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Decision

Matter of: Horizon Industries, Limited

File: B-310542

Date: January 7, 2008

Jeffrey A. Lovitky, Esq., for the protester.

Capt. Robert T. Wu, Department of the Army, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of proposal evaluation and award decision is denied where record shows they were reasonable and consistent with solicitation's terms.

DECISION

Horizon Industries, Limited protests the agency's evaluation of proposals and the award of a contract to Phacil under request for proposals (RFP) No. W91QUZ-06-R-0052, issued by the Department of the Army for contract and technical support services. Horizon challenges the evaluation rating ("exceptional," the highest rating available) given to the awardee's proposal for technical merit and past performance; the protester contends that the awardee's proposal instead should have been downgraded for failing to demonstrate that the awardee's proposed personnel and past performance met the RFP's personnel qualification requirements. Horizon also contends that its past performance should have been rated higher than acceptable and that the agency failed to conduct meaningful discussions with it regarding a perceived need for additional information about its prior work.

We deny the protest.

The RFP, issued on May 22, 2007, contemplated the award of an indefinite-delivery/indefinite-quantity contract at fixed hourly rates for acquisition, contract administration, and close-out services for the Army Contracting Agency, Information Technology E-Commerce, and Commercial Contracting Center (ITEC) and its

customers for a base year and two option periods.¹ RFP at 2. The RFP advised that an award under the RFP would be based on the best overall response received considering technical/management approach, past performance, and price (where the first two factors were approximately equal in importance and, combined, were more important than price). RFP at 54. Under the technical/management approach factor, proposals were to be evaluated to assess the offeror's understanding of the requirements and its capability to successfully perform in accordance with the RFP's performance work statement (PWS) considering the following subfactors: project plan (including technical approach, organizational resources and management controls); quality control plan (including quality objectives, and methods for measuring quality and meeting or exceeding quality standards); and personnel. Under the personnel subfactor of the technical/management approach factor, information regarding the experience and qualifications of the offeror's proposed personnel was to be reviewed in assessing the firm's capability to meet PWS requirements; in relevant part, the PWS required that the contractor have available or have the ability to acquire personnel meeting the required qualifications and experience levels. RFP at 14, 54-55. Under the past performance evaluation factor, the agency was to evaluate the extent to which an offeror's proposal demonstrated past performance of recent (*i.e.*, within 3 years), relevant (*i.e.*, similar in complexity and magnitude) work of similar size and scope, as well as the firm's commitment to customer satisfaction, scheduled completion of work, and good workmanship. RFP at 46-47, 55.

Nineteen proposals were received and evaluated, discussions were conducted, and revised proposals were evaluated. Phacil's proposal was rated exceptional under both the technical/management approach and past performance factors; Phacil's proposed price of \$3,262,496.07 was the second lowest of all offers received. Horizon's proposal was rated exceptional under the technical/management approach factor and acceptable under the past performance factor; the protester's proposed price was \$6,107,742.04. Finding that the Phacil proposal's strengths outweighed the slight cost advantage of another offeror's lower-priced proposal, the agency determined that the Phacil proposal represented the best value to the agency and made an award to Phacil on September 27. This protest followed.

¹ ITEC procures information technology (IT) equipment, hardware, software, and associated services, as well as non-IT services, for a variety of Department of Defense program offices. The contractor will support ITEC's contracting activities by providing pre-award contract support, post-award contract administration, assistance with acquisition planning, development of strategic sourcing options, assistance with source selection evaluation, identification of acquisition problems or concerns, development of innovative and practical solutions, participation in the analysis of the overall effectiveness of ITEC acquisition programs, recommendations for improvements or corrective actions, and close-out services. RFP at 14.

Horizon challenges the agency's evaluation and selection of the Phacil proposal for award. The protester alleges that, since the Phacil proposal failed to demonstrate that all of its personnel possess the qualifications and experience levels listed in the PWS, it should have been rated lower than exceptional under the technical/management factor (which includes personnel as one of its three equally weighted subfactors). Similarly, with regard to past performance, Horizon argues that the awardee's proposal failed to demonstrate that its prior work met all of the PWS personnel qualifications and experience requirements.

In reviewing a protest of an agency's proposal evaluation, we examine whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations; a protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. See United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. We have reviewed the protester's challenges to the evaluation of the awardee's proposal under the personnel subfactor of the technical/management approach factor, as well as under the past performance factor, and find that the agency's evaluation was reasonably based and consistent with the terms of the solicitation.

As an initial matter, we note that Horizon has not challenged the numerous proposal strengths found in the Phacil proposal under the other two subfactors--project plan and quality control plan--of the technical/management approach factor which were cited by the evaluators in support of the overall exceptional rating assigned to the proposal under the technical factor. Rather, Horizon argues that because Phacil's proposal contained summarized descriptions of personnel candidates' work histories that failed to demonstrate compliance with every personnel qualification of the PWS, the proposal should not have been rated exceptional. Our review of the record, however, fails to support Horizon's suggestion that any such demonstration was required here, since the RFP advised offerors that proposals (including personnel qualifications and experience information provided by the offeror) would be evaluated to assess the offeror's understanding of and capability to meet the PWS requirements, including the requirement to have personnel available--or the ability to acquire personnel--meeting the qualification and experience requirements of the PWS. RFP at 14, 54-55. Thus, the RFP did not require that proposals show compliance with every listed personnel qualification where they otherwise demonstrated the ability to acquire personnel with the qualifications required for the work under the RFP.²

² Our review of the Horizon proposal shows that it also did not match each PWS personnel qualification and experience requirement to the qualifications and experience of the sampling of individuals it proposed (*i.e.*, the protester's proposal only briefly summarized a single individual's qualifications by labor category even for labor categories where the agency estimated that more than one individual would be required).

The record shows that the evaluators reviewed the general personnel experience summaries in Phacil's proposal (noting the substantial number of years of experience of the firm's candidates) and found that the firm had demonstrated its ability to acquire personnel with the required qualifications. In this regard, our review of the record confirms the reasonableness of the evaluators' favorable evaluation of Phacil's proposed comprehensive recruiting, screening, hiring, training, and retention efforts to ensure that PWS personnel qualifications and experience requirements would be met in performing task orders under the contract, and that Phacil fully demonstrated its ability to provide the required qualified personnel. Accordingly, we have no basis to question the reasonableness of the agency's evaluation of the Phacil proposal as exceptional under the technical/management approach factor.

Horizon also challenges the agency's evaluation of Phacil's past performance as exceptional and contends that the work summaries in Phacil's proposal failed to show performance of relevant work, since they did not demonstrate that all of the personnel experience and qualification requirements in the PWS were met during performance of the prior work. Our review of the record provides no support for Horizon's position. First, the RFP's past performance evaluation terms did not require a demonstration that the personnel qualifications of the current RFP were met while performing its previous work. Rather, for the evaluation of past performance, the RFP required that offerors detail their performance of recent (*i.e.*, within 3 years), relevant (*i.e.*, similar in complexity and magnitude) work of similar size and scope, as well as commitment to customer satisfaction, timely completion of work, and good workmanship. RFP at 55. Second, and in any event, contrary to the protester's contention that Phacil failed to show that its prior work was related to the personnel qualification requirements, Phacil's proposal included a chart that specifically matched personnel qualifications listed in the current PWS to the firms' past contracts for similar work.³

Further, while Horizon generally contends that Phacil's prior work should be considered less relevant or not relevant because the awardee describes it as assisting in, rather than conducting, procurements, the record provides no basis to question the reasonableness of the agency's determination that Phacil's prior work is directly relevant to the type of contracting office assistance to be provided under the RFP. In this regard, Phacil's proposal was found to detail its prior contracting support activities for various Department of Defense agencies, including guiding market

³ Horizon's argument that past performance proposals were to show that a firm's prior work complied with current personnel qualification requirements is undermined by the fact that, unlike Phacil's chart indicating such compliance, its own past performance proposal did not match personnel qualification requirements to the firm's prior work.

research, developing solicitations, assisting in evaluations, performing cost analyses, performing contract management and administration tasks, and close-out services. The agency further explains that, unlike other offerors' past performance proposals that were considered less relevant to the current requirement (including Horizon's), Phacil's proposal showed performance of similar work performed for contracting offices that conduct procurements (like ITEC, the contracting office to be serviced under the current RFP).⁴ In sum, our review of the record provides no basis to question the reasonableness of the agency's determination that Phacil's prior acquisition-related work is directly relevant and that, given the highly favorable past performance reference survey ratings received for the firm, its past performance warranted a rating of exceptional.⁵

Horizon challenges the agency's evaluation of its proposal's rating of acceptable under the past performance evaluation factor. The protester further contends that, to the extent the agency perceived a lack of detail in the firm's past performance proposal, the agency failed to conduct meaningful discussions with the firm since it did not raise the matter with the protester. We need not address these contentions, however, since the protester has not shown that it has been prejudiced by the challenged actions. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, given the reasonableness of the agency's evaluation of the Phacil proposal as exceptional under both the technical/management approach and past performance factors, and the awardee's significantly lower price (which is almost half the price proposed by the protester), there is no indication in the record that, even if Horizon's proposal were rated

⁴ The agency explained that it found acquisition work performed for a contracting office more similar and relevant to the work to be performed here, since ITEC, the entity to be served under the contract, is a contracting office. In this regard, the agency found Horizon's acquisition-related work in support of a program management buying office (that is, an office that was providing subject matter expertise and assorted acquisition support to a contracting office conducting procurements on its behalf) to be further removed from, and thus less directly relevant to, the work required here. The agency points out that unlike that type of office, a contracting office like ITEC is responsible for every aspect of the procurements it conducts for its customers, including the skilled use of data management computer programs available only to the agency's contracting offices.

⁵ In comparison, while Horizon's prior work was found to be within the general scope of the current requirement, its prior contracts were significantly smaller in size than the effort under the RFP, as well as significantly lower in price.

exceptional under both non-price evaluation factors, it would have had a substantial chance of receiving the award.⁶ See Abt Assocs. Inc., B-295449, B-295449.2, Mar. 2, 2005, 2005 CPD ¶ 54 at 4.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁶ The protester does not allege that its technical capability and past performance are superior to the Phacil proposal so as to warrant payment of Horizon's significantly higher price, or suggest that, if discussions had been conducted, it would have significantly lowered its price to the extent necessary to have had a reasonable chance of award here.