



Decision

Matter of: Vocus Inc.

File: B-402391

Date: March 25, 2010

Todd Graham for the protester.

Michael McCabe, Esq., Federal Emergency Management Agency, for the agency.
Cherie J. Owen, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of successful vendor's proposal for information management system with regard to e-mail tracking and contact display capability is denied where the record shows that the agency's evaluation was reasonable.
2. Protest challenging evaluation of successful vendor's proposal for information management system with regard to the ability of proposed system to integrate with a specific press release distribution service is denied where the record shows that, although the agency effectively relaxed the solicitation requirement, this action did not prejudice the protester.

DECISION

Vocus Inc., of Lanham, Maryland, protests the issuance of an order to PR Newswire Association, LLC, of Washington, D.C., by the Federal Emergency Management Agency (FEMA) under request for proposals (RFP) No. W469106Y for a contact management and distribution system to support the public outreach efforts of its Office of External Affairs. Vocus contends that PR Newswire's proposal should have been rejected as unacceptable because it failed to satisfy several of the RFP's requirements.

We deny the protest.

BACKGROUND

FEMA issued the solicitation on November 17, 2009, to holders of applicable General Services Administration Federal Supply Service contracts, seeking a web-based information management system to more effectively reach out to key media and non-media stakeholders and measure and report on the effectiveness of its public outreach efforts. Agency Report (AR), Tab D, Contracting Officer's (CO) Statement, at 1. The RFP's statement of work (SOW) set forth the agency's requirements regarding system management and project management. The system management portion of the work was broken down into three main areas: contact management; distribution; and collaboration and campaign management. The first area required vendors to provide a system or service with contact management capabilities that would integrate essential external affairs functions into one browser-based, database-driven software suite. The second area, distribution, required vendors to provide a system or service to send broadcast messages to a list of targeted contacts via e-mail and fax. The third area, collaboration and campaign management, required that vendors provide a system or service that would enable FEMA's external affairs office to organize and track progress on communications projects and campaigns, and assist in maximizing the targeted distribution of communications products. Each service area listed a number of required system attributes.

As relevant here, the contact management section of the SOW specified that a vendor's system had to provide the capability of "viewing all information pertinent to a contact from within a contact's record--on one screen (as well as from a PDA¹)." AR, Tab A, RFP Attach. 1, at 3.

Under the collaboration and campaign management portion of the SOW, the RFP required that the proposed system be capable of generating electronic press releases or external affairs products, and permit distribution of such products to an unlimited number of recipients as well as "provide the ability to integrate distribution via PRWeb and other online distribution capabilities outside of the contractor's system or service."² *Id.* at 4. The SOW also required that the system provide the agency with the ability to track e-mail to determine which recipients opened e-mail messages, and what documents or links were accessed from which e-mails. *Id.*

¹ The acronym "PDA" stands for "personal digital assistant," an evolving term referring to a broad range of electronic devices with varying capabilities, including internet access and email. See, e.g., www.it.jhmi.edu/glossary/pqrs.html.

² PRWeb is an online news and press release distribution service, owned by Vocus. See www.prweb.com/pr/press-release-tip/prweb-faqs.html.

The RFP listed four evaluation factors: technical approach, management approach, past performance, and price. The solicitation specified that technical approach was the most important factor. Management approach and past performance were of equal importance, but less important than technical approach. The three non-price factors, when combined, were more important than price. The order was to be issued to the responsible offeror whose proposal represented the “best value” to the government, all factors considered. AR, Tab A, RFP, Attach. 2, at 2.

Three offerors, including PR Newswire and Vocus, submitted proposals by the November 30 closing date. AR, Tab D, CO Statement, at 2. An agency technical evaluation panel (TEP) evaluated offerors’ proposals as to the non-price factors using an adjectival rating scheme that was set forth in the RFP: excellent; good; satisfactory; marginal; unsatisfactory; and, with regard to the past performance factor, neutral. Id. at 1-2.

Each member of the TEP individually evaluated the proposals and prepared a technical evaluation worksheet. Id. at 2; AR, Tabs J-O, TEP Member Evaluation Sheets. The TEP then met to prepare a consensus TEP report and decided to conduct clarifications with each of the offerors. After clarifications, the TEP updated the consensus report and assigned the following ratings:

Offeror	Technical Approach	Management Approach	Past Performance	Overall Rating
PR Newswire	Good	Good	Good	Good
Vocus, Inc.	Satisfactory	Good	Good	Good
Offeror 3	Unsatisfactory	Satisfactory	Neutral	Unsatisfactory

AR, Tab G, TEP Report, at 2.

On December 17, the source selection authority (SSA) determined that PR Newswire’s proposal was both technically superior to, and lower-priced than, the proposal submitted by Vocus. Specifically, the SSA noted that PR Newswire’s proposal had received a rating of good on the technical approach factor, while Vocus’ received a rating of satisfactory. The SSA also noted that PR Newswire’s proposal offered a cost savings of 21% over the life of the contract, when compared to the price submitted by Vocus. The SSA therefore determined that PR Newswire’s proposal represented the best value to the government. AR, Tab P, Source Selection Decision, at 2. The order was issued to PR Newswire on December 18, and on December 19, the protester received its debriefing. This protest followed.

DISCUSSION

The protest raises several challenges to FEMA's evaluation of the proposal submitted by PR Newswire.³ Vocus alleges that PR Newswire's proposal did not offer the following features, as required by the RFP: the ability to view contact information on a PDA; the ability to provide tracking of e-mail messages; and the ability to integrate distribution of press releases via PRWeb.⁴ In its comments on the agency report, the protester also challenged the agency's evaluation of its own proposal. Specifically, the firm challenged several statements in the individual evaluators' scoring sheets, and the fact that the sheets were dated prior to the agency's clarifications with the offerors. The protester contends that its proposal was improperly evaluated as having weaknesses that in fact were addressed during clarifications.

The evaluation of technical proposals is a matter within the discretion of the contracting agency. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. Clark/Caddell Joint Venture, B-402055, Jan. 7, 2010, 2010 CPD ¶ 21 at 5. An offeror's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

With regard to the protester's challenge to the evaluation of its own proposal based on its review of the evaluators' scoring sheets, the record reflects that the evaluators reviewed the initial proposals, completed individual scoring sheets, and prepared the TEP Report prior to clarifications with the offerors. FEMA Response to GAO Questions, Mar. 12, 2010, at 2. After clarifications, they updated the TEP Report to reflect the information provided by the offerors; the individual scoring sheets were not updated. Id.; AR, Tab D, CO Statement, at 2-3. The record also shows that the

³ To the extent that Vocus asserts that, despite what PR Newswire stated in its proposal, it is not capable of meeting the solicitation's requirements, these assertions concern the agency's affirmative determination of responsibility. Affirmative determinations of responsibility are largely committed to the contracting officer's discretion, and our Office will not consider a protest challenging such determinations, except in limited circumstances not alleged or demonstrated here. See Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2009).

⁴ Vocus raised several other challenges to evaluation of PR Newswire's proposal in its initial protest, but failed to address these grounds in its comments on the agency report. Therefore, we regard these protest grounds as abandoned. See Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4.

updated TEP Report was the document relied upon by the contracting officer in making the selection decision, not the individual scoring sheets. AR, Tab D, CO Statement, at 3. Therefore, the protester's challenges to the statements contained in the individual scoring sheets, but not reflected in the TEP Report, provide no basis upon which to sustain the protest.

Vocus argues that PR Newswire's proposal was unacceptable because the firm did not offer to provide a system that would allow contact information to be viewed on a PDA. Protest at 1. The agency responds that, while neither PR Newswire nor Vocus specifically addressed the use of a PDA to display contact information from their systems, the agency concluded that the proposals of both companies met this requirement. FEMA Supp. Response, at 4. With regard to PR Newswire, FEMA explains that because the firm offered the ability to share content in several electronic media, the agency properly inferred that the content would be available via PDA. *Id.* at 4-5. For example, PR Newswire offered the ability to view content directly through Facebook, and Facebook is accessible on mobile devices, such as PDAs and cellular telephones. *Id.* at 5.

The RFP did not define the term "PDA," which, as noted above, is an imprecise term, commonly used to refer to numerous types of hand-held electronic devices. Given that most PDAs in use today offer the ability to access the internet and e-mail accounts, we think that the agency's conclusion--that all systems that offered the ability to view information electronically satisfied this requirement--was reasonable.

The protester also contends that PR Newswire's proposal did not offer the ability to provide e-mail tracking. However, our review of the record shows that PR Newswire specifically offered to provide this service. In this regard, the firm's proposal stated, "with fax and e-mail distributions FEMA will be able to see who has received your releases and if they have opened them, etc." AR, Tab B, PR Newswire Proposal at 7. Therefore, we find no merit to this protest ground.

Finally, the protester contends that PR Newswire's system does not offer the ability to integrate distribution of press releases and other products via PRWeb, as required by the RFP. Protest at 1. The agency acknowledges that PR Newswire's proposal did not offer the ability to integrate with PRWeb, but contends that the firm's system offers an equivalent capability--the ability to integrate with WebMaxPLUS, another online press release distribution service. FEMA Response to GAO Questions, Mar. 12, 2010, at 2. The agency contends that, although PR Newswire's system integrates with WebMaxPLUS rather than PRWeb, the system achieves the same results, and therefore satisfies the requirements of the solicitation. *Id.*; FEMA Supp. Response, at 5.

Generally, where a solicitation sets forth requirements in very specific terms, offerors must meet them precisely. See *Ross Cook, Inc.*, B-231686, Sept. 7, 1988, 88-2 CPD ¶ 216 at 2. However, if there is a discrepancy between the offered product and the stated requirement, and the offered product will meet the agency's needs, the

deviation may be waived if there is no prejudice to the other offerors. See Safety Storage, Inc., B-275076, Jan. 21, 1997, 97-1 CPD ¶ 32 at 4; CryoMed, B-241605, Feb. 22, 1991, 91-1 CPD ¶ 202 at 4. Unfair competitive prejudice from a waiver or relaxation of the terms and conditions of the RFP for one offeror exists where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements. CryoMed, supra.

Here, while PR Newswire did not offer the ability to integrate with the specific distribution service named in the RFP, it offered the ability to integrate with an equivalent service. The protester does not argue that the system with which PR Newswire's technology integrates, WebMaxPLUS, is inferior to PRWeb; rather, the protester contends that PR Newswire did not comply with the specific terms of the RFP requiring integration with PRWeb. We agree with the protester that the agency effectively waived the RFP requirement that the proposed system integrate with PRWeb, and instead considered the requirement to be satisfied if the system was capable of integrating with any online press release distribution service that offered the same features as PRWeb. Nevertheless, we see no basis to conclude that, had Vocus known of the relaxed requirements regarding integration with PRWeb, it would have revised its proposal in any material way. Because the protester has suffered no prejudice as a result of the agency's waiver of strict compliance with the RFP requirement, we deny this ground of protest.

The protest is denied.

Lynn H. Gibson
Acting General Counsel