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Decision

Matter of: WILLCOR, Inc.

File: B-413390.4

Date: October 24, 2016

Susan Warshaw Ebner, Esq., and Jacqueline R. Scott, Esq., Fortney & Scott, LLC, for the protester.

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DIGEST

Protest challenging the agency's evaluation of the protester's proposal as unacceptable is denied where the agency reasonably found that the protester's proposal did not adequately address solicitation requirements.

DECISION

WILLCOR, Inc., a small business located in College Park, Maryland, protests the elimination of its proposal from the competition conducted by the National Security Agency (NSA) under request for proposals (RFP) No. H98230-14-R-0069, for business, engineering, information technology, operations, and training support services. The protester argues that the agency's evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The solicitation was issued on July 21, 2014 as a small business set-aside. The RFP anticipated the issuance of up to 15 indefinite-delivery, indefinite-quantity contracts with fixed-price, cost-reimbursement, incentive, time-and-materials, and labor-hour task orders. Contracting Officer Statement (COS) at 1-2.

The RFP proposal evaluation criteria (PEC) stated that the agency would evaluate the following factors: management/risk, technical/risk, scenario based example/risk,

and price. RFP, PEC at 4-8. Management/risk included three subfactors: contract management requirements, probability of success, and innovation. Id. at 5. The contract management requirements subfactor entailed three pass/fail requirements, one of which was that offerors have an accounting system “that has been deemed acceptable for award by a [Defense Contracting Audit Agency (DCAA)] audit at the time of proposal submission and include the documentation from DCAA.” Id.

For the innovation subfactor, the solicitation provided that proposals would be evaluated based on the extent to which offerors described unique, flexible, and cost saving strategies in their management approaches, including (1) how each teammate is fully integrated into the structure, retained, and managed, (2) how work performance will be assessed by the offeror, (3) how successful performance will be fostered by the offeror, and (4) how situations of unsatisfactory performance will be promptly resolved and handled by the offeror. Id. at 5-6. The RFP proposal preparation instructions (PPI) reiterated these requirements and also directed offerors to “include sufficient detail for effective evaluation,” noting that “it is the responsibility of the offeror to ensure that its proposal contains all the information necessary to convey its approach successfully.” RFP, PPI at 2.

WILLCOR timely submitted its proposal in response to the solicitation and included a copy of a 2003 DCAA audit as evidence that its accounting system was deemed acceptable by the DCAA. WILLCOR’s proposal also stated that a “DCAA audit was conducted in November 2012 with a verbal that our accounting system is adequate, but a written Audit Report has not been received.” Agency Report (AR), Tab 19, WILLCOR Management/Risk Proposal, at 1.1-2. After receiving WILLCOR’s proposal, the NSA contacted the DCAA to get further details regarding the status of WILLCOR’s accounting system. DCAA informed the agency that the most recent completed audit was conducted in 2008. COS at 5. The 2008 audit determined that the “contractor’s accounting system is inadequate-in-part” due to “three significant deficiencies in Willcor, Inc.’s accounting system that could result in overstated or misstated costs on government contracts.” AR, Tab 20, 2008 DCAA Audit Report, at 2.¹ DCAA also provided information regarding a subsequent audit that was initiated in 2011 but then was cancelled before it had been completed. COS at 6; AR, Tab 21, DCAA Cancellation Memo.

As a result of this information, the agency concluded that WILLCOR had not demonstrated that its accounting system had been deemed acceptable by the DCAA. SSAC Report at 2. The NSA therefore assigned WILLCOR’s proposal a fail

¹ Certain documents provided in this protest (e.g., the 2008 DCAA audit and the source selection advisory council (SSAC) report) did not contain page numbers. Our Office separately assigned consecutively numbered pages to the unnumbered pages in these documents. The citations to these documents in this decision are to the page numbers assigned by our Office.

rating under the contract management requirements subfactor. Id. Additionally, the NSA rated WILLCOR's proposal unacceptable under the innovation subfactor as a result of two deficiencies. Id. at 3. The first deficiency was assessed based on the agency's conclusion that WILLCOR's proposal had not addressed in sufficient detail how it would retain and manage its teammates. Id. The second deficiency was assessed based on the NSA's determination that the proposal inadequately addressed the process WILLCOR would employ to resolve unsatisfactory performance. Id.

On May 5, 2016, WILLCOR was notified of its elimination from the competition. This protest followed.

DISCUSSION

WILLCOR argues that the agency erred in assigning WILLCOR's proposal two deficiencies under the innovation subfactor and in assigning WILLCOR's accounting system a fail rating.²

As a preliminary matter, WILLCOR argues that in rating offerors' proposals, the agency relied on definitions for terms such as "exceptional strength" and "deficiency" that were not set forth in the solicitation.³ WILLCOR asserts that the agency's use of such defined terms was inconsistent with the solicitation's stated adjectival ratings and also violated the requirement in Federal Acquisition Regulation (FAR) § 15.304 that all factors and significant subfactors that affect contract award, and their relative importance, be clearly stated.

We disagree. Here, the defined terms used by the agency were not inconsistent with the stated adjectival ratings, and instead amounted to a rating method used to determine those adjectival ratings. Our Office has held that agencies need not disclose evaluation standards or guidelines for rating proposals as more desirable or less desirable since agencies are not required to inform offerors of their specific rating methodology. Arcus Props., LLC, B-406189, Mar. 7, 2012, 2012 CPD ¶ 107

² Although this decision does not address every argument raised by WILLCOR, we have reviewed all of the protester's challenges and find that none provides a basis to sustain the protest.

³ The terms for which definitions were provided in the debriefing document were the following: exceptional strength, major strength, strength, meets standard, weakness, significant weakness, and deficiency. AR, Tab 15, Debriefing, at 12. For example, a deficiency was defined, in accordance with FAR § 15.001, as a "material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." Id.

at 8-9. Rather, the rating system used need only be consistent with the terms of the solicitation. Id. In this case, we see nothing inconsistent between the evaluation criteria set forth in the RFP, and the agency's evaluation findings.⁴

WILLCOR also challenges the deficiencies assessed in its proposal under the innovation subfactor. First, WILLCOR disputes the agency's finding that its proposal failed to address how the protester would manage and retain teammates under PEC section 3.1.3.1.1. AR, Tab 13, SSAC Report, at 3; Tab 11, Evaluation Consensus Report, at 9. As noted above, the solicitation provided that the agency would evaluate how each teammate is fully integrated into the structure, retained, and managed, and, here, NSA found that while WILLCOR had addressed how it would integrate its team members, its proposal failed to provide information detailing how it would manage and retain such teammates. Id.

Challenging this conclusion, WILLCOR asserts that its proposal "had ample descriptions of its team structure and management, and the way it structured and managed its team explained how WILLCOR also would promote team retention." Comments at 10. In support of this argument, the protester contends that its proposal sets out its strategy of managing the team as a single, flat organizational structure and discusses regular communications and meetings with such teammates. Id. Additionally, WILLCOR asserts that it addressed its management plan elsewhere in its proposal, and that it should not have been penalized for not addressing these elements again. Protest at 16.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. The Mangi Envtl. Group, Inc., B-401783, Nov. 20, 2009, 2009 CPD ¶ 231 at 3. A protester's disagreement with an agency's judgment, by itself, is insufficient to establish that the agency acted unreasonably. HP Enter. Servs., LLC, B-410212.2, Jan. 26, 2015, 2015 CPD ¶ 54 at 9.

Here, based on our review of the record, we conclude that the agency's evaluation of WILLCOR's management and retention of teammates was reasonable. In this regard, WILLCOR's proposal addresses PEC section 3.1.3.1.1 in a section of its proposal titled "Teammate Integration." As the title suggests, the section focuses almost entirely on discussing WILLCOR's approach to teammate integration. While the proposal section does include some discussion of organization structure, along

⁴ Nor do we find that the agency's use of the defined terms prejudiced WILLCOR. As discussed in further detail below, WILLCOR's proposal did not address the stated proposal evaluation criteria, and therefore was properly excluded from further consideration.

with generalized discussion of task order management, these references are addressed within the course of discussing WILLCOR's integration approach. Consequently, the proposal section fails to directly address and discuss WILLCOR's teammate management approach in any level of detail. Further, the proposal section is entirely devoid of any discussion of WILLCOR's approach to teammate retention.⁵ While the protester requests that we interpret portions of the section as evidencing WILLCOR's overall approach to teammate management and retention, we decline to do so where this approach is neither directly addressed nor detailed within WILLCOR's proposal. Our Office has long held that it is an offeror's obligation to submit an adequately-written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19.

With regard to the protester's contention that the agency should have looked beyond the applicable proposal section, paragraph 1.3.1.1, for evidence of WILLCOR's management and retention approach, we do not agree. When evaluating a particular section of a proposal, evaluators are not obligated to go to unrelated sections of the proposal in search of missing or inadequately presented information. Savantage Fin. Servs. Inc., B-299798, B-299798.3, Aug. 22, 2007, 2007 CPD ¶ 214 at 9. In this regard, where a proposal is organized by sections that correspond to specific paragraphs in the solicitation requirements, an agency may reasonably expect that the proposal will address these requirements in the correspondingly numbered proposal sections. CACI Techs., Inc., B-408552, Nov. 1, 2013, 2013 CPD ¶ 255 at 7-9. Here, WILLCOR's proposal was organized to correspond to similarly numbered sections in the PEC and PPI. In light of this, it was reasonable for the agency to expect that WILLCOR's approach to the applicable PEC section, 3.1.3.1.1, would be encompassed within the corresponding portion of WILLCOR's proposal, *i.e.*, paragraph 1.3.1.1.

WILLCOR also challenges the agency's second deficiency finding, which pertained to the protester's approach to resolving performance issues. In this regard, the PEC provided that offerors would be evaluated based on "[h]ow situations of unsatisfactory performance will be promptly resolved and handled by the Offeror." RFP, PEC at 6. In reviewing WILLCOR's proposal, the agency concluded that while WILLCOR stated its approach to avoiding unsatisfactory performance, it did not address the process for promptly resolving and handling unsatisfactory performance. AR, Tab 13, SSAC Report, at 3; Tab 11, Evaluation Consensus Report, at 11.

⁵ We note that the agency assessed a deficiency in another unsuccessful offeror, where that offeror failed to adequately address retention, despite having adequately addressed both teammate integration and management. See AR, Tab 13, SSAC Report, at 4.

WILLCOR disputes the agency's conclusion that its proposal did not define a process for correcting unacceptable performance issues. In this regard, WILLCOR's proposal notes that "[w]hen a deliverable is not approved by the [Program Manager] or Customer, it is identified and handled as [Nonconforming Products or Services (NCP/S)]." AR, Tab 19, WILLCOR Management/Risk Proposal, at 1.3-25. The proposal then details WILLCOR's approach to avoiding NCP/S from occurring, e.g., by discussing its internal technical review and correction cycle undertaken before the release of a deliverable. Id. While the proposal thus describes WILLCOR's process for avoiding the delivery of nonconforming deliverables, it fails to detail WILLCOR's process for resolving unsatisfactory performance that has already occurred.

WILLCOR argues that even if the proposal section at issue, paragraph 1.3.1.4, did not address how it would resolve unsatisfactory performance, that section referenced another section which did address the issue. In this regard, paragraph 1.3.1.4 included the statement: "To prevent the delivery or use of NCP/S we ensure a multi-layered review process as addressed in the Task Management paragraph in Paragraph 1.2.2.1 above." Id. We do not agree with the protester that this language reasonably put the agency on notice to look to other proposal sections for WILLCOR's plan to resolve unsatisfactory performance. While the proposal referenced the task management paragraph in section 1.2.2.1, it did so in the context of providing further information on WILLCOR's process "[t]o prevent the delivery or use of NCP/S." Id. Thus, while section 1.2.2.1 was referenced, it was not referenced as the place in WILLCOR's proposal containing its plan for resolving unsatisfactory performance. Instead, section 1.2.2.1 was mentioned as containing further information on WILLCOR's plan to avoid NCP/S from occurring or being used. In light of this, we do not agree with WILLCOR's assertion that this reference reasonably put the agency on notice to look beyond the paragraph of WILLCOR's proposal that was devoted to resolving performance issues, paragraph 1.3.1.4.⁶

Finally, because we find that the agency reasonably assessed two deficiencies in WILLCOR's proposal, which were sufficient by themselves to render its proposal unacceptable,⁷ we need not decide the question of whether the agency properly

⁶ At any rate, we note that paragraph 1.2.2.1 did not contain a detailed approach to resolving unsatisfactory performance, and instead only contained a summary diagram noting a cyclical review and resolution process. Thus, even if this section had been considered, it would not have provided a detailed plan for resolving unsatisfactory performance.

⁷ The solicitation indicated that a proposal that did not meet requirements and contained one or more deficiencies would be rated as unacceptable. RFP, PEC at 3.

assigned a fail rating to WILLCOR on the basis of the purported unacceptability of its accounting system.⁸

We deny the protest.

Susan A. Poling
General Counsel

⁸ In this regard, we note that the adequacy of an offeror's accounting system is generally considered a matter of responsibility, such that any negative determination on this basis must be referred to the Small Business Administration (SBA) for a final determination under its certificate of competency (COC) procedures. See PMO Partnership Joint Venture, B-401973.3, B-401973.5, Jan. 14, 2010, 2010 CPD ¶ 29 at 9; Orion Tech., Inc., B-405970, Jan. 13, 2012, 2012 CPD ¶ 89 at 4. However, where, as here, an agency's evaluation of a small business's proposal as unacceptable is based on factors unrelated to responsibility as well as under responsibility related factors, referral to the SBA for COC consideration is not required. See Service Co. of Louis Rogers, Inc., B-248995.2, Nov. 16, 1992, 92-2 CPD ¶ 347 at 4 n.4; Department of the Navy--Recon., B-244918.3, July 6, 1992, 92-2 CPD ¶ 199 at 4.