



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Alares, LLC

File: B-407124

Date: November 7, 2012

Donald Maggioli for the protester.

Jeanne S. Morris, Esq., Department of Veterans Affairs, for the agency.

Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of protester's proposal is denied where the proposal failed to address compliance with infection control procedures and provide a construction safety plan, as required by the solicitation, and agency was not required to infer or piece together such information from the protester's past performance information.

DECISION

Alares, LLC, of Quincy, Massachusetts, protests the award of a contract to Ironclad Services, Inc., of Springfield, Massachusetts, under request for proposals (RFP) No. VA241-12-R-0714, issued by the Department of Veterans Affairs (VA) for replacement of heating, ventilation, and air conditioning (HVAC) units. Alares challenges the agency's evaluation of its proposal.

We deny the protest.

BACKGROUND

The RFP, issued as a set-aside for service-disabled veteran-owned small businesses, provided for the award of a fixed-price contract to replace two HVAC units at the VA Medical Center (VAMC) in Providence, Rhode Island. RFP at 1, 15. Offerors were informed that award would be made, without conducting discussions, on a best-value basis considering the following factors: management approach, past performance, and price. Id. at 16. The management approach and past performance evaluation factors, when combined, were significantly more important than price. Id. The RFP identified the following five, equally-weighted subfactors

under the management approach factor: adherence to construction schedule; technical approach; experience; construction safety plan; and compliance with infection control procedures. Id. at 17. Offerors were instructed to provide separate technical, past performance, and price proposals. See id. at 17, 20, 23.

With regard to the construction safety plan subfactor, offerors were required to submit a plan that meets the RFP's various safety requirements, including with regard to fire systems, life safety measures, fire wall/smoke barriers, and asbestos and lead inspections. Id. at 17-18, 23; Addenda, Hospital Requirements, Bldgs. 7, 9. Offerors were also required to provide documentation showing successful training of personnel in accordance with Occupational Safety and Health Administration (OSHA) requirements, and to establish the offeror's familiarity and compliance with OSHA requirements. Offerors were also instructed to provide information regarding prior safety accidents or violations of OSHA or Environmental Protection Agency requirements. Id. at 18.

With regard to the compliance with infection control procedures subfactor, offerors were required to address compliance with the requirements of the infection control procedures at the VAMC, including with regard to supervision, employee responsibilities, work practices, training, materials, equipment, and risk assessment methods. Id. at 17-18, 23.

With regard to the past performance factor, offerors were required to identify current, relevant contracts. See id. at 23, 20-21. The RFP provided that the agency would consider data provided by the offeror, information obtained from questionnaires completed by the offeror's references, and information from other sources. See id. at 20-23, 25-32. Offerors were informed that the agency would evaluate, among other things under this factor, the offeror's past performance with infection control, compliance with specifications, and ability to successfully perform. See id. at 20.

The agency received proposals from seven offerors, including Alares and Ironclad, which were evaluated as follows:¹

¹ The RFP provided that the management approach factor would be evaluated as blue, green, yellow, pink or red. As relevant here, a pink rating reflected a proposal that met some, but not all of the RFP requirements, and where its overall quality could not be determined because of errors, omissions, or deficiencies that could be corrected without a major rewrite or revision of proposal. See RFP at 19. A blue rating reflected a proposal that met all, and demonstrated an excellent understanding of, the RFP requirements and was excellent in all respects. Id. The RFP provided that past performance would be evaluated as very low risk, low risk, average risk, above average risk, high risk, or neutral. Id. at 22.

	Management Approach ²	Past Performance	Price
Alares	Pink	Above average risk	\$2,518,874
Ironclad	Blue	Low risk	\$2,781,918

AR at 1; Tab E, Source Selection Decision, at 19. Alares' pink rating under the management approach factor reflected the agency's assessment that, although the firm demonstrated HVAC experience in a hospital environment and successful contract completion, the firm did not demonstrate a complete understanding of the work and its proposal did not address any construction safety requirements or infection control criteria as required by the RFP. AR, Tab E, Source Selection Decision, at 16. Ironclad's blue rating, on the other hand, reflected the agency's assessment that Ironclad's proposal satisfied all of the solicitation requirements and demonstrated an understanding of the requirements. See id. at 18-19.

The contracting officer, who was the source selection authority for this procurement, determined that Ironclad's proposal represented the best value to the government. Id. at 19; see Contracting Officer's (CO) Statement at 4. Award was made to Ironclad and this protest followed.

DISCUSSION

Alares protests the agency's evaluation of its proposal under the management approach and past performance factors, arguing that its proposal merited higher ratings under these factors. See Protest at 2; Comments at 1-2. In this regard, the protester maintains that the agency should have considered Alares' past performance at three other VA facilities as satisfying the RFP's safety and infection control requirements under the management approach evaluation factor. Id. Alares also contends that the agency deviated from the RFP's stated evaluation criteria by giving less weight to the past performance factor than to the management approach factor. See id.; Comments at 3.

The VA responds that it reasonably evaluated Alares' proposal consistent with the RFP's requirements. AR at 4. The agency contends that the protester asks the agency to overlook deficiencies in Alares' proposal and that the contracting officer had no duty to compensate for the poorly written proposal. See id. at 3.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See, e.g.,

² The source selection decision erroneously entitled this factor as "technical." See Agency Report (AR), Tab E, Source Selection Decision, at 12-20.

International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4.

The RFP here explicitly required offerors' technical proposals to include a construction safety plan and address compliance with the VAMC's infection control procedures. RFP at 17-18, 23. The protester, however, concedes that its technical proposal "omitted details regarding safety and infectious control" and that "this was [Alares'] oversight . . ." ³ Protest at 2; Comments at 2. Clearly stated RFP technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is technically unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5; Outdoor Venture Corp., B-288894.2, Dec. 19, 2001, 2002 CPD ¶ 13 at 2-3.

There is no merit to Alares' argument that its past performance at other VAMC's showed that Alares would satisfy the RFP's requirements with respect to the construction safety plan and infection control procedures. As noted above, offerors were required to provide plans addressing these requirements. Agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide. *See, e.g.,* Leach Mgmt. Consulting Corp., B-292493.2, Oct. 3, 2003, 2003 CPD ¶ 175 at 5 (protester's argument that its experience should have been apparent and that it related to other activities identified in its proposal denied); James Constr., B-402429, Apr. 21, 2010, 2010 CPD ¶ 98 at 5 (agency not required to piece together general statements and disparate parts of protester's proposal to determine the protester's intent); LexisNexis, Inc., B-299381, Apr. 17, 2007, 2007 CPD ¶ 73 at 6-7 n.6 (an agency is under no obligation to parse protester's proposal to try to determine whether the

³ Alares also contends that the agency was required to clarify or conduct discussions with Alares regarding any "minor informalities and irregularities" in its technical proposal, and cites the RFP's reservation of the agency's right to conduct discussions if necessary. Protest at 2-3, *citing* RFP at 16; *see* Comments at 2-3. Correction of omissions identified in Alares' proposal, however, would not constitute clarifications, but discussions. *See, e.g.,* Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 5; eMind, B-289902, May 8, 2002, 2002 CPD ¶ 82 at 5 (clarifications are not to be used to cure proposal deficiencies or material omissions). Here, the RFP specifically informed offerors that award would be made without conducting discussions. RFP at 23.

proposal offers comparable sources of information; by placing information in the appendix and requiring agency to piece together the proposal's content, the protester failed in its responsibility to clearly demonstrate compliance with RFP requirements).

In sum, Alares has not shown that the agency's evaluation of its proposal was unreasonable or inconsistent with the RFP, and the protester's disagreement with the agency's judgment does not establish that the agency acted unreasonably. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied. ⁴

Lynn H. Gibson
General Counsel

⁴ In its comments, Alares argues for the first time, based on a search of USAspending.gov, that Ironclad has insufficient experience as a prime contractor, and the protester challenges the awardee's past performance evaluation in that regard. Comments at 3-4. These arguments are untimely. Under our Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2012).