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Decision

Matter of: LCLC Inc/CfMRF

File: B-414357

Date: May 22, 2017

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Col. C. Taylor Smith, Capt. Ryan P. Payne, Corey Lastinger, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force, on behalf of the Naval Special Warfare Command, for the agency.

Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging selection of lower-rated, lower-priced proposal is denied where the source selection authority considered the technical differences between the two offerors' proposals but determined that the superiority of the higher-rated, higher-priced proposal was not worth paying the associated price premium.

DECISION

LCLC, Inc., d/b/a Center for Military Relationships and Families (LCLC), of Seattle, Washington, challenges the award of a contract to TechWerks, LLC, of Arlington Heights, Illinois, by the Department of the Navy, Naval Special Warfare (NSW) Command, under solicitation No. H92240-16-T-0084, for a resilience program. The protester challenges the evaluation of TechWerks's technical proposal and the selection decision.

We deny the protest.

BACKGROUND

The solicitation was issued on August 22, 2016, under the procedures of Federal Acquisition Regulation (FAR) parts 12 and 13. See Agency Report (AR), Tab 16, Combined Synopsis/Solicitation Notice. The solicitation, as amended, contemplated the

award of a single indefinite-delivery, indefinite-quantity (IDIQ) type contract with fixed-priced exhibit line item numbers for resilience program offerings for the NSW community services members.¹ See Solicitation, Performance Work Statement (PWS); id., amend. 0003, at 2-4, 6.² The ordering period for the contract was to be up to five years or until the \$6.5 million contract ceiling was reached. Id., amend. 0003, at 6. Award was to be made on a best-value tradeoff basis, considering two factors: technical capability and price. Solicitation at 5. The technical capability factor was comprised of two equally weighted subfactors: corporate experience and key personnel experience. Id. The solicitation stated that the technical capability factor was significantly more important than the price factor. Id. at 10.

As relevant here, the solicitation stated that under the corporate experience subfactor, the agency would evaluate the extent to which: the offeror's corporate experience is recent and relevant; the offeror has established relationships with leading subject matter expert (SME) speakers/presenters in topics pertinent to military resiliency; and the offeror's experience and established relationships indicate the probability of successful performance. Id. at 9. Similarly, the solicitation stated that the agency would evaluate the extent to which the offeror's key personnel experience is recent and relevant, and the extent to which the experience indicates the probability of successful performance. Id. For both subfactors, the solicitation stated that relevant experience was defined as "similar in scope, magnitude and complexity to services required by this solicitation." Id. at 10.

The agency received seven timely-submitted proposals, including those from LCLC and TechWerks. AR, Tab 14, Source Selection Decision Document (SSDD) at 1. A source selection team was convened to evaluate the proposals. Id. at 3. The evaluation of the offerors' proposals under each factor and subfactor was discussed in detail in the SSDD, including the evaluations of the technical evaluators. See, e.g., id. at 17-19 (LCLC), 19-23 (TechWerks).

The agency found that both offerors demonstrated adequate approaches to satisfying the solicitation requirements under both subfactors. Specifically, the agency found that the corporate experience³ and established relationships with SMEs⁴ in TechWerks's

¹ The solicitation was amended three times. All citations to the Solicitation are to the final version, as amended.

² All citations to the record are to the pagination provided by the agency.

³ The agency found that TechWerks demonstrated relevant to somewhat relevant corporate experience based on two contract examples identified by TechWerks. See AR, Tab 14, SSDD at 20-21. As relevant here, the first contract example was found to be relevant because it demonstrated experience managing a contract of somewhat smaller magnitude and complexity that had many similarities in scope to the solicitation requirements. Id. at 20.

proposal indicated an average probability of successful performance, while the experience and relationships with SMEs in LCLC's proposal indicated a high probability of successful performance. See id. at 18-19, 22-23. The agency also found that TechWerks's key personnel experience indicated an average probability of successful performance, while LCLC's indicated a high probability of successful performance.⁵ Id. at 19, 23.

In sum, the evaluation results for the protester and the awardee were as follows:

	LCLC	TechWerks
Corporate Experience	High Probability of Success	Average Probability of Success
Key Personnel Experience	High Probability of Success	Average Probability of Success
Price	\$7,147,586	\$3,224,100

Id. at 37.

The contracting officer (CO) found that TechWerks's proposal had the lowest total evaluated price, demonstrated an adequate technical approach to satisfying the solicitation requirement, and overall indicated an average probability of successful performance under the contract. Id. at 37. As between TechWerks and LCLC, the CO found that

LCLC offers technical superiority to TechWerks, having the most highly relevant corporate experience and key personnel experience, and extensive SME relationships established managing the previous contract for the NSW Resilience Program, therefore indicating overall a high probability of success in future performance under this contract. However, it is not in the [government's] best interest to pay a 121.69 [percent] higher price for these technical benefits presented by LCLC. Award to TechWerks, who offers an acceptable technical approach at a significant fiscal savings, is in the [government's] best interest.

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⁴ The agency found that while TechWerks did not identify SMEs for certain topics, the SME speakers/presenters identified by TechWerks collectively presented a broad range of subject matter expertise to satisfy the solicitation requirements. AR, Tab 14, SSDD at 21-22.

⁵ The agency found TechWerks's key personnel experience recent and concluded that the experience ranged from relevant to somewhat relevant. AR, Tab 14, SSDD at 23. The agency found TechWerks's proposed program manager to have relevant experience notwithstanding some differences in the scope of the experience. See id. at 22-23.

Id. at 38.

LCLC was notified of the award on February 1, 2017. This protest followed.

DISCUSSION

The protester challenges the agency's evaluation of Techwerks's technical proposal and argues that the selection decision was flawed and inadequately documented.⁶

As noted above, the Navy conducted this procurement using simplified acquisition procedures for commercial items. Simplified acquisition procedures are designed, among other things, to reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate proposals in accordance with the terms of the solicitation. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 3; ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4. In reviewing protests of an allegedly improper simplified acquisition evaluation, our Office examines the record to determine whether the agency met this standard and executed its discretion reasonably. Computers Universal, Inc., B-297552, Feb. 14, 2006, 2006 CPD ¶ 42 at 4-5. An offeror's disagreement with an agency's evaluation, without more, is not sufficient to sustain the protest. See Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Underlying LCLC's arguments challenging the agency's evaluation of TechWerks's proposal under the technical capability factor is the protester's insistence that the solicitation did not allow the agency to assess relevancy of experience under both of the factor's subfactors. See Protester's Comments at 2-5, 12-14; Supplemental (Supp.) Comments at 2-9. In this regard, the protester contends that the solicitation required that offerors possess "relevant" corporate or key personnel experience --i.e., similar in scope, magnitude and complexity to the services required by the solicitation--and argues that to the extent the experiences contained any dissimilarities, they should be found not "relevant." Id. Similarly, the protester argues that because the solicitation required that offerors possess "established relationships" with SMEs, to the extent a offeror lacked established relationships with SMEs in any area, its proposal failed to meet the solicitation's requirements. Protester's Comments at 2-3, 5-6; Supp. Comments at 3, 6-7.

⁶ In filing and pursuing its protest, LCLC has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's assertions and although we do not specifically address all of LCLC's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

In response, the agency argues that LCLC has misinterpreted the terms of the solicitation. See CO's Supp. Statement of Facts (Supp. COS) at 2-7. The agency explains that the solicitation was designed to utilize a comparative assessment of the degree of relevancy of corporate and key personnel experience when compared to the services required by the solicitation, and not a pass/fail methodology. See id. at 2. As a result, the agency utilized commonly defined and understood terms (highly relevant, relevant, somewhat relevant, and not relevant) to describe the degree of similarity of the offerors' contract examples to the contemplated contract effort. Id. at 3-4. The agency further explained that a similar graduated scale was used to capture the extent to which offerors had established relationships with SMEs in topics related to military resiliency. Id. at 4.

When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Level 3 Commc'ns LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

Here, the solicitation stated that under both the corporate experience and key personnel experience subfactors, the agency would evaluate the extent to which the offeror's experience was recent and relevant. Solicitation at 9. While the protester correctly points out that the solicitation defined relevant as "similar in scope, magnitude and complexity to services required by this solicitation," similar experience need not be identical. We find that the agency's interpretation of the solicitation, when read as a whole, is reasonable, whereas the protester's interpretation is not reasonable.

Accordingly, there was no requirement here that the proposal submitted by TechWerks be rejected because the agency observed some differences between the program manager's scope of experience and the experience required by the solicitation. Similarly, there was no requirement that the proposal be rejected because it did not demonstrate that it possessed established relationships with SMEs in each and every topic pertinent to military resiliency.⁷

⁷ The protester also argued that TechWerks's proposal failed to demonstrate any established relationships with SMEs because its proposal failed to explicitly state that TechWerks worked in the past with those individuals to provide military resiliency training. See Protester's Comments at 5-6; Supp. Comments at 6-7. In response, the agency explains that as discussed in its evaluation, TechWerks provided information about 10 SMEs in topics pertinent to military resiliency with whom it had established relationships. See Supp. COS at 6; see also AR, Tab 14, SSDD at 21-22. Our review of the record shows that the 10 SMEs identified by TechWerks in its proposal also were members of TechWerks's senior scientific resilience training advisory panel and were
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The protester also raises a number of arguments challenging the selection decision. In this regard, the protester primarily argues that the agency's best-value tradeoff analysis was flawed and inadequately documented. See Protest at 13-16; Protester's Comments at 14-20.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical trade-offs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Halfaker and Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 12. Even where, as here, technical merit is significantly more important than price, an agency may properly select a lower-priced, lower-rated proposal if it reasonably decides that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified. Id.

Here, the record shows that the agency acknowledged in its tradeoff decision that LCLC's proposal was technically superior to TechWerks's proposal and identified the technical benefits that LCLC's proposal offered. See AR, Tab 14, SSDD at 38. However, it concluded that the benefits were not worth a price that was more than twice as high as TechWerks's price.⁸ Based on our review of the record, we conclude the SSDD reasonably supports the agency's relative assessments of the proposals and selection decision. Ultimately, the protester's objections to the source selection decision reflect its disagreement with the agency's assessments but do not demonstrate an unreasonable or otherwise improper award determination.

The protest is denied.

Susan A. Poling
General Counsel

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"actively engaged in the TechWerks resilience program." See AR, Tab 12, TechWerks's Proposal at 7, 11-14. On this record, LCLC's arguments provide no basis to sustain the protest.

⁸ For the first time in its comments, LCLC argued that the agency essentially converted the basis of award for this procurement from best value to lowest-priced, technically acceptable. See Protester's Comments at 14-18. The agency's brief explanation for the rationale for award was provided to LCLC on February 1, 2017, and provided a summary of the agency's tradeoff decision. As a result, this argument is untimely when first raised in LCLC's comments filing. 4 C.F.R. § 21.2(a)(2).