current PWS. AR, Tab 5, Technical Evaluation Report, at 3. The Army determined that the protester's proposal reflected a lack of understanding of the requirements of the administrative support required by PWS § 3.5.1. Id.

FreeAlliance alleges that the agency's rationale is unreasonable because the services it offered under PWS § 3.5.1 exceeded the agency's requirements and added value. Protest at 11-12. We find that FreeAlliance's argument amounts simply to disagreement with the evaluation and is insufficient to establish that the agency's evaluation was unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. In its response to PWS § 3.5.1, FreeAlliance's proposal neither distinguished nor denoted that some of the services it was offering were "in excess" of the solicitation's requirements. From the agency's perspective, FreeAlliance proposed a package of services, some of which were requirements of the predecessor contract, without a discernable appreciation for the services that were contemplated by the RFP at issue here. As a result, we find the agency reasonably determined that the inclusion of work responsive to the predecessor contract raised questions about FreeAlliance's understanding of the services contemplated in the PWS.²

Finally, FreeAlliance contends that, even if the agency reasonably found its proposal lacking under PWS §§ 3.4.2 and 3.5.1, it was unreasonable for the agency to find its proposal technically unacceptable based on the identification of two "minor" flaws. Protest at 12-13. Again, we find this to be only disagreement with the agency's judgment and this, alone, is insufficient to establish that the agency's evaluation was unreasonable. Ben-Mar Enters, supra, at 7. While FreeAlliance may deem these inadequacies to be "minor," such disagreement provides no basis to question the agency's conclusion that the proposal's failure to satisfy the requirements of PWS

² The Army notes that FreeAlliance failed to describe how it would satisfy PWS § 3.5.1's requirement to track and process excess IT equipment. AR, Tab 2, COS at 4. Although this rationale does not appear in the contemporaneous record, and accordingly we afford it less weight, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, it is consistent with the RFP and contemporaneous record and provides an additional basis for the Army's conclusion under PWS § 3.5.1.

§§ 3.4.2 and 3.5.1 rendered it unacceptable, and ineligible for award. Accordingly, we find the agency's award decision was reasonable and consistent with the terms of the solicitation.

The protest is denied.

Susan A. Poling
General Counsel