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Decision

Matter of: Journey Aviation LLC

File: B-419368.2; B-419368.3

Date: June 2, 2021

David R. Warner, Esq., Tyler J. Freiburger, Esq., and Heather B. Mims, Esq., Centre Law & Consulting LLC, for the protester.

Katherine B. Burrows, Esq., Lauren Brier, Esq., Samuel S. Finnerty, Esq., and Timothy F. Valley, Esq., Piliero Mazza PLLC, for Tenax Aerospace, Holdings, LLC, the intervenor.

Michael Giordano, Esq., Department of Justice, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was reasonably assessed a deficiency by the agency, where the proposal included a general statement of compliance with solicitation requirements and the agency reasonably determined this was not sufficient to demonstrate the protester's ability to meet a specific material requirement.

DECISION

Journey Aviation LLC (Journey), a small business, of Boca Raton, Florida, protests the award of a contract to Tenax Aerospace Holdings, LLC (Tenax), a small business, of Madison, Mississippi, under request for proposals (RFP) No. 15F067-20-R-0000051, issued by the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), for the lease of an ultra-long-range aircraft to provide rapid response transportation for DOJ personnel world-wide. Journey argues that the award to Tenax was improper because the agency's evaluation of proposals was unreasonable.

We deny the protest.

BACKGROUND

The FBI issued the RFP on April 22, 2020, as a total small business set-aside under Federal Acquisition Regulation parts 12 and 15 procedures. The agency seeks to lease a dedicated aircraft that will transport DOJ personnel around the world in support of counterterrorism and other FBI investigations. Agency Report (AR), Tab 4, RFP at 1;

AR, Tab 5, RFP attach. 1, Statement of Work (SOW) at 1; AR, Tab 7, RFP attach. 3, Instructions/Basis for Award at 2.¹ This aircraft will also provide transportation support for the Attorney General of the United States and the Director of the FBI. SOW at 1. The solicitation contemplates the award of a single fixed-price contract with a 1-year base period and four 1-year option periods. RFP at 4-5.

The RFP provides for contract award on a best-value tradeoff basis, considering the following four factors, in order of importance: (1) corporate experience; (2) aircraft configuration and specification; (3) past performance; and (4) price.² RFP at 49-50; AR, Tab 7, RFP attach. 3, Instructions/Basis for Award at 2. When combined, the non-price evaluation factors are significantly more important than price. AR, Tab 7, RFP attach. 3, Instructions/Basis for Award at 2, 4.

Six offerors, including Journey and Tenax, submitted proposals. AR, Tab 1, Contracting Officer's Statement (COS) at 1. After evaluating the proposals, the agency made award to Journey on September 29, 2020, which Tenax protested with our Office. *Id.* We dismissed the protest as academic upon notification from the agency that it was taking corrective action which would consist of reevaluating proposals and making a new award decision. *Tenax Aviation, LLC*, B-419368, Nov. 17, 2020 (unpublished decision).

The agency issued clarification questions and informed offerors that if the FBI did not receive a response, the FBI would deem the offeror no longer interested in the procurement and its proposal would not be evaluated. AR, Tab 11, Source Selection Evaluation Board (SSEB) Report at 1.³ The agency issued these clarifications to confirm the availability of the proposed aircraft and to confirm the validity of the proposed pricing. COS at 1.

For the reevaluation, the agency replaced several members of the original SSEB, as well as the contracting officer, who also served as the source selection authority (SSA). COS at 1-2. Only four of the original six offerors responded to the agency's clarifications. See AR, Tab 11, SSEB Report at 1-2. Upon reevaluation, the contracting officer determined a competitive range was in the best interest of the agency, and

¹ Citations to the solicitation refer to the conformed RFP documents provided in the agency report.

² The RFP provides for the evaluation of the non-price factors on a color-coded and narrative rating system that allows evaluators to "identify strengths, weaknesses, and risks associated with each proposal." AR, Tab 7, RFP attach. 3, Instructions/Basis for Award at 3. From highest to lowest, the colors used in the rating system are: blue, green, yellow, amber, and red. *Id.* at 3-4. Evaluated price is the total price for the base year plus the option years. RFP at 50; AR, Tab 7, RFP attach. 3, Instructions/Basis for Award at 2, 4.

³ The agency submitted a less redacted copy of the SSEB report as part of its supplemental agency report. Citations to the SSEB report are to this document.

entered into discussions with Journey and Tenax, the only two offerors whose proposals were included in the competitive range. *Id.* at 2.

The agency issued evaluation notices (ENs) to Journey and Tenax, as well as conducted a conference call during which each offeror was permitted to ask additional questions about their ENs. *Id.* The agency provided written responses to the offerors' questions and offerors submitted responses to the ENs. *Id.* The SSEB reviewed the responses and concluded the offerors understood their respective ENs. *Id.* Thereafter, the agency closed discussions and issued requests for final offers to Journey and Tenax that included amended solicitation attachments. *Id.*

Both offerors timely submitted revised proposals and were evaluated as follows:

Offeror	Corporate Experience	Aircraft Configuration and Specification	Past Performance	Price
Journey	Yellow	Red	Yellow	\$32,977,500
Tenax	Blue	Green	Blue	\$29,426,508

AR, Tab 13, Source Selection Decision Document (SSDD) at 3.

Based on this reevaluation, the agency assigned Journey's proposal a deficiency. In this regard, the SOW required offerors to propose aircraft modified with "a bipolar ionization [system] to better ensure aviation clean air."⁴ See SOW at 3. The SSEB determined that Journey did not meet this requirement because its proposed aircraft did not include a bipolar ionization modification and its proposal did not state that such a system would be added to its aircraft. AR, Tab 11, SSEB Report at 7, 8, 16. The SSEB concluded the absence of the system was "a material failure to meet the minimum acceptable level of performance" and assigned the proposal a deficiency and a red rating for factor 2, aircraft configuration and specification.⁵ *Id.* at 7. Consequently, the agency did not evaluate Journey's price. *Id.* at 16.

Conversely, the SSEB evaluated Tenax's proposal and found it was technically acceptable; the SSEB also determined Tenax's proposed price was fair and reasonable. *Id.* at 16. The SSEB concluded that Tenax was "the only qualified competitor." *Id.* at 4.

⁴ A bipolar ionization system neutralizes airborne and surface pathogens which can endanger passengers. AR, Tab 11, SSEB Report at 8.

⁵ A proposal that receives a red rating "fails to meet performance or capability standards. The requirements can only be met by major changes to the proposal." AR, Tab 7, RFP attach. 3, Instructions/Basis for Award at 3, 4; AR, Tab 11, SSEB Report at 6.

Even though the agency determined Journey's proposal did not meet minimum performance standards, and did not evaluate Journey's price, the SSEB conducted a comparative analysis of Journey's and Tenax's technical proposals and recommended award to Tenax because it offered the highest-rated technical proposal with the lowest evaluated price. See AR, Tab 12, Comparative Analysis at 9-12.

On February 2, 2021, the SSA selected Tenax for award. In her decision, the SSA noted her review of and concurrence with the SSEB report and the comparative analysis, both of which recommended award to Tenax. AR, Tab 13, SSDD at 4-5; see also AR, Tab 11, SSEB Report at 4; AR, Tab 12, Comparative Analysis at 12. The SSA concluded that Tenax's solution offered the best value to the government and noted that Tenax's proposal was the highest-rated technical proposal and offered the lowest price. AR, Tab 13, SSDD at 4-5. The agency notified Journey of the source selection decision and this protest followed.

DISCUSSION

The protester challenges the agency's evaluation of proposals under the aircraft configuration and specification factor and the past performance factor. Among other things, the protester argues that the agency improperly assessed a deficiency to its proposal for failing to meet the solicitation requirement that the proposed aircraft include a bipolar ionization system. As discussed below, we find that the agency reasonably assessed a deficiency to the protester's proposal and determined that the proposal failed to meet the solicitation's requirements. As a result, we do not address the protester's other complaints pertaining to the evaluation of proposals because the protester is not an interested party to raise them.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. See *SDS Int'l, Inc.*, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *MVM, Inc.*, B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 6. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; *LOGMET LLC*, B-405700, Dec. 14, 2011, 2011 CPD ¶ 278 at 3.

Offerors are responsible for submitting a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows for a meaningful review by the procuring agency. *Microwave Monolithics, Inc.*, B-413088, Aug. 11, 2016, 2016 CPD ¶ 220 at 6. Where a proposal is unclear or inconsistent with those requirements, the offeror risks having its proposal evaluated unfavorably. *CALIBRE Sys., Inc.*, B-414301.3, Sept. 20, 2017, 2017 CPD ¶ 305 at 5. In addition, a

protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *MVM, Inc., supra* at 5-6.

The SOW required the aircraft delivered under the contract to meet or exceed approximately 35 specifications and technical requirements; the solicitation required the delivered aircraft to include a bipolar ionization system to ensure better air quality in the cabin. SOW at 1-3. For factor 2, aircraft configuration and specification, the RFP instructed that:

[t]he Offeror shall submit serial number, maintenance records and safety records for the primary aircraft and any identified back-up aircraft. Provide performance characteristics, cabin configuration, installed avionics and any installed optional equipment currently aboard the proposed primary aircraft.

AR, Tab 7, RFP attach. 3., Instructions/Basis for Award at 4. The RFP also instructed in connection with factor 1, corporate experience, that "[t]he volume shall discuss the Offeror's clear understanding of the requirements throughout the statement of work (SOW) and other areas of the solicitation and the methods to meet or exceed the requirements." *Id.*

The protester's revised proposal asserted, "[t]he aircraft that Journey Aviation is proposing, S/N 5465, will meet all of the requirements as specified in the SOW Section 2.2.a through 2.2.ii, upon delivery (30 days after contract award)."⁶ AR, Tab 9, Journey Revised Proposal at 9. Section 2.2ii is the requirement for the proposed aircraft to include a bipolar ionization system. SOW at 3. Other than the general reference to meeting the solicitation requirements, the proposal did not mention modifying the proposed aircraft to include the bipolar ionization system. COS at 8; see *generally* AR, Tab 9, Journey Revised Proposal.

The SSEB found that the protester's proposed aircraft did not contain a bipolar ionization system and the proposal did not specify that the aircraft would be modified to include a bipolar ionization system. AR, Tab 11, SSEB Report at 8. According to the agency, "[t]he absence of the bipolar ionization system is a material failure to meet the minimum acceptable level of performance." *Id.* The evaluators did not believe the proposal's general statement of compliance with the requirements "clearly demonstrated" how the protester would meet the requirement to install the bipolar ionization modification prior to delivery. COS at 8. Consequently, the SSEB determined that the proposal failed to meet solicitation requirements and that the proposal was incapable of doing so without major changes to it; the SSEB assigned the proposal a red/fail rating. AR, Tab 11, SSEB Report at 7-8.

⁶ The aircraft proposed in the protester's revised proposal is different from the aircraft proposed initially. Protest at 6.

The protester contends that its proposal met the solicitation requirements pertaining to the bipolar ionization modification because its proposal clearly stated that the proposed aircraft would meet all of the requirements specified in the statement of work. Comments at 2-7. In this regard, the protester argues that the RFP does not require offerors to demonstrate their understanding of the SOW requirements or specify how offerors will meet requirements by the delivery date if the proposed aircraft does not currently meet requirements. *Id.* at 3-7. Moreover, the protester argues, the RFP only requires offerors to discuss their “clear understanding” of the SOW requirements with respect to factor 1, corporate experience, and the agency improperly imputed this “more onerous” requirement to factor 2, aircraft configuration and specification. *Id.* at 3-4.

In response, the agency asserts that assigning the protester’s proposal a deficiency and determining the proposal did not meet the RFP’s requirements was reasonable because the protester’s aircraft did not include the required bipolar ionization system and the protester’s generic statement that it would meet all of the SOW requirements was not sufficient to demonstrate that the required bipolar ionization modification would be added to the proposed aircraft. COS at 8; AR, Tab 3, Memorandum of Law (MOL) at 5. Furthermore, the agency argues that the evaluators could properly assess an offeror’s understanding of and methods for meeting the requirements under factor 2, aircraft configuration and specification, notwithstanding the instruction placement in the evaluation criteria for factor 1, corporate experience, because the instruction was directed toward the technical volume as a whole.⁷ AR, Tab 16, Supp. MOL at 6-8.

Based upon our review of the record, we find that the agency’s evaluation was reasonable. We have consistently stated that offerors are responsible for including sufficient information to establish compliance with solicitation requirements, and blanket statements of compliance are insufficient to meet that obligation. *Microwave Monolithics, Inc., supra; National Shower Express, Inc.; Rickaby Fire Support*, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. Under factor 2, aircraft configuration and specification, offerors were required to “[p]rovide performance characteristics.” AR Tab 7, RFP attach. 3, Instructions/Basis for Award at 1. The protester’s proposed aircraft does not include a bipolar ionization system and its proposal is devoid of any reference to the bipolar ionization modification requirement.

While the protester’s proposal states that the proposed aircraft will meet all the SOW requirements, we think that the evaluators reasonably viewed this blanket statement as failing to provide supporting information to demonstrate the protester provided an aircraft with the required bipolar ionization modification. RFP attach. 3, Instructions/Basis for Award at 1; SOW at 3. Accordingly, we agree with the agency that the protester’s proposal failed to meet the minimum acceptable level of performance with respect to the bipolar ionization modification requirement, and that the

⁷ The RFP instructed offerors to submit corporate experience, aircraft configuration and specification, and past performance information together in volume 1 of their proposals. AR, Tab 7, RFP attach. 3, Instructions/Basis for Award at 1.

agency's assessment of a deficiency is reasonable. This protest ground therefore is denied.⁸

Finally, as noted above, the protester challenges other aspects of the technical evaluation and argues that its proposal was misevaluated under the past performance factor. However, as we find that the agency reasonably determined the protester's proposal was not technically acceptable because it failed to meet minimum performance standards, the protester is not an interested party with respect to its remaining protest grounds.

In order for a protest to be considered by our Office, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the protester's proposal would be in line for award if its protest were sustained. *BANC3, Inc.*, B-416486, B-416486.2, Sept. 10, 2018, 2018 CPD ¶ 316 at 9. Since the protester is not in line for award given the deficiency received and the protester's technically unacceptable proposal, the protester is not an interested party to raise its other protest challenges, and we will not consider them here. See *Tetra Tech Tesoro, Inc.*, B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 6.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁸ Because we agree with the agency's argument that the assignment of a deficiency based on the protester's general statement that it would comply with the requirements of the solicitation was reasonable, we do not address the agency's alternative argument.