



Decision

Matter of: Effective Shareholder Solutions, Inc.

File: B-401796.3

Date: October 26, 2010

Richard D'Ottavio for the protester.

Robert R. Goff, Jr., Esq., Defense Information Systems Agency, for the agency.

Paula A. Williams, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated proposals is denied where there is no basis in the record on which to question the reasonableness of the agency's evaluation.

DECISION

Effective Shareholder Solutions, Inc. (ESS), of Export, Pennsylvania, protests the evaluation of proposals and award of a contract to Sterling Heritage Corporation, of Great Falls, Virginia, by the Defense Information Systems Agency, Defense Information Technology Contracting Organization (DITCO), under request for proposals (RFP) No. HC1028-09-R-2011.

We deny the protest.

BACKGROUND

The agency initially issued this solicitation in June 2009, seeking proposals to provide support services for the government's charge card programs managed by the Department of Defense (DoD) Unique Identification and Purchase Card Joint Program Management Office.

The RFP anticipated award of a single 5-year indefinite-delivery/indefinite-quantity fixed-price contract with a minimum ordering value of \$100,000. Award would be made to the offeror whose proposal represented the best value to the government, considering: (1) technical/management approach; (2) past performance; and (3) cost/price. The solicitation stated that when combined, all non-price factors were significantly more important than cost/price. RFP at 64, 66.

Proposals were submitted by several offerors, including ESS and Sterling. After the initial evaluation, discussions, and evaluation of final proposal revisions (FPR), the agency determined that Sterling's proposal represented the best value to the government based on its superior technical approach, demonstrated relevant and recent past performance, and low risk at a reasonable price. Award was made to Sterling on April 2, 2010. Agency Report (AR) exh. 9, Price Negotiation Memorandum (PNM), at 8-10.

The agency provided ESS a detailed written debriefing, including its specific strengths and weaknesses and overall evaluation ratings. ESS then filed its initial protest with our Office on April 13. Before responding to the protest, the agency announced that it was taking corrective action. Specifically, the agency stated that it had reviewed the issues raised in ESS' protest and decided to: (1) amend the solicitation to revise the evaluation criteria; (2) request revised proposals; (3) conduct discussions; (4) request and evaluate FPRs; and (4) make a new source selection decision. AR exh. 4, Notice of Corrective Action Letter (Apr. 27, 2010). Since that corrective action rendered ESS' protest of the initial evaluation and award decision academic, we dismissed the protest. Effective Shareholder Solutions, Inc., B-401796.2, Apr. 28, 2010.

The corrective action was implemented when DITCO issued RFP amendment No. 5, on April 29. This amendment revised the evaluation criteria and requested submission of revised proposals by May 6. The agency received and evaluated revised proposals, conducted discussions, and requested, received, and evaluated FPRs.

As is relevant here, the agency evaluated the FPRs as follows:¹

¹ The relevant color codes utilized in evaluating FPRs under the technical/management approach factor were defined as follows: blue--exceeds requirements, offeror is capable of exceptional performance; green--satisfactory, offeror is capable of meeting performance requirements; and red--highly inadequate, offeror cannot meet performance requirements. Under the past performance factor, the relevant color codes were blue--highly relevant/very recent past performance, and white--completely lacks relevant performance history. Risk was assessed as: (1) high--likely to cause significant disruption of schedule, increase in cost, or degradation of performance; (2) moderate--likely to cause moderate disruption of schedule, increase in cost, or degradation of performance; and (3) low--likely to cause minimal or no disruption of schedule, increase in cost, or degradation of performance. RFP amend. 5, at 5.

| Factors/Subfactors | | ESS | Sterling |
|-----------------------------|---|----------------|-----------------|
| Technical/Management | | | |
| | 1. Ability to create meaningful information support | Red/High | Blue/Low |
| | 2. Technical capability | Green/Moderate | Blue/Low |
| | 3. Technical capability for developing capabilities/tools | Red/High | Blue/Low |
| Past Performance | | | |
| | 1. Knowledge of DoD charge card programs | White/High | Blue/Low |
| | 2. Ability to retain personnel | Blue/Low | Blue/Low |
| | 3. Experience directly related to federal charge card program | White/High | Blue/Low |
| Price² | | \$280,065 | \$285,189.16 |

CO Statement at 9. On the basis of these evaluation results, the agency again made award to Sterling, finding that the firm's proposal offered the best value to the government.

DISCUSSION

ESS alleges that the agency improperly evaluated revised proposals. Agencies are required to identify the bases upon which offerors' proposals will be evaluated and to evaluate proposals in accordance with the stated evaluation criteria. Federal Acquisition Regulation §§ 15.304(d), 15.305(a); Sikorsky Aircraft Co.; Lockheed Martin Sys. Integration-Owego, B-299145 et al., Feb. 26, 2007, 2007 CPD ¶ 45 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead 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. Keeton Corrections, Inc., B-293348, Mar. 4, 2004, 2005 CPD ¶ 44 at 6.

ESS argues that despite its strong industry experience operating a charge card program, its revised proposal was improperly downgraded under the technical/management approach factor and the past performance factor because of its lack of experience with DoD's charge card systems and/or financial programs. Protest at 1-4; Comments at 1-3. We disagree.

RFP amendment No. 5 plainly laid out the bases upon which revised proposals would be evaluated. For instance, the technical/management approach factor

² Prices were evaluated based on the first task order, which was issued concurrently with contract award. Contracting Officer's (CO) Statement at 2.

required offerors to demonstrate that they could perform the contract requirements, as follows:

- Offerors must demonstrate the ability to examine business requirements, assess needs, collect and analyze data to create meaningful information to support Department of Defense strategic planning and improve the Department of Defense's purchase card program operations.
- Offerors must demonstrate the technical capability to: (a) support Department of Defense program reporting . . . [and] (b) develop and update Department of Defense program related processes, policy and guidance internal controls . . .
- Offerors must demonstrate the technical capability to investigate existing and emerging technologies and practices for developing capabilities/tools that can be used for the management, maintenance and control of Department of Defense charge card or financial programs.

RFP amend. 5, at 2.

Similarly, under the past performance factor, the RFP called for offerors to demonstrate recent experience with DoD charge card programs. Id. at 3.

Given the clear language of the RFP, we think the agency properly took into account the protester's admitted lack of DoD-related experience in its evaluation of the protester's proposal. To the extent that the protester argues that the RFP should not have called for offerors to demonstrate DoD-specific experience, the protest is an untimely challenge to the terms of the RFP. ESS knew or should have known that the agency planned to evaluate proposals based on an offeror's experience with DoD charge card programs and/or operations, when ESS received the April 29 RFP amendment. Under our Bid Protest Regulations, to be timely any challenge to the evaluation scheme had to be filed before May 6, the time set for receipt of revised proposals by the RFP amendment. 4 C.F.R. § 21.2(a)(1) (2010). Moreover, the record indicates that when ESS received this amendment, it already knew certain facts about the initial evaluation of its proposal. In this regard, ESS knew that the agency considered its lack of any direct experience supporting DoD charge card operations to be a weakness under the technical/management approach factor and the past performance factor. Indeed, ESS raised this issue in its initial protest to our Office. Initial Protest at 1 (Apr. 12, 2010). Accordingly, the protester's post-award allegations concerning its evaluation under the non-price factors are untimely.

For the record, we recognize that, after the initial protest was dismissed on the basis of the agency's decision to revise the RFP and reevaluate proposals, the protester

submitted a letter to our Office in which it complained about the agency's proposed corrective action. The protester now contends that this submission, filed on May 4, constituted a timely protest to the terms of the amended RFP. We disagree.

The letter submitted by ESS was not identified as a protest; on the contrary, it was captioned, "Reply to the Notice of Agency Corrective Action and Request for Dismissal," indicating that it was a response to the agency's request for dismissal of the initial protest. While there is language in the submission that appears to relate to the amendment to the RFP (such as the references to "new guidelines,") the filing does not specifically refer to the amendment, indicate when the amendment was issued, or describe the provisions to which the protester is objecting. In the absence of some clearer indication by the protester that it intended its submission as a protest of the terms of amendment 5, we reasonably regarded it as a filing relating to the dismissal of the initial protest (as in fact the filing was described in its own caption). In addition, ESS was on notice that we had not docketed the May 4 filing as a protest and that the process triggered by the filing of a protest never occurred; for example, no letters acknowledging the protest were issued and no agency report was requested or received. Despite the absence of any indication that the filing was regarded as a protest, the protester took no steps to inquire about the status of its filing. Instead, the protester participated in the reopened competition and filed its protest of the RFP terms only after award was made to another offeror. Under these circumstances, we cannot conclude that the May 4 filing constituted a protest of the amended terms of the RFP.

The protester also contends that the color scheme for evaluating proposals was not "an objective rating system." Protest at 3. Since the amendment fully disclosed the color scheme and risk assessment ratings that would be used to evaluate proposals, the protester also was required to raise this issue prior to the time set for receipt of revised proposals. 4 C.F.R. § 21.2(a)(1).

The protester asserts that the agency exhibited bias in favor of Sterling. Specifically, the protester complains that amendment 5 allegedly was issued only to again select Sterling, a previous DoD vendor, regardless of whether Sterling "had knowledge or the experience base to do a card management program." Comments at 5.

ESS has failed to point to anything in the record in support of this allegation. The protester's reliance on information obtained from the awardee's website is insufficient to demonstrate bias on the part of the agency either in the issuance of the amendment or the evaluation of Sterling's relevant experience. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. Leader Commc'ns Inc., B-298734, B-298734.2, Dec. 7, 2006, 2006 CPD ¶ 192 at 9; McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 28.

Finally, ESS questions the blue/low risk rating assigned to Sterling's proposal under the ability to retain personnel subfactor of the past performance factor on the basis

that Sterling had no prior experience with its subcontractor, who could simply decide “to leave” the project. Comments at 4. This allegation is too speculative to state a sufficient legal or factual basis for protest. In any event, nothing in the RFP prohibited offerors from submitting, or the agency from evaluating, experience and past performance information concerning an offeror’s proposed subcontractor. We have reviewed the evaluation and source selection documents, as well as Sterling’s proposal, and conclude that this aspect of the evaluation was unobjectionable.³

In sum, we find the agency’s evaluation of revised proposals was reasonable and consistent with the RFP and we see no basis to question the selection of Sterling’s proposal for award.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

³ Since ESS was not represented by counsel, it was provided only a redacted copy of the agency’s report, which did not include Sterling’s proposal or the contemporaneous evaluation documents.