



Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: Rig Masters, Inc.

File: B-417374.5; B-417374.6

Date: January 23, 2020

David R. Johnson, Esq., and Tyler E. Robinson, Esq., Vinson & Elkins LLP, for the protester.

Wayne A. Keup, Esq., Wayne A. Keup, PLLC, for Re-Engineered Business Solutions, Inc., the intervenor.

Thomas J. Warren, Esq., David Dyer, Esq., and Steven H. Finch, Esq., Department of the Army, for the agency.

Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's staffing evaluation is denied where the agency reasonably determined that the awardee's proposed project manager met the solicitation's requirements and where the agency did not treat offerors unequally.
 2. Protest alleging that agency waived a solicitation personnel requirement is denied where the evaluation record demonstrates that the agency reasonably applied the requirement in question.
-

DECISION

Rig Masters, Inc., a small business located in Monterey, Louisiana, protests the award of a contract to Re-Engineered Business Solutions, Inc. (RBS), a small business located in Cocoa, Florida, under request for proposals (RFP) No. W912EE-18-R-0012, issued by the Department of the Army, Corps of Engineers (Corps) for contractor services at locks and dams in the state of Louisiana. The protester asserts that the agency unreasonably and unequally evaluated the awardee's proposed project manager, and improperly relaxed the applicable personnel requirement.

We deny the protest.

BACKGROUND

On November 9, 2018, the Corps issued the solicitation, which contemplated the award of a fixed-price contract for the provision of operations, maintenance, and repair services at lock and dam facilities in the state of Louisiana. The solicitation stated that award would be made on a lowest-priced, technically acceptable basis.

The RFP called for the evaluation of three factors: technical, past performance, and price. Agency Report (AR), Tab 1, RFP, at 92. The technical evaluation factor, in turn, consisted of two subfactors: capability and staffing. For the evaluation of staffing, the solicitation originally required resumes to be submitted for 32 individuals proposed for performance on the project. Contracting Officer's Statement (COS) at 1. This requirement was later amended to require resumes only for a qualified project manager and a qualified administrative staff person. RFP at 86.

For the past performance factor, the Corps was to evaluate each offeror's past performance on "contracts of a similar nature, size, scope, and complexity, utilizing a comparable number of personnel with like skills." Id. at 90. For the evaluation of price, the solicitation contemplated that the agency would evaluate each offeror's price proposal for completeness and price reasonableness. Id. at 91-92.

Both Rig Masters (the incumbent contractor) and RBS timely submitted proposals in response to the RFP. COS at 3. On February 14, 2019, the agency announced award of the contract to Rig Masters. Id.

RBS filed a protest of the award, which our Office docketed as B-417374.1. Based on allegations of impropriety on the part of the source selection evaluation board chairperson, the Corps notified GAO it would take corrective action in response to the protest. Id. at 4. Our Office subsequently dismissed Rig Master's protest as academic in light of the announced corrective action.

Following the dismissal, the agency convened a new source selection evaluation board and reevaluated proposals. Id. Based on the reevaluation, the Corps determined that RBS's proposal was the lowest-priced, technically acceptable offer. Id. On May 16, the Corps revoked the award to Rig Masters and awarded a contract for the requirement to RBS. Id.

Rig Masters filed a protest challenging the agency's award to RBS, which our Office docketed as B-417374.3. Rig Masters alleged that the agency had unreasonably evaluated RBS's past performance, improperly waived material RFP requirements, and failed to perform a required price realism analysis. Rig Masters also asserted that RBS's proposal contained material misrepresentations.

On June 25, the agency announced it would take corrective action in response to Rig Master's protest and in response to concerns regarding the restrictiveness of the

solicitation requirements. Id. at 6. On the basis of this corrective action, our Office dismissed the protest as academic.

As part of the corrective action, the Corps revised the solicitation to remove requirements deemed too restrictive. In doing so, the agency removed many of the solicitation's personnel requirements. As relevant here, however, the agency kept the requirement for offerors to submit a resume for a "[q]ualified [p]roject [m]anager." Id. at 7. The amended solicitation required that the proposed project manager have a minimum of five years of "related supervisory experience"; it also required that this individual be a certified lock and dam operator with at least five years of "[l]ock & [d]am operator and/or mechanical experience." RFP at 86. The solicitation required resumes to be included in offerors' proposals to "identify relevant job experience, qualifications, education, and certifications." Id.

Both RBS and Rig Masters timely submitted proposals in response to the amended solicitation. The Corps evaluated revised proposals and determined that RBS, which proposed a price of \$16,538,142, was the lowest-priced, technically acceptable offeror.

Rig Masters, whose proposed price was higher, at \$16,792,050, was evaluated as unacceptable under the staffing subfactor. In this respect, the agency concluded that the resume submitted for Rig Masters' proposed project manager did not demonstrate compliance with either the requirement for five years of related supervisory experience, or the requirement that the individual be a certified lock and dam operator with a minimum of five years of lock and dam operator and/or mechanical experience. COS at 14-15.

On October 4, the Corps awarded the contract to RBS. This protest followed.

DISCUSSION

Rig Masters argues that the Corps unreasonably and unequally evaluated RBS's proposed project manager as acceptable under the solicitation's personnel requirements, and that this finding was reached only through the improper relaxation or elimination of the applicable requirement. In this regard, the protester argues that RBS's proposed project manager lacks the level of supervisory experience required by the solicitation, but was nonetheless deemed acceptable by the agency. The protester argues that this was not only unreasonable, it was also inconsistent with the agency's evaluation treatment of Rig Masters' proposed project manager. The protester contends that it was improper for the agency to relax the stated requirements without providing offerors the opportunity to compete for the agency's actual requirements.

We have reviewed all of Rig Master's arguments and find no basis to sustain the protest. We discuss the chief arguments below.

Staffing Evaluation

The protester argues that the agency departed from the plain meaning of the solicitation's staffing requirements by concluding that RBS's proposed project manager was acceptable. As relevant here, the solicitation required that the proposed project manager have a minimum of five years of "related supervisory experience." RFP at 86. The protester asserts that RBS's proposed project manager, who formerly worked for Rig Masters on the incumbent contract, does not meet this standard because he "has never risen above the position of foreman of a single lock on the river," and because he "was only responsible for, at most, six employees and the operations of a single lock and dam." Protest at 10. In addition, the protester contends that the resume provided for this individual "does not demonstrate any supervisory experience at all." Rig Master Comments at 7 (emphasis omitted). While the protester concedes that the resume lists the proposed project manager's position as a foreman on the incumbent contract, the protester contends that the resume descriptions for this position do not actually indicate any meaningful supervisory experience. For example, the resume descriptions list "[o]perate navigation lock and dam gates, control valves, and other associated equipment," and "[m]aintain lock security and inspect lock machinery daily," neither of which, the protester argues, demonstrates supervisory experience. Id. at 7-8.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Where, as here, a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 10. We will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. Red River Computer Co., Inc.; MIS Scis. Corp., B-414183.8 et al., Dec. 22, 2017, 2018 CPD ¶ 7 at 9-10.

Here, we conclude that the agency reasonably determined that RBS's proposed project manager met the applicable experience standard. As an initial matter, we note that the proposed project manager's resume demonstrated that he served as a foreman, a position that the agency reasonably credited as a supervisory position under the incumbent effort.¹ Further, the contracting officer (who also served as the source selection authority) explained that the resume indicated that the former foreman was "responsible for safe operation of [the lock] including daily inspections, waterway communication, discretion in communicating relevant issues higher in the chain of

¹ The contracting officer also noted that RBS's staffing plan indicated that the foreman position is one involving the supervision of, on average, five people. COS at 12.

command, machinery testing, repair, coordination with the [Corps field office], training [lock and dam] trainees, and updating operational logs and policies as relevant.” COS at 12. The contracting officer found this experience met the RFP requirement for related supervisory experience and overlapped with similar duties expected of the project manager. Id.

While Rig Masters is correct that the resume did not specifically detail activities involving the supervision of other personnel, the resume did demonstrate responsibility over, and supervision of, lock and dam functions and activities, such as lock and dam equipment and facilities, lock security and inspection, and testing and maintenance. See id.; AR, Tab 6, RBS Proposal, at 40-41. Thus, the protester’s characterization of the resume as demonstrating no supervisory experience whatsoever is simply not accurate. And, although the protester contends that responsibility over these activities falls short of demonstrating a suitable level of “related supervisory experience,” we find no basis to question the agency’s judgment on this question, i.e., that the foreman experience was sufficiently relevant to the project manager position, because it was supervisory in nature and involved similar responsibilities. While the protester argues that the requirement should have been read more restrictively, we decline to adopt such an interpretation in the absence of evidence that the provision was intended to be read in that way. See Red River Computer Co., Inc.; MIS Scis. Corp., supra.

Unequal Treatment

The protester also argues that the Corps engaged in unequal treatment by applying a more rigid evaluation standard to Rig Masters’ proposed project manager than to RBS’s proposed project manager.² For this position, both Rig Masters and RBS proposed individuals who had not previously served as project managers. Rig Masters proposed its company president, while RBS proposed a former foreman, who was previously employed by Rig Masters on the incumbent contract. RBS’s candidate was found acceptable, whereas Rig Masters’ candidate was not, despite having “personally worked closely with the Corps on [the incumbent] contract for over a decade, and [despite being] the [p]resident and, literally, the head supervisor of Rig Masters--who has successfully performed under the incumbent contracts for the past 10 years.” Protest at 13. The protester contends that the agency went outside the four corners of the resume submitted for RBS’s candidate to “selectively use[] its personal knowledge to assume some supervisory experience,” but that it did not similarly go outside the four corners of the resume submitted for Rig Masters’ candidate to assess his experience. Rig Masters Comments at 17.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation’s requirements and evaluation criteria. LASEOD Grp., LLC, B-405888,

² The protester did not directly challenge its own unacceptable rating apart from challenging the agency’s purported unequal evaluation treatment of Rig Masters’ and RBS’s proposals.

Jan. 10, 2012, 2012 CPD ¶ 45 at 4. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. Abacus Tech. Corp.; SMS Data Prods. Grp., Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 11.

Here, we find the different treatment afforded to the protester's proposal to be reasonably explained by meaningful differences between the resumes submitted by the two offerors. As noted above, the agency reasonably determined that the resume submitted for RBS's proposed project manager met the applicable solicitation requirement by demonstrating related supervisory experience as a foreman on the incumbent effort. In addition, we note that the RBS resume included specific detail, and relevant dates, demonstrating compliance with not only the solicitation requirement for five years of "related supervisory experience," but also the requirement for a minimum of five years of lock and dam operator and/or mechanical experience. RFP at 86. In contrast, the resume submitted for Rig Masters' proposed project manager included no dates or job titles, and did not specifically detail how the individual's experience met the two requirements. See AR, Tab 7, Rig Master Proposal Excerpts, at 2-3. Indeed, while the resume stated that the Rig Masters president was a certified lock and dam operator, the certificate attached to the resume was dated August 2019, thus indicating that he only recently achieved that certification and therefore did not meet the RFP's requirement for 5 years of lock and dam operator and/or mechanical experience. See id. at 3-4. Accordingly, we find that the agency had a reasonable basis for the different conclusions reached in its evaluations of the two proposals.

Waiver of Requirement

As a final matter, the protester contends that statements made by the contracting officer in response to the protest indicate that the agency relaxed its requirements without notifying offerors. In support of this argument, the protester relies on a statement made by the contracting officer to explain the agency's decision to adopt a less-restrictive interpretation of the applicable requirement:

Finally, my determination that [the RBS] resume met the RFP's minimum bar for acceptability was also informed by my intent to increase competition through the implementation of the prior corrective action by attempting to level the playing field for all interested offerors here and removing the vast majority of the burdensome staffing resume requirements for this project. . . . Taking an overly restrictive view of the phrase "related supervisory experience" to mean "supervisory experience as a [p]roject [m]anager" would not be reasonable, especially given my market research on the number of individuals capable of performing this kind of work in this region of the country. In fact, in retrospect I should have eliminated this resume requirement along with the others that I removed, since the current [p]roject [m]anager on the incumbent project has a right of first refusal under the [collective bargaining agreement] and the RFP's [n]ondisplacement of [q]ualified workers clause. . . rendering

this a questionable discriminator amongst competing proposals in any event.

COS at 13.

The protester contends that this statement demonstrates that the agency effectively waived or relaxed the project manager qualification requirements out of a belief that these requirements did not matter since the incumbent project manager would be given a right of first refusal anyway. In response to this protest ground, the agency submitted a supplemental declaration from the contracting officer disputing this interpretation and denying that she waived or eliminated the relevant requirements. See Supp. COS at 4.

Based on our review of the evaluation record, we find no basis to conclude that the agency waived or relaxed the RFP requirement at issue. Indeed, as noted above, we find that the agency reasonably evaluated RBS's proposed project manager as meeting this requirement. While the above statement indicates that the contracting officer did not adopt a restrictive interpretation of the relevant requirement (based on a desire to encourage competition), this interpretation was, by no means, inconsistent with the language of the requirement or otherwise impermissible. And, although the contracting officer notes that she "should have eliminated this resume requirement," COS at 13, there is no indication within the evaluation record that she actually did so, and indeed the contracting officer herself states that she did not. See Supp. COS at 4.

The protest is denied.

Thomas H. Armstrong
General Counsel