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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: NLX Corporation

File: B-288785; B-288785.2

Date: December 7, 2001

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DIGEST

Agency evaluation of proposals is unobjectionable where it is reasonable and consistent with solicitation evaluation criteria, and adequately documented; protester's substantial, inadequately explained price reduction in its final proposal revision was reasonably assessed as introducing proposal risk.

DECISION

NLX Corporation protests the award of a contract to TYBRIN Corporation under request for proposals (RFP) No. F42600-01-R-0003, for a mission planning support contract (MPSC), issued as a total small business set-aside by the Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah. NLX contends that the Air Force's evaluation of the NLX and TYBRIN proposals was improper and unreasonable in a multitude of respects, all to the detriment of NLX.

We deny the protest.

BACKGROUND

The MPSC is intended to provide support services for the Air Force Mission Support System Program Office, and combines two existing contracts, one of which provides mission planning system support facility services for the system support facility (SSF) at Hill AFB, and the other provides system support representatives (SSR) services at various Air Force sites in the United States and overseas. NLX is the incumbent under the SSF contract, and NLX's proposed subcontractor, [deleted], is an incumbent SSR contractor, as is NLX's other subcontractor, [deleted]. TYBRIN's proposed subcontractor, BAE Systems, is likewise an incumbent SSR contractor. The instant RFP was issued on April 19, 2001, for a base period award of 39 months with two 3-year option periods that the contractor could earn on an "award term" basis.[1] The RFP solicits SSF and SSR support services on the basis of integrated "best-value" evaluation criteria under which three technical factors, past performance, mission capability and proposal risk, are each of equal importance, and of greater importance than price, the fourth evaluation factor. The mission capability factor includes four subfactors, in descending order of importance: integrated master plan (IMP); operational scenarios; resource management plan (RMP); and transition plan. The RFP contemplated a fixed-price-plus-award-fee contract, and also included options for various unpriced cost-reimbursable and cost-plus-fixed-fee contract line items. Separate submissions for three different volumes of the initial proposal were due on different dates, with the last volume due by June 1, 2001. NLX and TYBRIN were the only offerors that submitted proposals.

The proposals were evaluated by a source selection evaluation team (SSET), within which a past performance risk assessment group (PRAG) evaluated past performance in order to arrive at a performance confidence assessment representing the agency's confidence in the offerors' probability of successfully performing as proposed. RFP § M-903-2.1.1. In making this assessment, as provided by the RFP, the agency specifically considered the relevance of the particular past performance in order to ascertain how closely the skills demonstrated in the prior contracts match the skills necessary to successfully perform the MPSC workload. RFP § M-903-2.1.6. The highest possible relevance rating was "very relevant," for past performance involving "the magnitude of effort and complexities which are comparable to the MPSC requirements," and the next highest rating was "relevant," for past performance involving "less magnitude of effort and complexities comparable to most of the MPSC requirements." Id. After reviewing the PRAG's individual contract ratings, the source selection authority (SSA) assigned final confidence ratings to the offerors.

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[1] The "award term" provision in the solicitation provides that the contractor may earn an extension to the contract period of performance from 3 to 6 years on the basis of performance during the evaluation period. Specifically, the contractor may earn up to 25 points every 6 months during the first 2 years of the evaluation periods, with an accumulation of 70 points over 2 years required in order to earn a 3-year extension. The evaluation periods occur during years 1 and 2 for the first award term period and during years 4 and 5 for the final award term period. RFP § H-902.

The SSET performed an initial evaluation, which was presented to the SSA at a June 5 initial evaluation briefing (IEB). The SSA determined to include both proposals in the competitive range and to conduct discussions in the form of the issuance of evaluation notices (EN) addressing all proposal inadequacies and weaknesses, and face-to-face discussions with each offeror. The discussions encompassed technical and contractual ENs, and past performance ENs. In response to the past performance ENs, written explanations were solicited and provided by the offerors. The evaluation process used color codes under which, as is relevant here, green represented an acceptable rating and blue represented an exceptional rating. Discussions were completed in late June, and a second evaluation briefing was given to the SSA on June 29.

The Air Force issued a request for final proposal revisions (FPR) to both offerors on July 18, each of which included a copy of the offeror's second evaluation briefing charts showing evaluated strengths and weaknesses, and both offerors submitted FPRs by the July 26 closing time. After the SSET reviewed and evaluated the FPRs, an 8-hour final evaluation briefing with the full SSET and the SSA was held on August 17. This meeting was open to input by all SSET members, and divergent views were presented and considered. On August 20, the final evaluation briefing charts were refined at the SSA's direction to reflect the determinations reached as a result of the meeting, and a source selection decision document (SSDD) was prepared by the SSET chair, also at the SSA's direction.

TYBRIN's FPR price was $91,182,889; NLX's price was $87,459,695. TYBRIN's proposal received a higher technical rating. In particular, under the past performance factor, TYBRIN's proposal received a rating of "high confidence/no doubt," while NLX's proposal received a rating of "significant confidence/little doubt." TYBRIN's proposal also received a slightly higher overall mission capability rating because TYBRIN received a blue/exceptional rating versus NLX's green/acceptable rating under the RMP subfactor. The mission capability subfactor evaluation assessments were otherwise the same (green for all for both offerors), and both offerors received the same proposal risk assessments, moderate under IMP and low under the other subfactors. The SSA signed the SSDD on August 22, in which he summarized his determination as follows:

> The proposal submitted by TYBRIN Corporation represents the best overall value to the Air Force. I have determined that the TYBRIN Corporation proposal offered greater mission capability, a higher past performance rating, and a superior approach in the Resource Management Plan subfactor that was worth the additional 4.25 [percent] price differential over the NLX Corporation proposal. TYBRIN Corporation offered greater efficiencies based in part upon

> their plan and commitment for continuous performance improvement, enhanced employee retention and a superior employee-training program.

Agency Report (AR), Tab 97, SSDD, at 5.

The agency provided both offerors with a preaward notice letter on August 22. NLX received a debriefing on August 29 and timely filed this protest with our Office on August 31, which it augmented with a supplemental protest filed on October 15.

PROTEST AND REVIEW STANDARD

NLX's core protest allegation is that "the SSA consistently gave TYBRIN the benefit of the doubt for the objective weaknesses in its proposal, while holding NLX to a higher standard. Conversely, the SSA brushed aside NLX's objective proposal strengths at the same time he lauded TYBRIN's." Protest at 13. NLX goes on to assert that "NLX, not TYBRIN, offered the stronger technical solution, the lower program risk, and the lower price, [thus] TYBRIN certainly did not offer a 'better value' to the Government." Protest at 14. NLX questions the reasonableness of, and the adequacy of the documentation for, numerous aspects of the evaluation of both proposals, most significantly with respect to the price evaluation, the past performance evaluation and the RMP evaluation. NLX further asserts that the allegedly unreasonable evaluations are attributable to bias against NLX on the part of the SSET chairperson.

An agency's method for evaluating the relative merits of competing proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. <u>Advanced Tech. and Research Corp.</u>, B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3. Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. <u>Lear Siegler Servs., Inc.</u>, B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. Our chief concern is not the number of strengths or weaknesses, or specific ratings, but whether the evaluation communicates the principal strengths and weaknesses to the SSA and whether the record supports and adequately documents the agency's conclusions. <u>Innovative Logistics Techniques, Inc.</u>, B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144 at 9; <u>PRC, Inc.</u>, B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 4. The fact that the protester disagrees with the agency's judgment does not render the evaluation unreasonable.

PRICE

NLX's FPR price of $87,459,695 represented a [deleted] reduction from its initial proposed price of [deleted]. In contrast, TYBRIN's FPR price of $91,182,889 represented a relatively minor reduction from its initial price of [deleted]. The evaluated proposed prices consist entirely of the fully loaded annual wage rates for the proposed staff, escalated and extended over the contract period, including options, plus a relatively small award fee component. While both prices were "determined reasonable through competitive market forces," the SSA was concerned by NLX's substantial price reduction. AR, Tab 97, SSDD, at 5. In particular, the SSA was apprehensive that the reduction was based substantially on a decrease in the projected annual escalation rate from NLX's initial 3.6 percent average annual escalation rate (which substantially matched the escalation factor recommended in the solicitation, RFP § H-901.2), to an average annual [deleted] percent escalation rate. AR, Tab 97, SSDD, at 5. The SSA viewed this reduction as raising "concerns involving consistent and efficient contract performance, retention of qualified contractor personnel throughout the life of the contract, and other potential performance problems." Id.

In addition, the remainder of the reduction appeared to reflect a proposed management change as it resulted from shifting half of the program manager's and deputy manager's salaries, and all of the security manager's salary, to an indirect cost account. Id. at 3-4. The SSA viewed this arrangement as "a new management structure that consists of one equivalent direct-billed person with shared responsibilities between two individuals, the program manager and deputy manager. These individuals would work half time direct and half time indirect." Id. This shift caused the SSA to question the possible impact of the apparent "shared responsibility" based on the additional risk created because "there would be a possibility of inefficient communication, duplicative tasking of contractor effort and questionable lines of authority/responsibility." Id. at 4

NLX argues that since this is a fixed-price contract, under which its FPR price is within 4.25 percent of TYBRIN's price, and was found reasonable, the proposed price reduction provided no basis for the agency to downgrade NLX's proposal by assessing increased risk. Protester's Comments at 24-25. In our view, the agency reasonably considered the risks introduced by NLX's substantial price reduction. While the solicitation stated that price reasonableness would be determined through competition, it also provided that an evaluation for cost reasonableness would be performed by the government cost/price analyst. RFP § M-903.2.4. The solicitation specifically warned that the agency could reject a proposal that was evaluated as unrealistically low in cost reflecting a failure to comprehend the complexity and risks of the program. RFP § M-902.c. An agency reasonably may consider risk associated with low proposed fixed prices where, as here, the risk appropriately relates to the offeror's understanding. SEEMA, Inc., B-277988, Dec. 16, 1997. 98-1 CPD ¶ 12 at 5. The nature and extent of the agency's price analysis is largely a matter of agency discretion. East/West Indus., Inc., B-278734.4, May 28, 1998, 98-1 CPD ¶ 143 at 5. Further, an offeror assumes the risk that changes in its final offer might raise questions about its ability to meet solicitation requirements. Joint Threat Servs., B-278168, B-278168.2, Jan. 5, 1998, 98-1 CPD ¶ 18 at 10.

Here, NLX proposed a dramatic price reduction which the SSA determined was not adequately addressed or justified by NLX in its FPR. AR, Tab 97, SSDD, at 5. In particular, the SSA determined that the reduction in the annual escalation rates from those initially used by NLX, to an unrealistically low [deleted] percent average escalation rate over the contract life (under [deleted] percent per year in the last 3 years), resulted in increased performance risk. NLX's only explanation in its FPR for the escalation decrease was that it had switched to "the use of actual labor rates rather than corporate-wide pooled rates," and that "everyone hired for this program will be paid at their current salary or better." AR, Tab 84, NLX FPR, at 1. This explanation is at best applicable to the proposed first-year wage rates, but has no relevance to the reasonableness of, or basis for, the later-year escalation rate decrease.

Similarly, the SSA questioned the potential performance problems raised by shifting half of proposed wages for two key positions to indirect costs. As the SSA explained at a hearing held in conjunction with this protest:

> Here's the risk. I have a contract right now where the manager was only direct billed 20 percent and I have problems on that contract. They are now adjusting for 100 percent. My technical support folks . . . while they are supposed to be working full-time on my programs, I only pay for part of their salary with direct. The other is indirect. And . . . I'm always having to take them out of corporate meetings to come to my meetings. What NLX stated—and there was a footnote in the price chart—they stated that these folks would work full-time. But when they are not direct billed against that contract, I don't have control of those guys. If they go do overhead kind of work, there's not a lot I can do about that. There's a risk with that.

Hearing Transcript (Tr.) at 152-53.

NLX's FPR spreadsheet simply states in a footnote that "[t]wo (2) full time Site Managers will be assigned to the program." AR, Tab 84, NLX FPR, at Price Spreadsheet. However, NLX also stated in its FPR that the "Program Manager and Deputy Program Manager will each be charging 50% of their time to an indirect labor account to support general management activities. This results in an equivalent staffing of 1 Site Manager on the [price] spreadsheet." Id. at 1. The SSA found that NLX had not adequately explained the change in the functioning of the two positions that appears to result from the proposed indirect costing manipulation. In our view, the SSA reasonably concluded that NLX's dramatic and inadequately explained escalation decrease, coupled with unexplained apparent changes in key management roles raised valid concerns about NLX's possible lack of understanding, and added risk to contract performance, including possible retention problems.[2]

PAST PERFORMANCE

The evaluation of past performance is a matter within the discretion of the contracting agency, which our Office will review in order to ensure that it was reasonable and consistent with the stated evaluation criteria. Sterling Servs., Inc., B-286326, Dec. 11, 2000, 2000 CPD ¶ 208 at 2-3. Here, the solicitation stated that the past performance rating is designed to gauge the confidence that the Air Force had in an offeror's probability of successfully performing the MPSC as proposed. RFP § M-903.2.1. TYBRIN's past performance received the highest possible confidence rating, high confidence/no doubt, while NLX's past performance received the next highest rating, significant confidence/little doubt. NLX contends that the difference in the agency's degree of confidence is "not warranted by the information submitted to the Air Force. On an objective basis, NLX provided the Air Force with greater confidence that it (and its teaming partners) could perform the MPSC without performance difficulties." Protest at 14. NLX's complains that the two offerors' past performance was initially evaluated as substantially the same by the PRAG, and that during the course of the successive evaluations, without adequate documentation, NLX's assessment was unreasonably reduced based on the relevance consideration. Protester's Comments at 8. NLX contends that this is implausible in view of the fact that NLX and its subcontractor, Lockheed, are incumbents and received favorable performance assessments on the SSF and SSR contracts that the instant RFP is replacing. NLX takes the position that these are the most relevant contracts for

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[2] We also note that under NLX's FPR pricing strategy, NLX's prices exceed TYBRIN's on an annual basis for the first 3 years, the only period for which prices are actually fixed. AR, Tab 84, NLX FPR Price Spreadsheet; AR, Tab 83, TYBRIN FPR Price Spreadsheet. In our view, this raises a question as to whether the government would actually obtain the benefit of NLX's lower evaluated price. The RFP contains an escalation clause, § H-901, which provides that absent an applicable ceiling, which was not present here, the actually allowable escalation after the 3-year base period could be adjusted based on differences in the then-current escalation rate relative to the recommended measure of average industry escalation listed in the RFP. Depending on the accuracy of the RFP's recommended escalation rate, NLX may be able to obtain an increased escalation rate under this provision. Further, if NLX instead chose to retain the proposed curtailed salary escalation, with the attendant retention and performance risk that the Air Force reasonably assessed, this could affect the exercise of the "award term" options, which as noted above, the RFP specifically makes dependent on achieving favorable performance ratings. Absent the option exercise, TYBRIN's price would be lower since it is lower during the base period. In either instance, there is a question as to whether NLX's price will actually represent the lower cost to the government.

evaluation purposes since the contract at issue is a sustainment contract for the continuation of the SSF and SSR contracts, and not a mission planning contract.

The Air Force correctly notes that having performed these two predecessor contracts does not by itself establish that an offeror has the most relevant past performance, and points out that NLX's assertion that the current contract is merely a sustainment effort is factually misplaced. The agency accurately points out that the MPSC contract also requires integration of the predecessor contracts, and that the RFP contains a number of software development requirements, and thus reflects substantially more than a purely sustainment effort. More significantly, the RFP contains specific criteria for assessing relevance. In particular, the RFP provides that comparable programs warranting a "very relevant" assessment include "[o]n-site mission planning engineering/technical services," and that programs comparable to most requirements warranting a "relevant" assessment include "[o]n-site engineering/technical services . . . [and a]ny mission planning related efforts." RFP § 903-2.1.6. Accordingly, the agency's assessment of the relevance of an offeror's past performance properly was focused on whether the performance in question encompassed mission planning services.

The PRAG initially evaluated past performance relevance based on the five most relevant recent contracts about which offerors were invited in the RFP to provide relevance information. This evaluation was limited to the information provided by the offerors. Contracting Officer's Statement at 8. NLX's argument is substantially based on the fact that under this initial evaluation, all five of NLX's contracts were evaluated as very relevant, but that four of these contracts were "mysteriously . . . downgraded to 'relevant.'" Protester's Comments at 8. The record shows that, consistent with the RFP, the PRAG team developed additional information about a broader range of relevant contracts by querying the contractor performance assessment rating system (CPARS) database and conducting followup inquiries with appropriate contract administration officials, and that the data was assembled and presented in detail at the August 17 decision briefing. Contracting Officer's Statement at 3-4. In order to reach the determination that a contract was very relevant, the PRAG applied the RFP criteria, which focused on an assessment of whether the contract included on-site mission planning and engineering and technical services, not simply mission planning sustainment. Id. at 8.

The PRAG recognized NLX's performance of the SSF contract, found this contract very relevant, and assigned a blue/exceptional rating. AR, Tab 95, Decision Briefing, at 52. The PRAG also recognized [deleted] (NLX's proposed subcontractor's) performance of SSR contracts as very relevant, and assigned performance ratings of green/acceptable. In the final PRAG report presented to the SSA at the decision briefing, the PRAG reported that NLX's team's past performance consisted of four very relevant contracts and 16 relevant contracts. Of the four very relevant contracts, the PRAG rated one as blue/exceptional, and the remaining three as green/acceptable. For the TYBRIN team, there were a total of 13 contracts, nine of which were rated very relevant. Of these nine, six received a performance rating of blue/exceptional and the other three were green/acceptable. Id. at 52-54. Based on these assessments, the SSA concluded that a high confidence/no doubt rating was warranted for TYBRIN and a significant confidence/little doubt rating was warranted for NLX. In view of the PRAG's assessments, which are substantiated by a detailed review of the contract performance records showing that the TYBRIN team had substantially more highly relevant contracts with blue/exceptional ratings than did the NLX team, the record establishes that the SSA's respective performance rating determinations were reasonable and adequately documented. NLX's disagreement does not establish otherwise, and we see no basis to question the reasonableness of the SSA's past performance evaluations of the two offerors.

RESOURCE MANAGEMENT PLAN

Under this factor, TYBRIN's final evaluation was blue(exceptional)/low risk; and NLX was evaluated as green(acceptable)/low risk. NLX complains that both proposals were rated equal (green/low) initially, and that there was no basis in the record to support the raising of TYBRIN's final score to blue. Protester's Hearing Comments at 17. The RFP states that the RMP is met when the proposal demonstrates a smooth and efficient buildup of qualified personnel and resources to ensure no interruption of services or impact to the mission, and the requirements include a hiring plan, sample resumes, retention factors, a security clearance plan, and an internal training plan. RFP § M-903-2.2.1.3. The SSA concluded that TYBRIN exceeded requirements and that NLX provided lesser strengths in retention and employee incentives. AR, Tab 97, SSDD, at 4.

At the June 5 briefing, TYBRIN's assessment under RMP was changed from green to blue for which the briefing notes "[the SSA] directs that we raise them to a Blue here." AR, Tab 52, IEB, at 85. NLX objects that no further contemporaneous explanation is found, thus the change was unwarranted and unjustified. Protester's Comments at 19. In fact, the SSDD details that the SSA found TYBRIN to have "exceeded the minimum requirements in a beneficial way by clearly demonstrating they understood the resource management requirements and providing an exceptional hiring plan, internal training plan and security clearance plan. The key strength was their ability to tie all the plans together in an integrated resource management plan by incorporating personnel requirements, metrics and rewards." AR, Tab 97, SSDD, at 4. The SSA concluded that TYBRIN's "proposal demonstrates that they would maintain the quality personnel required for this effort and that would significantly benefit the Air Force," in contrast to NLX Corporation's lesser strengths. Id.

While NLX disagrees with this assessment of TYBRIN's relative strength, it is supported by the record, which establishes that TYBRIN's RMP proposed a variety of more favorable benefits under its retirement, leave and benefits plans. In addition, TYBRIN's security plan stated that it had obtained permission for blanket rollover of security clearances for incumbent personnel, which NLX had not. TYBRIN also proposed a variety of specific employee training programs beyond those proposed by NLX. Additionally, TYBRIN's proposal also committed to track its resource management performance to [deleted], while NLX's did not. Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, which are merely guides for the SSA, who must use his own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract. Information Network Sys., B-284854, B-284854.2, June 12, 2000, 2000 CPD ¶ 104 at 12. Here, the record establishes that the SSA reasonably determined that TYBRIN offered a better, more integrated RMP package than NLX, and adequately documented his determination that TYBRIN's exceptional rating was warranted.

In sum, we find without merit NLX's contention that the two proposals were improperly evaluated. On the contrary, based on our review of the entire record, we conclude that the Air Force's evaluation of the two proposals was reasonable and consistent with the solicitation criteria, and adequately documented, and does not reflect dissimilar or unequal treatment.[3] In short, the differences in the two

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[3] This decision addresses only the more relevant protest allegations raised by NLX, specifically those relating to the evaluation areas that were critical to the source selection trade-off determination. We have carefully reviewed each of NLX's numerous other allegations and we find all of them without merit. The record does not evidence that there were any meaningful improprieties in the agency's evaluation of the respective proposals. In view of this determination, NLX's allegation of bias on the part of the SSET chair provides no basis to sustain the protest. In order to establish bias, the protester must show both that the procurement official in question specifically intended to harm the protester, and that this translated into action which unfairly affected the protester's competitive position. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 12. Where, as here, we conclude that the respective evaluations were reasonable and adequately documented, there is no basis to conclude that the protester's competitive position was affected by any possible bias.

In a supplemental protest filed on October 15, NLX added a contention that an improper organizational conflict of interest resulted from the award because "TYBRIN developed the mission planning software that it will be fielding, testing and fixing under this Contract." Supplemental Protest at 10. This allegation is untimely and not for consideration on the merits since it was filed more than 10 days after NLX's August 29 debriefing, at which time NLX knew or should have known all of the information which formed the basis for this protest ground. LeBoeuf, Lamb, Greene & MacRae, B-283825, B-283825.3, Feb. 3, 2000, 2000 CPD ¶ 35 at 11-12.

proposals recognized by the SSA provide a reasonable basis for the decision to award to TYBRIN.

The protest is denied.

Anthony H. Gamboa
General Counsel