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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: PCMG; Computer Security Solutions, LLC

File: B-410763; B-410763.3

Date: February 5, 2015

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Erin V. Podolny, Esq., Department of Health and Human Services, National Institutes of Health, for the agency.

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DIGEST

Protests challenging an agency's rejection of protesters' proposals for failing to include technical literature are denied where record shows protesters failed to include such information, and the information was a material requirement of the solicitation.

DECISION

PCMG, of Chantilly, Virginia, and Computer Security Solutions, LLC (CSS), of McLean, Virginia, protest the elimination of their respective proposals under request for proposals No. NIHJT2014002, issued by the Department of Health and Human Services, National Institutes of Health, to acquire information technology (IT) commodities and solutions. The protesters maintain that the agency unreasonably eliminated their proposals from consideration for failing to include technical literature.

We deny the protests.

The RFP contemplates the award of 40-50 government-wide indefinite-delivery, indefinite-quantity contracts to provide an array of IT commodities and solutions for a 10-year period. The estimated total value of the contracts is \$20 billion. RFP § B.5. In general, the RFP contemplates award on a best-value basis, considering price and several non-price factors, with the non-price factors deemed significantly

more important than price. RFP § M.1.3. The RFP advised offerors that they either could propose as an original equipment manufacturer (OEM), or as a value added reseller (VAR). RFP § L.4.1 (a). Both protesters proposed as VARs.

The RFP provided for a two-step evaluation process. Under step 1, proposals were to be evaluated on a “go/no-go” basis. RFP § M.1.1. Under the go/no-go evaluation factor, the agency would consider, among other things, whether the offeror had submitted all of the documentation required by the RFP. Id. The record shows that both of the protester’s proposals were eliminated during the go/no-go phase of the agency’s evaluation because neither concern included technical literature for the products they were proposing. There is no dispute concerning the lack of technical literature in the firms’ respective proposals.

Both protesters argue that the RFP did not require inclusion of technical literature and that the agency’s rejection of their respective proposals was unreasonable for failing to include that information. We discuss 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. On this record, we have no basis to object to the agency’s elimination of the protesters’ proposals.

THE CSS PROTEST

CSS principally maintains that it was not required to submit technical literature with its proposal because it proposed as a VAR rather than as an OEM, and that, in any event, its proposal included sufficient information for the agency to evaluate the adequacy of what was being offered. According to CSS, the RFP required only OEMs to submit technical literature, while VARs could satisfy the requirements of the RFP simply by describing the parts or products that the firm intended to offer, and providing authorized reseller certification letters from their respective OEM suppliers. CSS argues that it adequately described the products it was offering and included all of the necessary authorized reseller certification letters in support of its proposal. We find no merit to CSS’s protest.

As an initial matter, we conclude that CSS’s position--that the RFP imposed different requirements for OEMs and VARs for the submission of technical literature--is inherently unreasonable. As the agency explains, the underlying reason for requiring the submission of technical literature was to enable the agency to verify or confirm that the products being described elsewhere in the proposal, would, in fact, meet the agency’s actual requirements. See Agency Legal Memorandum, at 10-11. That underlying reason for requiring technical literature—to enable the agency to corroborate an offeror’s claims that the products being offered actually meet the agency’s requirements--applies with equal force to both

OEMs and VARs. In fact, since VARs are offering the products of third-party manufacturers, logic suggests that the requirement for technical literature would be even more important than if the offeror were an OEM. CSS has offered no explanation for its position that the RFP required OEMs--but not VARs--to submit technical literature with their proposals, and we conclude that this fundamental, underlying premise of CSS's argument does not withstand logical scrutiny.¹

We also conclude that the RFP unequivocally requires the submission of technical literature with a firm's proposal. In numerous places, the RFP's instructions advised offerors that the submission of technical literature was mandatory. For example, in describing the organization, page limitations and formatting of the proposals, offerors were instructed as follows:

As part of this Section [the technical/management proposal volume], the offeror shall provide backup documentation to include:

- The technical literature from the proposed OEM (i.e. Specification sheet, User's Guide, etc.) that substantiates that the Offeror can comply with the commodities specified in Attachment J.4 Technical Compliance Workbook of the solicitation.

RFP § L.3.1. In addition to the mandatory nature of this instruction (i.e. "shall"), this instruction applies to "literature from the proposed OEM." If, as asserted by CSS,

¹ Alternatively, CSS argues that its proposal included other information that was adequate for the agency to evaluate its proposal. In particular, in Attachment J.8, Products List, CSS included internet web addresses that it claims would have led the agency to the required technical literature. An examination of the CSS proposal, however, shows that it included only generic web addresses for whole categories of products. For example, the first 464 items listed in CSS's Attachment J.8 are separate products manufactured by a single concern, but the web address for each product is identical. Agency Report (AR), exh. 7B, CSS Proposal, Vol. II, Sec. 2, Technical Understanding, Attachment J.8. In any event, the agency specifically advised offerors that web addresses or internet links were not acceptable in lieu of the technical literature required. In responding to an offeror question regarding the acceptability of web links in lieu of technical literature, the agency specifically advised: "The Government will not accept web links as evidence that an Offeror meets the minimum requirements. There is no limitation on the backup documentation (assuming it is not a web link) provided." RFP, Amendment No. 2, Offeror Questions and Answers, Section J.4 Technical Compliance Workbook, question No. 72.

this instruction applied only to OEMs, the reference to “proposed OEMs” would make no logical sense. It follows that this RFP instruction was applicable to VARs.²

In describing the contents of the firms’ proposals under the RFP’s technical understanding and capability section, the RFP again instructed offerors as follows:

As part of this section, the offeror shall also provide backup documentation to include:

- The technical literature from their respective commodity catalog(s) that substantiates that the offeror can comply with the commodities specified in Attachment J.4 –Technical Compliance Workbook of the solicitation.

RFP § L.4.3(a). Again, the instruction to offerors to include technical literature with their proposals is both unequivocal and mandatory.³

The agency further emphasized the mandatory nature of the requirement for technical literature in responding to offerors’ questions. In this regard, one offeror asked if the agency would consider removing the requirement for technical literature. The question and answer were as follows:

[Q:] Would the government consider removing the requirement for technical literature to substantiate that commodities meet requirements of the solicitation?

² In its initial protest, CSS also suggested that if it were required to submit technical literature it would have had to furnish thousands of pages with its proposal, and that such a requirement was inconsistent with the RFP’s limit of 15 pages for this portion of the proposals. However, the instruction makes clear that information furnished as back-up documentation was not subject to the 15-page limitation. RFP § L.3.1

³ CSS argues that it understood the reference in this section of the RFP to “commodity catalog(s)” to be a reference to an OEM’s commodity catalog which, the protester argues, is a document that only an OEM would have. CSS argues that this shows that the requirement for technical literature applied only to OEMs. However, the phrase “commodity catalog” was expressly defined by the agency as follows: “Attachment J-8 [an offeror’s products list to be submitted with their proposal] represents the contractor’s CIO-CS [chief information officer--commodities and solutions] commodity catalog.” RFP, Amendment No. 2, Offeror Questions and Answers, Section L, Question No. 27 (emphasis supplied).

[A:] No. The offeror must provide the technical literature it deems applicable to substantiate that the commodities meet the requirements of the Technical Compliance Workbook, Attachment J.4.

RFP, Amendment No. 3, Offeror Questions and Answers, Section L, Question No. 77. We point out that this question makes no distinction between OEMs and VARs, and instead refers only to offerors, thereby providing additional support for the conclusion that technical literature was required to be provided by all offerors.

Finally, the RFP's go/no-go evaluation factors clearly also contemplate that offerors will provide technical literature. In general, the go/no-go evaluation factors required offerors to submit all of the documents specified in RFP Attachment J.2, Compliance Checklist.⁴ RFP § M.1.1(1). The RFP Attachment J.2, Compliance Checklist expressly requires submission of Attachment J.4, Technical Compliance Workbook, along with backup technical literature. RFP at Attachment J.2. In addition, in discussing the evaluation of Attachment J.4, Technical Compliance Workbook, the RFP provided as follows:

Technical Compliance Workbook. As required under Paragraph L.4.3, offerors are required to submit a completed Technical Compliance Workbook (Attachment J.4) and provide evidence that their proposed items meet the Government's minimum requirements as listed in the workbook. The government will assess whether the offeror has met the minimum requirements for each product listed in this Workbook and may utilize any additional backup documentation submitted by the offeror during the evaluation. If the proposal does not demonstrate that it meets the minimum requirements (including TAA, EPEAT Bronze registered or higher, ENERGY STAR® or FEMP-designated as applicable) and for VARs, evidence from the respective manufacturers that they are Authorized Resellers of the products proposed, the proposal will be determined unacceptable and ineligible for further consideration for award.

RFP § M.1.1(2). CSS argues that the terms of this RFP section require only that it complete the J.4 Technical Compliance Workbook and submit evidence from its OEM manufacturers that it is an authorized reseller of the products offered. We disagree. This section specifically requires not only submission of the J.4 Technical Compliance Workbook, but also submission by the offeror of "evidence that their proposed items meet the Government's minimum requirements as listed in the workbook." *Id.* In addition, if a firm was proposing as a VAR, it also was required to provide evidence from its respective OEM manufacturers that the offeror is an

⁴ The RFP included eight attachments identified as Attachments J.1-J.8. RFP at page J-1.

authorized reseller of the OEM's product. Thus, for VARs, three things were required by this section: (1) Attachment J.4 Technical Compliance Workbook; (2) evidence--that is, technical literature--demonstrating that the products described in the J.4 workbook actually met the agency's requirements; and (3) evidence demonstrating that the offeror was an authorized reseller of the OEM products being proposed.

Because CSS failed to provide any evidence that its proposed products met the descriptions included in the J.4 Technical Compliance Workbook, the record shows that the agency acted reasonably and consistently with the terms of the RFP in finding the firm's proposal unacceptable. We therefore deny CSS's protest.⁵

PCMG's PROTEST

PCMG asserts that the RFP did not require submission of technical literature principally because references to the technical literature in the RFP described it as "back-up" materials. PCMG maintains that it adequately described the products it was offering in the Attachment J. 4, Technical Compliance Workbook, and Attachment J.8, Products List, and that it certified that its products complied with the RFP's requirements. PCMG also notes that it provided an OEM point of contact for the products being offered. Finally, PCMG points out that RFP § M.1.1 states only that the agency "may" use the backup materials in evaluating proposals. PCMG therefore maintains, based on these allegations, that its proposal without the technical literature was acceptable and should not have been rejected.⁶

⁵ CSS argued for the first time in its comments that the RFP included a latent ambiguity. In support of this broad allegation CSS asserts, among other things, that the RFP identified technical literature as "optional," and that the RFP provided only that offerors "may" rather than "shall" submit technical literature. See CSS Comments at 12-14. These aspects of CSS's protest are untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2014), protesters are required to raise all allegations within 10 days of when the protester knows or should know of its basis for protest. Here, CSS was advised during its debriefing that its proposal had been eliminated for failing to include technical literature. That information, coupled with a reading of the RFP, provided CSS all of the information necessary to advance these allegations. In fact, CSS concedes that it could have made these arguments once it received its debriefing: "Here CompSec's [CSS's] interpretation did not directly conflict with other solicitation provisions, and the ambiguity only came to light when CompSec received its debriefing after being excluded from the competitive range." CSS Comments at 13. In light of these considerations, we dismiss these aspects of CSS's protest as untimely.

⁶ Like CSS, PCMG, for the first time in its comments, asserted that the RFP included a latent ambiguity. For the same reasons discussed above, we dismiss this aspect of its protest as untimely. 4 C.F.R. § 21.2(a)(2).

For the reasons discussed at length above, we find no merit to PCMG's protest. The fact that the RFP may have used the term "back-up" in describing the technical literature requirement does not mean that the information was not required to be included in PCMG's proposal. In addition, the fact that RFP § M.1.1 stated that the government "may" use the back-up materials provided does not mean those materials were not required; rather, it gave the agency discretion in terms of the extent to which it would review the required back-up materials in connection with its go/no-go evaluation. In the final analysis, PCMG failed to include the required information. Accordingly, the agency reasonably rejected the firm's proposal.

The protests are denied.

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General Counsel