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Decision

Matter of: Ahtna Facility Services, Inc.-Reconsideration

File: B-404913.3

Date: October 6, 2011

Robert K. Tompkins, Esq., Patton Boggs LLP, for the protester.

Department of the Army, for the agency.

Gary R. Allen, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision denying protest is denied where, contrary to protester's claims, the decision considered all of protester's arguments in resolving the protest, but only discussed the primary arguments, and where the decision did not contain errors of fact or law that warranted its reversal or modification.

DECISION

Ahtna Facility Services, Inc. requests reconsideration of our decision in Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134, in which we denied Ahtna's protest of its exclusion from the competitive range by the Department of the Army under request for proposals (RFP) No. W81K04-11-R-0005 for healthcare environmental services for the San Antonio Military Medical Center-North (SAMMC-N) and other medical facilities at or around Fort Sam Houston, Texas. Ahtna complains that we did not address the "unequal treatment of offerors" and "improper ranking of proposals" arguments raised in its supplemental protest, and various other arguments it made challenging the reasonableness of the agency's evaluation. Ahtna also argues that our decision made errors of law and fact concerning its ground of protest about addressing seven types of services, and misread the RFP requirements concerning performance metrics.

We deny the reconsideration request.

On December 8, 2010, the agency published the RFP, seeking proposals to provide healthcare environmental services for SAMMC-N and other nearby medical facilities. The RFP provided that the agency would use "the Lowest Price, Technically

Acceptable (LPTA) source selection technique,” with two evaluation factors: technical acceptability and price. RFP amend. 3 at 263, 270-71, 279-86. Under the technical acceptability factor, the RFP established two subfactors, management approach and technical approach, along with various subfactor “components.” The RFP advised offerors that a technically acceptable proposal was one that “contains no deficiencies or significant weaknesses,” further stating that “any aspect of the proposal judged to be unacceptable may render the entire proposal unacceptable.” Id. at 264-65, 280.

With regard to technical acceptability, the RFP advised offerors that their proposals must comply with all of the requirements contained in the RFP’s performance work statement (PWS). Specifically, the RFP stated, “[a]ll requirements specified in the PWS are mandatory,” and elaborated that “[t]he proposal shall not merely offer to perform work in accordance with the PWS, but shall outline the actual methods proposed as specifically as possible.” Id. at 270.

On January 18, 2011, Ahtna and several other offerors submitted proposals. The agency subsequently evaluated Ahtna’s initial proposal as technically unacceptable, with multiple deficiencies and significant weaknesses. The agency retained Ahtna’s proposal in the competitive range and, by letter dated March 2, opened discussions with Ahtna, specifically outlining the various evaluated proposal deficiencies and significant weaknesses. On March 4, the agency conducted oral discussions with Ahtna, again identifying the various flaws in Ahtna’s proposal and responding to various Ahtna questions. On March 9, Ahtna submitted its revised proposal. Based on its evaluation, the agency concluded that Ahtna’s proposal was still technically unacceptable, and excluded it from the competitive range.

Ahtna protested to our Office, challenging the evaluation of its technical and management approaches, and asserting that the agency failed to conduct meaningful discussions and exhibited bias. In a supplemental protest, Ahtna also complained that the agency treated offerors unequally and improperly ranked proposals.

In our decision of June 30, 2011, we denied Ahtna’s protest, finding that the agency’s assessment that Ahtna’s revised proposal remained technically unacceptable was reasonable, that the agency had conducted meaningful discussions, and that the record did not support the allegation of bias. We also noted that Ahtna had raised various other arguments, which we had reviewed and found no basis for sustaining the firm’s protest. See Ahtna Facility Servs., Inc., supra, at 11 n.15.

Ahtna requests reconsideration of our decision. Ahtna argues that our decision failed to consider all of Ahtna’s arguments and that it contained various errors of fact and law. To prevail on a request for reconsideration, the requesting party must either show that our decision contains errors of fact or law, or present information not previously considered that warrants the decision’s reversal or modification. 4 C.F.R. ¶ 21.14(a) (2011); Waterfront Techs., Inc.–Recon., B-403638.4, June 29, 2011,

2011 CPD ¶ 126 at 3. Here, Ahtna does not show that our decision contains material errors of law or fact that warrant modification or reversal of our prior decision.

In its reconsideration request, Ahtna states that we failed to consider its arguments that it raised in its initial and supplemental protests concerning the unequal treatment of offerors, the improper ranking of proposals, and numerous other assertions. Contrary to Ahtna's arguments and stated in our prior decision, we considered all of Ahtna's arguments in resolving the protest, but only discussed its primary arguments in resolving the protest. This is consistent with the statutory mandate that our bid protest forum provide for "the inexpensive and expeditious resolution of protests." See Competition in Contracting Act of 1984, 31 U.S.C. § 3554(a)(1) (2006). We have again reviewed the arguments referenced by the protester in its reconsideration request that were not addressed in detail in our prior decision and find that none had any merit; we also find these arguments do not provide a basis to warrant reversal or modification of our prior decision.

Ahtna also asserts that our decision committed a clear error of fact and law in considering Ahtna's arguments on the evaluation of its technical proposal and its policies and procedures manual both with respect to the "seven types of services" and "metrics and standards." Reconsideration Request at 6.

Ahtna specifically claims that it had not been "informed prior to its protest (March 22) that it did not address the seven types of services in its debriefing or otherwise," and therefore, our decision made a "clear error of fact and law . . . [by reading] into the debriefing document that Ahtna was on notice that the agency believed it did not address the seven types of services." Id. at 4-5. Ahtna's version is readily belied by the documents the agency sent to it on March 2 and March 17. The agency's March 2 letter expressly advised Ahtna that its procedures manual was deficient in that it "did not include the seven (7) types of services [identified in the PWS]," "failed to include performance standards," and "failed to include meaningful and measurable performance metrics." AR, Tab 11, Items for Discussion, at 5-6. Again, in the March 17 letter, the agency plainly stated that its "revised EVS Policies and Procedures Manual **failed** once more to include cleaning procedures that address the seven (7) types of services." AR, Tab 20, Debriefing Letter, at 10.

Ahtna also claims that our decision was based on a clear error of fact because it found that Ahtna did not establish standards or metrics for determining the level of performance that would constitute deficient performance. Reconsideration Request, at 5. Ahtna bases its assertion on the fact that its comments on the agency report, and the underlying proposal, stated that it had a "zero tolerance" policy for errors. Id. We fail to see Ahtna's point. The RFP plainly requires offerors to include in their offers a procedures manual that "demonstrate[d] meaningful and measurable performance metrics . . . and [otherwise] establish performance standards." RFP, amend. 3 at 270-71 and 215 (emphasis added). The fact that Ahtna has a "zero tolerance" policy for errors might indicate how it treats a performance deficiency that has occurred, but says nothing about any "measurable" standards, or any other

method for determining what constitutes such a deficiency. We find no error of fact or law in the decision as to this issue to warrant reversal or modification of our prior decision.

The remainder of Ahtna's request for reconsideration repeats arguments it made during the original protest or merely disagrees with our decision, which provides no basis to grant its reconsideration request. Waterfront Techs., Inc.-Recon., supra.

The request for reconsideration is denied.

Lynn H. Gibson
General Counsel