

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Concept Analysis and Integration, LLC

File: B-406638.3

Date: March 29, 2013

Michael D. McLean, for the protester.
Dennis Adelson, Esq., David R. Koepfel, Esq., and Liviya Piccione-Sand, Esq.,
Department of Labor, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's proposal where agency informed protester that its proposal was unclear with regard to specification, and subsequent prototype demonstration and pilot testing confirmed that protester's proposal required installation of additional software that was prohibited by the solicitation.

DECISION

Concept Analysis and Integration, LLC, (CAI) of Alexandria, Virginia, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. DOL121RP21396, issued by the Department of Labor (DOL) for a cloud-based customer relations management software and related services. CAI challenges the agency's determination that its proposal was non-compliant with the RFP's technical requirements, and it argues that the agency improperly induced CAI to prepare a costly prototype of its proposed software.

We deny the protest.

BACKGROUND

The RFP was issued as a small business set-aside and it provided for the award of an indefinite-delivery indefinite-quantity (ID/IQ) contract for a base year and four option years, using the commercial item acquisition procedures of Federal Acquisition Regulation part 12. RFP at 1-5, 40, 45. The statement of objectives (SOO), included with the solicitation, required that the contractor implement a cloud-based software platform to streamline DOL's customer service intake and

provide a fully accessible source of information for customers and agency users. SOO at 5. Over 100 technical requirements and objectives were specified, including, as relevant here, that the cloud platform be accessible using only a web browser and that the platform not require installation of any client-based software. Id. at 7, 16-23.

The RFP provided for a two-phase competition and stated that award would be made on a best value basis considering the following evaluation factors: technical approach, management capabilities, information technology (IT) security requirements, past performance, and price. RFP at 24, 41-42. For evaluation during the phase 1, offerors were to submit separate proposal volumes under each evaluation factor. Id. at 24-32. Technical proposals were required to describe the offeror's understanding and technical approach to the SOO, and the overall functional and technical capabilities of the offeror's proposed cloud platform. Id. at 26-27, 35. Offerors were required to discuss their platform architecture, configuration, and other technical elements, identify any assumptions in their technical approach, and respond to a number of screening questions.¹ Id. at 26-27, 35, 41. The RFP advised offerors that their technical approach must be clearly defined and demonstrate an ability to meet each SOO functional requirement and objective, and that the agency would evaluate the contractor's understanding of the work to be performed in accordance with the SOO. Id. at 27, 35, 41. The RFP stated that the agency would establish a competitive range comprised of the most highly-rated proposals based on the phase 1 evaluation, and it would invite those offerors in the competitive range to participate in phase 2. Id. at 24, 30-31, 45.

Offerors who advanced to phase 2 of the competition were required to prepare a technical proof of concept (POC), which was essentially a prototype, and provide a live demonstration. Id. at 24, 30-31. The solicitation provided detailed objectives and instructions for phase 2, including for pilot testing, and advised offerors that the agency would provide additional instructions and technical data (such as its current web environment) at the start of the 5-week POC period.² Id. at 30-31, 42; SOO at 39-52. Under the RFP procedures, the offeror was to release its POC to the agency at the conclusion of the demo, so that the agency could conduct up to two weeks of pilot testing under various user scenarios. RFP at 31, 42; Agency Report

¹ Specifically, offerors were required to respond to six yes-or-no questions regarding the offeror's experience, certifications under federal IT laws and regulations, availability of key personnel and team members, and location of its proposed cloud server. RFP at 26, 41.

² The RFP advised offerors that the agency would hold question and answer sessions on the first day of the POC period for offerors in the competitive range and that they would be permitted to submit written questions (by day 3 of the POC) regarding the POC's scope, logistics, and integration details. RFP at 30.

(AR), Tab 3E, CAI Questions & Answers, at 7. At the end of the POC period, participating offerors were required to submit a proposed work statement for the first ID/IQ task order, and revised proposals if necessary. RFP at 24, 27; see SOO, Production Implementation Objectives, at 29-31 (Task Order No. 1); AR, Tab 3E, CAI Questions & Answers, at 1, 5-6.

The purpose of the phase 2 evaluation was to validate each offeror's proposed cloud platform and to evaluate offerors' revised proposals, task order SOW, and POC. RFP at 42. Among other things, the agency was to evaluate whether the offeror's POC met all objectives and how efficiently it performed. Id. The RFP provided that the agency pilot users would rate the ease of use and accessibility of the offeror's proposed cloud platform and whether the platform demonstrated self-service web capability that would satisfy customer needs without agency assistance. Id. at 31, 42.

The agency received a number of proposals, including from CAI, in August 2012. Contracting Officer's (CO) Statement at 1-2; CO's Supp. Statement at 1. After evaluating proposals under phase 1, the agency established a competitive range consisting of those offerors (including CAI) whose proposals were determined to have a reasonable chance for award, and it invited these offerors to participate in phase 2 of the competition. CO's Statement at 2.

On October 23 (the first day of CAI's concept period), the agency briefed CAI on the demo, including conditions, ground rules, and scenarios, and invited CAI to submit further questions. Id.; CO's Supp. Statement at 1; AR, Tab 6, POC Instructions. On that date, the agency also provided a "Clarification/Deficiency Report" that listed areas where CAI's proposal did not comply with RFP requirements, and the agency advised CAI to use the report to assist in preparation of its final proposal revisions. CO's Supp Statement at 1; Protest, Attach., CO Oct. 23, 2012 Email to CAI; AR, Tab 7, Clarification/Deficiency Report. Among other things, the report advised CAI that it was unclear to agency evaluators whether CAI's proposed cloud platform would include a web browser add-in or require the browser to download and install a software application.³ AR, Tab 7, Clarification/Deficiency Report, at 3. The report

³ CAI's proposal included a table that compared technical aspects of CAI's cloud platform to each SOO requirement and included a yes-or-no column on whether each requirement is "inherently supported by [CAI's] product or whether custom interfaces need to be developed." AR, Tab 4, CAI's Technical Proposal, at 23-30. The table indicated "no" on whether CAI's cloud platform could be accessed using only an web browser without installing further software, and the table noted that "[i]nternal technologists and administrators will use a SmartClient that installs via a browser." Id. at 29. CAI's proposal also included a diagram of its platform's data integration architecture that listed SmartClient and .NET in one of 11 interconnected boxes. Id. at 13.

questioned whether administrative privileges (i.e., permission to change a computer workstation's configurations or download software) would be required if CAI proposed a browser add-in, and the report reminded CAI that a software application would not be allowed. Id. On October 26, the agency provided CAI with written responses to 57 questions submitted by the firm, including, among other things, that CAI should respond to the report by submitting a revised technical proposal and/or technical appendix. CO's Statement at 2; AR, Tab 3E, CAI Questions & Answers, at 1, 5-6.

CAI submitted specifications and instructions on November 26 for accessing its POC. CO's Statement, Attach. 3, CAI Nov. 26, 2012 Email to CO, at 1; see AR, Tab 10, CAI POC Instructions, at 1. They included, among other things, that DOL computer workstations accessing CAI's cloud platform must have, or allow the user to install, Oracle RightNow SmartClient for the demo and pilot testing.⁴ CO's Statement, Attach. 3, CAI Nov. 26, 2012 Email to CO, at 1.

CAI's demonstration was held on November 30. CO's Statement at 2. The agency's technical evaluation panel (TEP) observed the demo and then reported to the contracting officer that the demo made clear that CAI's cloud platform would require installing new software, contrary to RFP specifications.⁵ AR, Tab 15, Declaration of TEP Leader, at 3.

Pilot testing of CAI's cloud platform was conducted, or attempted, between November 30 and December 10. Id. at 4. Three of the four agency pilot testers who attempted to remotely access CAI's cloud platform using their workstations' web browsers were unable to do so because, upon attempting to log onto the platform, the evaluators were prompted to download software, which was restricted by their respective workstations and local IT systems. Id.; CO's Statement at 3; AR, Tab 11, Emails between CO & Pilot Testers.

⁴ CAI's POC instructions also stated that the workstations must use .NET framework, version 4. CO's Statement, Attach. 3, CAI Nov. 26, 2012 Email to CO, at 1; AR, Tab 10, CAI POC Instructions, at 1. DOL had advised offerors that its website (www.dol.gov) uses a ".NET" framework, but the agency did not specify any particular version of .NET. See AR, Tab 3B, Apr. 10, 2012, Questions & Answers, at 4.

⁵ CAI was unable to demonstrate its POC using the agency's computer because .NET was not installed on it. AR, Tab 15, Declaration of TEP Leader, at 3. Thus, the agency permitted CAI to use CAI's own computer for the demonstration. Id. Immediately after the demo, CAI informed the agency that .NET version 4.0 and Oracle RightNow SmartClient had to be installed on DOL workstations in order to run CAI's proposed platform. CO's Statement at 2; Attach. 4, CAI Nov. 30, 2012 Email to CO, at 1.

CAI provided a new list of system requirements on December 7, this time stating that workstations would require “installation of SmartClient and that the installer must have sufficient Administrative privileges to accomplish the installatio[n]” in order for CAI’s cloud system to function. AR, Tab 11, CAI Agency Workspace System Requirements, at 1 (emphasis in original); CAI Dec. 7, 2012 Email to CO.

The agency notified CAI on December 18 that its proposal did not meet the solicitation’s technical requirements and that the proposal should not have been included in the competitive range. AR, Tab 13, Notice of Exclusion from Competitive Range. The agency removed CAI’s proposal from further competition.

DISCUSSION

CAI protests the agency’s rejection of its proposal and disputes that its technical proposal was non-compliant with RFP specifications. The protester also argues that, by inviting CAI to participate in phase 2 of the competition, the agency misled CAI into believing that its proposal was otherwise technically acceptable. In the protester’s view, offerors in the competitive range should have been deemed technically acceptable based solely on their proposals, and the purpose of phase 2 was simply to select the best choice.

DOL responds that it properly rejected CAI’s proposal as non-compliant. The agency argues that CAI’s technical proposal was vague and ambiguous, and it did not clearly disclose that its proposed cloud platform would require the installation of special software or a particular version of .NET. According to the agency, it was only during phase 2 of the competition (namely, CAI’s demo and the pilot users’ unsuccessful attempts to access its system), that the agency fully realized that CAI’s underlying proposal was premised on installation of additional software. DOL maintains that it otherwise properly included CAI’s proposal in the competitive range initially and afforded CAI a fair opportunity to correct technical deficiencies and revise its proposal.

In reviewing protests of an agency’s evaluation, our Office does not reevaluate proposals, rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation’s evaluation scheme and procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

CAI’s protest is largely based on the faulty premise that DOL’s inclusion of the protester’s proposal in phase 2 of the competition precluded the agency from subsequently concluding that the proposal was technically unacceptable. The fact that an agency initially included a proposal in the competitive range does not preclude the agency from later excluding the proposal from further consideration, if the proposal is found no longer to have a reasonable chance of receiving award.

See, e.g., MRK Incineration/IDM Corp., a Joint Venture; Halliburton NUS Envtl. Corp., B-244406.5, B-244406.6, Jan. 16, 1992, 92-1 CPD ¶ 77 at 5-6; Dowty Maritime Sys. Inc., Resdel Eng'g Div., B-237170, B-237173, Feb. 2, 1990, 90-1 CPD ¶ 147 at 6-7. Contrary to the protester's view, the agency's invitation for CAI to participate in phase 2 of the competition did not guarantee that the protester's proposal was technically acceptable. MRK Incineration/IDM Corp., supra.

The record here supports the agency's finding that CAI's proposal failed to meet the solicitation's technical specifications. 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.

As noted above, the RFP instructed offerors to propose, and the SOO explicitly required, a cloud-based platform that was accessible using only a web browser without installing any client-based software.⁶ RFP at 26-27, 35; SOO at 7, 16-23. Offerors were also informed that, if their proposals were included in the competitive range and advanced to phase 2 of the competition, then the offeror would be required to submit a POC and conduct a demo to validate the offeror's proposed platform. RFP at 24, 30-31, 45. The RFP explicitly stated that the agency would evaluate offerors' performance during phase 2, including whether they met all SOO objectives and how efficiently the offeror's POC performed. Id. at 42. Moreover, the RFP stated that pilot users would rate the ease of use and accessibility of the offeror's proposed system and whether it demonstrated self-service web capability that would satisfy customer needs without agency assistance. Id. at 31, 42.

CAI does not dispute that its proposed cloud platform required the installation of SmartClient as additional software. See, e.g., Protest, Attach. A, at 2; Comments at 2-4; see also AR, Tab 11, CAI Dec. 7, 2012 Email to CO (CAI stating that in order for its cloud system to function, agency workstation requires installation of SmartClient and installer must have sufficient administrative privileges for

⁶ The RFP included numerous other requirements that, in our view, also put offerors on notice that the cloud platform must be fully integrated, and compatible with, DOL's existing IT systems. For example, the RFP required that the proposed platform be integrated with the agency's existing email systems, compatible with commercially available software, easily customizable to DOL's public website (www.dol.gov), and accessible through various communication channels, including web and email. SOO at 6-7, 16, 18, 21. The platform was also required to reduce costs and efforts associated with maintaining hardware, infrastructure, and personnel needs, as well as allow non-technical agency users to easily support case management activities. Id. at 5-6, 18.

installation); CAI Agency Workspace System Requirements, at 1 (agency workstations used for live demo must be allowed to install Oracle RightNow SmartClient). The protester also concedes that the agency's pilot testers could not test the functionality of CAI's proposed platform on their workstations.⁷ See Comments at 4, 7. Accordingly, we find sufficient basis in the record to support the agency's decision to reject CAI's proposal.

With regard to CAI's complaint that the agency never should have invited the firm to participate in phase 2 of the competition, we agree with the agency that it was not clear at the conclusion of phase 1 that CAI's proposal was unacceptable. As noted above, CAI's proposal contained only a brief note on CAI's 8-page table and a reference to SmartClient in a diagram. AR, Tab 4, CAI's Technical Proposal, at 13, 29. CAI's proposal contained no substantive discussion of SmartClient, and DOL was not required to discern, for example, how SmartClient would be integrated and compatible with the agency's IT systems. Given the lack of clarity in CAI's proposal, we cannot conclude that the agency should have realized, after its initial evaluation of CAI's proposal during phase 1 of the competition, that CAI's POC was unacceptable. See, e.g., The Louis Berger Group, Inc., B 407715 et al., Jan. 25, 2013, 2013 CPD ¶ 55 at 9 (agency not required to divine protester's approach to specified technical requirement from proposal's check-the-box table). Accordingly, we find unobjectionable the agency's actions in inviting CAI to participate in phase 2.

In sum, although CAI complains that its proposal should not have been included in the competitive range, it has not shown that the agency violated any procurement laws or regulations or acted unreasonably in rejecting the protester's proposal. The protester's disagreement with the agency's judgment does not establish that the agency acted unreasonably or provide a basis to sustain its protest.⁸ See, e.g., CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2.

⁷ CAI complains that the POC testing was unsuccessful, in part, because the DOL workstation upon which the POC was tested did not deploy the latest version of .NET. The agency did not represent to offerors, in the RFP or otherwise, that their workstations contained the latest version of .NET. Moreover, the protester itself had informed the contracting officer that .NET normally is not part of a workstation's desktop and that federal agencies "do not see the need to push .NET for the average desktop." See CO's Statement at 2; Attach. 4, CAI Nov. 30, 2012 Email to CO, at 1; see also AR, Tab 15, Declaration of TEP Leader, at 4 (.NET versions vary across all DOL workstations). What is more, CAI's proposal otherwise recognizes that agency work stations may use differing versions of web browsers and operating systems. AR, Tab 10, CAI POC Instructions, at 11; Tab 11, CAI Agency Workspace System Requirements, at 1-2.

⁸ To the extent that CAI maintains that the RFP's requirement that offerors prepare a POC was onerous for small businesses, its argument is untimely because it

(continued...)

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of proposals. Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1) (2012).