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Decision

Matter of: Wolverine Services, LLC; DL LSS, Joint Venture

File: B-410133; B-410133.2; B-410133.3

Date: October 23, 2014

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DIGEST

Protests challenging agency's evaluation of proposals are denied where record shows that evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

Wolverine Services, LLC, of Anchorage, Alaska, and DL LSS, Joint Venture, of Clover, South Carolina, protest the elimination of their respective proposals under request for proposals (RFP) No. W52P1J-14-R-0019, issued by the Department of the Army for logistics support services at Fort Knox, Kentucky. Both protesters maintain that it was unreasonable to exclude their proposals from consideration based on what the protesters characterize as minor discrepancies.

We deny the protests.

The RFP contemplates the issuance of a task order, for a 1-year base period and four 1-year option periods, to the successful offeror on a lowest-priced, technically

acceptable basis.¹ Offerors were advised that the agency would perform an initial compliance review to determine whether proposals met various requirements of the solicitation. RFP at 60. As is relevant to these protests, offerors were required to fill out a staffing matrix identified in the RFP as attachment 2 that detailed the offeror's staffing for the four option periods.²

The RFP contemplated two broad categories of proposed employees, functional labor category (FLC) 1 employees, and FLC 2 employees. FLC 1 employees were defined by the RFP as employees that will directly accomplish the tasks or functions identified in the solicitation (for example, mechanics performing maintenance efforts), while FLC 2 employees were defined as employees that do not directly perform the tasks or functions identified in the RFP, but that nonetheless are required in connection with performance of the contract (for example, managers or administrative assistants). RFP at 49.

The RFP advised offerors that, in order to be found compliant, their attachment 2 had to include a minimum number of hours for FLC 1 employees (for all option periods combined) in three broad categories: 133,840 hours for maintenance, 133,790 hours for supply, and 69,860 hours for transportation. RFP at 50. The RFP specifically advised that failure to propose at least the minimum number of hours for each of the three categories of FLC 1 employees would render the proposal noncompliant, and that the agency would reject it without further evaluation. RFP at 60-61.

The agency received a number of proposals in response to the RFP, including those submitted by the protesters. The agency performed its compliance review of the proposals and determined that both protesters failed to propose the minimum number of FLC 1 labor hours required by the solicitation. On the basis of that conclusion, the agency rejected both firms' proposals without further consideration. Wolverine Agency Report (WAR), exh. 12a, Proposal Rejection Letter; DL LSS Agency Report (DAR), exh. 10b, Proposal Rejection Letter.³ After being advised of the rejection of their respective proposals (and, in the case of DL LSS, after it

¹ The competition for this requirement is confined to concerns eligible under section 8(a) of the Small Business Act that also have been awarded basic ordering agreements under the agency's enhanced Army global logistics enterprise program.

² Attachment 2 included staffing for both the base and option periods, but only the offerors' staffing for the option periods is relevant to the protests.

³ The record shows that the agency also concluded that Wolverine had failed properly to complete attachment 2 because it failed to insert the appropriate functional areas in certain columns of its attachment 2. WAR, exh. 12a, Proposal Rejection Letter.

requested and received a debriefing), both firms filed protests in our Office.

PROTESTS

Both protesters maintain that the agency unreasonably rejected their proposals for failing to offer the required number of FLC 1 labor hours. We discuss the details of each protest below, but note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

Wolverine's Protest

The record shows that the agency determined that Wolverine's proposal failed to offer the minimum number of hours in the supply and transportation categories. Specifically, the agency calculated that Wolverine offered only 69,644 hours in the transportation category (approximately 215 hours fewer than the 69,860 hours required by the RFP) and offered only 131,889 hours in the supply labor category (approximately 1,900 hours fewer than the 133,790 hours required by the RFP). WAR, exh. 11, Agency Calculation of Wolverine's Proposed Labor Hours.

The record shows that the discrepancies in Wolverine's proposed hours were the result of two errors. First, Wolverine erroneously identified its bus driver positions as exempt from the Service Contract Act (SCA). According to the protester, all of its SCA employees' hours were calculated using a full-time equivalent (FTE) employment year of 1,920 hours, whereas, its SCA-exempt employees' hours were calculated using a FTE employment year of 1,880 hours. The protester states that properly classifying all of its bus driver positions as SCA positions eliminates the approximately 215 hour shortfall identified by the agency in the transportation labor area.

Second, the record shows that Wolverine erroneously classified all of its general clerk II positions as included in the FLC 2 labor category rather than the FLC 1 labor category. According to the protester, one of its general clerk II positions should have been classified in the FLC 1 labor category, and that when this position is properly categorized, this eliminates the approximately 1,900 labor hour shortfall in the supply labor area.

Wolverine argues that the agency's rejection of its proposal for these minor discrepancies was unreasonable because neither error amounts to a deficiency in its proposal that would merit its rejection. The protester also maintains that at the

top of its attachment 2 it correctly identified more than the required number of overall hours for the supply and transportation labor categories, even though elsewhere in its attachment 2 it incorrectly classified (and therefore incorrectly calculated) the hours associated with its bus driver and general clerk II positions. Wolverine also contends that in several areas of its proposal other than its attachment 2, it correctly identified its bus drivers as employees subject to, rather than exempt from, the SCA; and also correctly identified one of its general clerk II employees as included in the FLC 1 category.

Wolverine has given us no basis to question the agency's evaluation. First, to the extent the protester maintains that it was unreasonable for the agency to reject its proposal for failing to comply with the minimum labor hours requirement of the RFP, the solicitation was clear and unequivocal. It provided as follows:

If the FLC1 hours contained in the Offerors Attachment 0002- Staffing/Labor Mix, FTE Count Option Periods 1-4 tab, are not equal to or greater than the minimum FLC1 hours for each Functional Area identified in Exhibit F TE 5-001 M-S-T MINIMUM FUNCTIONAL LABOR CATEGORY 1 HOURS (i.e., Maintenance, Transportation, Supply), the Offerors proposal shall be rendered noncompliant and will not be evaluated nor further considered for award. The Offeror must satisfy the minimum hours requirement as stated in this RFP without exception.

RFP at 61. Firms therefore were on notice that the agency would summarily reject any proposal failing to meet the minimum hours requirement. While the protester essentially complains that its proposal varied only slightly from the minimum hours requirement--in effect the protester maintains that its proposal did not deviate sufficiently from the RFP requirements to merit rejection--the RFP did not contemplate a comparative evaluation of the degree to which an offeror's proposal failed to comply with the solicitation. Rather, the RFP provided that failure to meet the minimum hours requirement would result in rejection of the proposal without further consideration.

Second, to the extent that Wolverine's proposal included information that was different from the calculations included in its attachment 2 (both the other portions of its proposal that it maintains reflected the correct information, as well as the summary table appearing at the top of its attachment 2), that information rendered its proposal, at best, ambiguous. Simply stated, there was no way for the agency to determine which portion of Wolverine's proposal the firm intended as its actual offer.

In any event, the agency specifically advised offerors that it would use the Microsoft Excel software application (attachment 2 is a Microsoft Excel spreadsheet), along with offeror-provided data entered in attachment 2, to calculate the proposed hours

and ensure that the minimum hours were being proposed. The RFP provided as follows:

By using Microsoft Excel, the Government will verify the Offerors proposed option period total proposed FLC1 hours. In order to verify the Offerors total proposed FLC1 hours by Functional Area, the Government will multiply the number of proposed FLC1 FTEs for all FLC1 positions by the applicable offeror-provided number of hours per year by employee type.

RFP at 60-61. The RFP therefore was clear regarding how the agency would calculate the offerors' proposed total hours; the fact that other, conflicting, information appeared elsewhere in Wolverine's proposal (even, for example, in the summary table in attachment 2 that was not based on the excel calculations) did not provide the agency with a basis to deviate from the evaluation method specified in the solicitation. In the final analysis, the agency evaluated the Wolverine proposal in a manner that was consistent with the express terms of the RFP and properly calculated that Wolverine's proposal did not offer the required minimum number of hours. We therefore deny this aspect of Wolverine's protest.

Wolverine also asserts that the agency should have engaged in either discussions or clarifications to resolve what it characterizes as the minor errors in its proposal. According to the protester, the errors identified in its proposal could easily have been resolved through discussions or clarifications.

We find no merit to this aspect of Wolverine's protest. As an initial matter, the RFP specifically provided that the agency intended to make award without discussions. RFP at 62. In addition, although the RFP reserved to the government the right to engage in discussions, it specifically advised offerors that the agency would only engage in discussions after performing step 1 (price evaluation) and step 2 (technical evaluation) of its substantive evaluation of proposals. Id. The RFP, in turn, provided that the agency's substantive evaluation would only be performed on proposals that remained under consideration after the agency performed its compliance review, the stage at which the Wolverine proposal was eliminated from consideration. RFP at 61. It follows that the RFP never contemplated engaging in discussions with those offerors whose proposals initially were eliminated as noncompliant.

As for clarifications, where, as here, a solicitation states that the agency intends to make award without discussions, the contracting officer's discretion not to hold discussions is quite broad and is, in general, a matter that we will not review. Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5. Likewise, while agencies have broad discretion to seek clarifications from offerors, there is simply no requirement that offerors be permitted to clarify their proposals. JBlanco Enters., Inc., B-402905, Aug. 5, 2010, 2010 CPD ¶ 186 at 4 n.4. Here, in view of

the express terms of the RFP advising offerors that the agency would eliminate proposals that did not offer at least the minimum number of FLC 1 hours, the Army was under no obligation to provide Wolverine an opportunity to resolve the errors in its proposal through clarifications. We therefore deny this aspect of Wolverine's protest.

DL LSS Protest

DL LSS's proposal was eliminated from consideration because the firm incorrectly classified one employee as an FLC 1 type employee rather than as a FLC 2 type employee. This resulted in the agency calculating that DL LSS offered 131,994 hours in the maintenance labor category (approximately 1,845 hours fewer than the 133,840 minimum hours for maintenance required by the RFP). DAR, exh. 10b, Notice of Proposal Elimination, at 3.⁴

DL LSS maintains that the agency unreasonably eliminated its proposal from consideration because, substantively, the duties of the employee in question are not supervisory in nature. According to the protester, even though the term "supervisor" appears in the title of this position,⁵ in practical terms, the duties to be performed by this individual are not supervisory in nature. DL LSS therefore concludes that the agency erred in eliminating that position from its calculation of DL LSS's minimum hours for the maintenance area of performance.

We find no merit to DL LSS's protest. The RFP defined the position in question as follows:

The Contractor shall provide Data Entry Supervisor[s] (DES) who possess . . . a minimum of 5 years of Supervision in Production Control, and the ability to prepare necessary documentation (automated and manual) according to [the] . . . STAMIS/AIS [Standard Army Management Information Systems/Automated Information Systems] system and function area. Additionally, the DES SAMS [Data Entry Supervisor Standard Army Maintenance System]-1/2E will possess knowledge of SAMS-E data entry screens [,] and perform the following functions at a minimum: check equipment availability,

⁴ The record shows that DL LSS also misclassified a second employee as an FLC 1 type employee rather than an FLC 2 type employee under the supply performance area, but that misclassification did not result in the firm's proposal being deemed noncompliant. DAR, exh. 10b, Notice of Proposal Elimination, at 3.

⁵ DL LSS's labor category title for that position was "Production Control Supervisor," DAR, exh. 7a DL LSS Attachment 2, at 2. The RFP used the title "Data Entry Clerk Production Control (Supervisor-key)." DAR, exh. 5d, at 1.

maintain equipment files, dispatch equipment, add/delete operators, enter equipment faults, schedule equipment maintenance, print dispatch control log[s] . . . [and] equipment service records, create maintenance work order[s]/task [orders,] and assign personnel.

DAR, exh. 5d, at 1. This position description clearly contemplates that the individual performing this aspect of the requirement will engage in at least some supervisory type functions, including adding and deleting operators, scheduling (but not actually performing) equipment maintenance, and creating maintenance task orders and assigning personnel. Id. Although DL LSS maintains that these tasks are substantive in nature (rather than supervisory or administrative in nature), the protester's position amounts to no more than disagreement with the agency's conclusion concerning the categorization of this employee as an FLC 2 type employee rather than an FLC 1 type employee.⁶ Such disagreement, without more, does not demonstrate that the agency's evaluation was unreasonable. AT&T Corp., supra. We therefore deny DL LSS's protest.

The protests are denied.

Susan A. Poling
General Counsel

⁶ We also note that the RFP contemplated the possibility of hybrid-type employees that performed both FLC 1 and FLC 2 type functions, and stated as follows:

The Offeror must clearly identify all FTEs that are cross utilized FTEs, or, in other words, when a portion of an FTE is applicable to an FLC1 labor category and a portion of the same FTE is also applicable to an FLC2 labor category. These employees must be listed on the Attachment 0002 Staffing/Labor Mix in all applicable locations (e.g. part time worker (FLC1) and part time manager (FLC2)) with the appropriate percentage of hours applicable to each labor category expressed as a decimal (not to exceed two decimal places to the right of the whole number).

RFP at 50. Thus, although the protester may be correct that this position is not entirely comprised of supervisory duties, DL LSS was required by the terms of the RFP to allocate this employee's time between FLC 1 and FLC 2 type functions. Because DL LSS classified this employee entirely as an FLC 1 type employee (rather than allocating the employee's time between FLC 1 and FCL 2 labor categories), the agency reasonably excluded the employee's time entirely in calculating the minimum FLC 1 hours proposed by DL LSS.