



Decision

Matter of: Stone Hill Park, LLC

File: B-414555.4

Date: July 18, 2017

Randy Stone, Stone Hill Park, LLC, for the protester.
M. Warren Butler, Esq., and Scott D. Stevens, Esq., Starnes Davis Florie LLP, for Timberline Homes of Louisiana, LLC, the intervenor.
Nathaniel Greeson, Esq., and Erin Greten, Esq., Department of Homeland Security, for the agency.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly evaluated the protester's proposal as unacceptable is denied where the record shows that the agency's evaluation was reasonable and in accordance with the solicitation requirements.

DECISION

Stone Hill Park, LLC, a small business located in Greenwell Springs, Louisiana, protests the award of contracts to Timberline Homes of Louisiana, LLC (Timberline LLC), a small business located in Lafayette, Louisiana, and Andries and Associates, LLC, a small business located in Carencro, Louisiana, by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), pursuant to request for proposals (RFP) No. HSFE06-17-R-0003 for the maintenance and deactivation of manufactured housing units (MHUs). The protester alleges that the agency failed to reasonably evaluate Stone Hill's proposal, improperly amended the solicitation after the closing date for submission of proposals, and failed to conduct a proper best-value tradeoff decision. The protester also alleges that Timberline LLC was not eligible for award because it does not meet the solicitation's Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) set-aside requirement. See 42 U.S.C. §§ 5121-5207.

We deny the protest.

BACKGROUND

FEMA is authorized to provide disaster assistance to individuals and households for emergencies, major disasters, and incidents of national significance under the Stafford Act. RFP at 18. On August 11, 2016, a major disaster was declared due to storms and floods in Louisiana. The declaration designated individual assistance for the following disaster-affected parishes: East Baton Rouge, Livingston, St. Helena, Tangipahoa, Arcadia, Ascension, East Feliciana, Iberia, Lafayette, Point Coupee, St. Landry, Vermilion, Avoyelles, Evangeline, Iberville, Jefferson Davis, St. Martin, St. Tammany, Washington, West Feliciana, St. James, West Baton Rouge, Assumption, Cameron, St. Charles, and John the Baptist.¹ Id. at 18, 41; Agency Report (AR), Tab M, Source Selection Decision (SSD) at 1. Due to the lack of housing resources as a result of the floods, FEMA implemented direct housing assistance in response to a request from the State of Louisiana for all affected parishes. AR, Tab M, SSD, at 1. FEMA issued a task order to Chicago Bridge & Iron (CB&I) Federal Services under the agency's pre-positioned contracts to provide for the haul/install and maintenance/deactivation for approximately 4,000 MHUs to temporarily house families affected by the flood. Id.

The agency issued the current solicitation for the maintenance and deactivation portion of the task order to transition to contracts for local businesses residing or primarily doing business in the disaster-affected areas in accordance with the Stafford Act. Id. FEMA issued a combined synopsis/solicitation on November 29, 2016, as a commercial item solicitation under the procedures in Federal Acquisition Regulation (FAR) parts 12 and 15, seeking proposals to provide the MHU maintenance and deactivation services. RFP at 19. The RFP was issued as both a Stafford Act set-aside for firms in the disaster-affected parishes, and a set-aside for small businesses. Id. at 9, 11. The solicitation contemplated the award of two fixed-price contracts, and provided that the awards would be made on a best-value basis based on the agency's evaluation of the following four factors: technical approach (phase-in and quality control plan), past performance, company experience, and price. Id. at 18-19. The RFP provided that the non-price factors were of equal importance and when combined were more important than price. Id. at 19. The RFP provided for a 6-month base period with three 6-month option periods. Id. at 3-6.

FEMA received multiple proposals in response to the solicitation, including a proposal from Stone Hill. AR, Tab M, at 3. The source selection evaluation board evaluated the proposals and rated Stone Hill's proposal as follows:

¹ The initial solicitation included 20 of these parishes. RFP amendment No. 1 added the parishes of St. James and West Baton Rouge to the solicitation. RFP amend. No. 1 at 41. A modification/amendment notice was also issued on the fedbizopps website on December 6, 2016, adding the following parishes: Assumption, Cameron, St. Charles, and John the Baptist. See www.fbo.gov (last visited July 17, 2017).

	Technical Approach	Past Performance	Company Experience	Price
Stone Hill	Good	Neutral	Unacceptable	\$26,976,000

Id. With respect to Stone Hill’s company experience, the evaluators assessed a deficiency because the proposal provided “no evidence of hauling, installing, or deactivation of mobile homes.” AR, Tab K, Technical Evaluation Consensus Report, at 30. A weakness was also assigned because Stone Hill’s proposal “did not demonstrate experience with a mission of th[e] scope and complexity” of the current maintenance and deactivation work. Id. The evaluators concluded that Stone Hill’s proposal was ineligible for award because it received an unacceptable rating. Id. at 29; see RFP at 19 (“[a] rating of ‘[u]nacceptable’ in any of the [] technical factors or sub-factors will render the entire proposal technically unacceptable and, therefore, not eligible for award”).

The source selection authority reviewed the results and recommendations of the source selection evaluation board and conducted an integrated assessment and comparison of the strengths, weaknesses, deficiencies, and risk of the proposals. AR, Tab M, SSD, at 1. Based on this analysis, the source selection authority concluded that the proposals of Timberline, LLC and Andries and Associates, LLC represented the best value to the agency. Id. at 6. Stone Hill was provided notice of the awards and received a debriefing. AR, Tab J, Debriefing, at 1-3. On April 14, Stone Hill filed its protest with our Office.

DISCUSSION

Stone Hill challenges the agency’s evaluation of its proposal and the agency’s best-value award decision. The protester also alleges that the agency improperly amended the solicitation after the closing time for receipt of proposals. Stone Hill further contends that Timberline LLC was not eligible for award because it does not meet the Stafford Act set-aside requirement. Based on our review of the record, we find no basis to sustain the protest.²

² Prior to receipt of the agency report, we dismissed the protester’s challenge that the agency improperly amended the solicitation after the closing time for receipt of proposals. We concluded that the protester’s challenge was untimely as Stone Hill did not file its protest within 10 days of receiving the agency’s notification of the amendment, which it acknowledged. In this regard, our decisions state that where, as here, the agency does not provide an opportunity to submit revised proposals after the alleged solicitation defect becomes known, an offeror is obligated to protest the issue, which concerns the fundamental ground rules of the procurement, within 10 days after knowing of the basis for protest. 4 C.F.R. § 21.2(a)(2); Del-Jen Educ. & Training Group/Fluor Federal Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 6-7.

(continued...)

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. ADNET Sys., Inc., B-413033, B-413033.2, Aug. 3, 2016, 2016 CPD ¶ 211 at 7. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. A protester's disagreement with reasonable evaluation judgments does not provide a basis to sustain its protest. Technology Mgmt. Co., Inc., B-409976, Sept. 26, 2014, 2014 CPD ¶ 294 at 4.

With respect to company experience, the RFP required offerors to describe their experience on similar and/or relevant projects and endeavors. RFP at 20. The solicitation listed specific information for the firms to provide for each reference (contract number, type of contract, size of contract, description of work, etc.), and stated that the information may include the experience of predecessor companies, major subcontractors, or proposed key personnel. Id. at 21. The RFP provided that the agency would evaluate each offeror's experience in providing services of a similar nature to the work to be performed under the requirements (scope, complexity, contract type, and period of performance in relation to the requirements of the solicitation), and would consider the experience of the offeror and of proposed subcontractors and/or partners intended to occupy a major role. Id.

Stone Hill's proposal provided the personal experience of its owners, which detailed experience in maintenance and construction management, as well as land acquisitions and relocation projects. AR, Tab H, Stone Hill Proposal, at 15-17. The proposal also provided the experience of the firm's assistant/project manager with keeping records on rent rolls, tenant retention and evictions, and billing among other items; the experience of the firm's proposed compliance officer/safety coordinator with public relations, labor relations, contract negotiations, and claims statements; and the experience of a proposed plumber with water and wastewater management. Id. at 18-20. As relevant here, Stone Hill's proposal also provided a "Louisiana Manufactured Housing Commission Manufactured Housing Installer License" for an individual proposed to perform a portion of the deactivation, hauling and installing, relocation, and maintenance call center work. Id. at 21.

Stone Hill asserts that the agency's assignment of a deficiency and unacceptable rating under the company experience factor is unreasonable because the agency overlooked that Stone Hill provided a local haul and install company with extensive experience in its proposal. The agency asserts that its evaluation was reasonably based on the contents of Stone Hill's proposal. We agree.

(...continued)

Here, Stone Hill's protest was filed on April 14, which was well after 10 days from the February 17 notice. We dismiss this aspect of the protest.

The evaluators assessed a deficiency to Stone Hill's company experience because the firm's proposal provided no evidence of hauling, installing, or deactivation of mobile homes. AR, Tab K, Technical Evaluation Consensus Report, at 30. The record demonstrates that the only information provided by Stone Hill regarding hauling, installing, or deactivation of mobile homes was an installer license. This license did not provide any explanation with respect to the experience this individual had in providing services of a similar nature to the work to be performed (hauling, installing and deactivation of mobile homes) as required by the solicitation. Thus, we find that the agency's assignment of a deficiency was reasonable as there was no basis for the agency to conclude, as the protester alleges, that Stone Hill's proposal provided experience with the hauling, installing, or deactivation of mobile homes. ACC Constr.-McKnight JV, LLC, B-411073, Apr. 30, 2015, 2015 CPD ¶ 147 at 5 (it is an offeror's responsibility to submit an adequately written proposal and a firm runs the risk of having its proposal rejected as unacceptable if it fails to do so). We also conclude that the assessment of the deficiency provided a permissible basis for determining that Stone Hill's proposal was unacceptable, and thus ineligible for award. See RFP at 22 ("An unacceptable rating indicates that the submission contains one or more deficiencies."). See also Id. at 19 ("A rating of '[u]nacceptable' in any of the [] technical factors or sub-factors will render the entire proposal technically unacceptable and, therefore, not eligible for award.").

Stone Hill also generally alleges that the agency's best-value decision was flawed because its proposal provided a better value than the awardees' proposals. With regard to the award to Timberline LLC specifically, Stone Hill also contends that Timberline LLC was not eligible for award because it does not meet the solicitation's Stafford Act set-aside requirement. We need not reach the merits of these allegations because, as explained below, Stone Hill is not an interested party to challenge the agency's best-value decision or award to Timberline LLC.

Our Bid Protest Regulations define an interested party as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Pursuant to the RFP, if a proposal received an unacceptable rating in any factor or subfactor, the proposal was ineligible for award. RFP at 19. Since we find no basis to question the agency's evaluation of Stone Hill's proposal as unacceptable under the company experience factor, as discussed above, Stone Hill is not an interested party to challenge the agency's best-value award decision. Moreover, since the record demonstrates that there are intervening offerors that would be in line for award if Timberline LLC was eliminated from the competition, Stone Hill is not an interested party to challenge the agency's determination of Timberline LLC's Stafford Act set-aside eligibility. As a result, we do not address the remainder of Stone Hill's allegations.

The protest is denied.

Susan A. Poling
General Counsel