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Decision

Matter of: CASE LLC

File: B-404954

Date: July 7, 2011

Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.
James E. Durkee, Esq., and James W. DeBose, Esq., Department of Defense,
Defense Information Systems Agency, for the agency.
Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest challenging agency's elimination of protester's proposal from the competitive range is denied where record shows that agency reasonably found, after engaging in meaningful discussions with protester, that its proposal included several deficiencies that rendered it technically unacceptable.

DECISION

CASE, LLC, of Alexandria, Virginia, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. EG0173.00, issued by the Defense Information Technology Contracting Organization (DITCO) on behalf of the Defense Information Systems Agency (DISA) for information technology (IT) support services in support of the integrated information management system. CASE argues that the agency treated offerors disparately, failed to engage in adequate discussions with it and misevaluated its proposal.

We deny the protest.

The RFP, issued to all contract holders under the General Services Administration's multiple award, alliant small business government-wide contract, contemplates the issuance of a cost reimbursement and labor hours task order for a base year and six 1-year options to perform various IT support services. As originally issued, the RFP required offerors to submit technical and cost proposals by December 3, 2010. Technical proposal were to be limited to 25 pages. Firms were advised that award would be made on a "best value" basis, considering past performance,

technical/management considerations and cost, with the non-cost considerations together being significantly more important than cost. RFP amend. 6, at 2-4.

The agency received numerous timely proposals by the deadline for proposal submission. The agency reviewed the initial proposals and determined that several of them exceeded the 25-page limitation. Consequently, on December 6, the agency issued an amendment advising offerors that any portion of their proposal exceeding the 25-page limitation would not be considered in the agency's evaluation of proposals, and allowing firms to resubmit their proposals by December 8.

The agency did not receive any new proposals by the December 8 deadline, and therefore commenced evaluation of the offers received. After reviewing one of the proposals submitted, the agency evaluators advised the contracting officer that there appeared to be a serious misunderstanding by the firm submitting that offer concerning the instructions for submitting proposals. Based on this finding, the agency revisited the terms of the RFP and concluded that the instructions set forth in the solicitation, along with the evaluation criteria, were ambiguous. The agency therefore issued two additional amendments to the RFP that increased the page limit for technical proposals from 25 to 40 pages, and also made changes to the evaluation criteria.

In terms of the changes to the evaluation criteria, the agency amended the RFP's technical/management evaluation factor in several respects. First, whereas the earlier solicitation required offerors to demonstrate their understanding of five complete functional task areas (FTAs), the RFP as amended required offerors to demonstrate their understanding of just three subtasks under three of the FTAs. Compare RFP amend. 5 with amend. 6. These subtasks were listed under the RFP's technical/management evaluation factor as subfactor 1. Second, the earlier version of the RFP included four subfactors under a technical/management evaluation factor (technical, labor mix, management and key personnel). Under the revised RFP, the agency reduced the number of subfactors to just two and consolidated the labor mix, management and key personnel subfactors into the second subfactor, which provided as follows:

The government will evaluate the contractor's proposed staffing plan for an optimum mix of labor categories and labor hours to meet the requirements of the performance work statement (PWS).
Qualifications shall be demonstrated by providing generic position descriptions for key personnel.

RFP amend. 6, at 3. Additionally, the amendment extended the due date for proposals to January 13, 2011. Id. at 1.

The agency received numerous proposals in response to the amended solicitation, including the protester's. After evaluating the protester's proposal, the agency sent

CASE a total of 14 discussion questions, 1 relating to its cost proposal and 13 relating to its technical proposal. Agency Report (AR), exh. 5. CASE responded to the discussion questions by submitting a revised proposal. AR, exh. 7. The agency evaluated CASE's revised proposal and found that it was acceptable under the first subfactor (that is, the agency found CASE's response to the three specified subtasks acceptable), but found its proposal under the second subfactor unacceptable. AR, exh. 10. In this regard, the agency identified six deficiencies with the CASE proposal. *Id.* at 3-5. On the basis of these evaluation findings, the agency eliminated CASE's proposal from the competitive range. AR, exh. 11. After being advised of the agency's decision to eliminate its proposal from the competitive range and receiving a debriefing, CASE filed this protest.

CASE has made a large number of arguments in connection with its protest. We have carefully considered all of CASE's allegations and find them to be without merit. We discuss CASE's principal arguments below.

CASE asserts that the agency treated offerors disparately. According to the protester, the agency's amendments to the RFP after proposals were submitted were made to extend preferential treatment to certain of the offerors. The protester maintains that, after receiving initial proposals that failed to conform in one way or another to the original RFP, the agency improperly relaxed its requirements (by reducing the number of FTAs that had to be addressed in the proposals or giving firms that submitted proposals exceeding the 25-page limit another opportunity to submit conforming proposals) in order to allow offerors that otherwise would have been eliminated from the competition to continue to compete for the task order.¹

We dismiss this aspect of CASE's protest. First, these changes to the RFP were made by amendments to the solicitation that contemplated the submission of revised proposals. To the extent that CASE thought the agency's relaxation of its requirements was improper, it should have filed a protest to that effect prior to the January 13 deadline for submitting revised proposals. 4 C.F.R. § 21.2 (a)(1). Since CASE did not file its protest prior to January 13, it is untimely. Sea-Land Servs., Inc., B-266238, Feb. 8, 1996, 96-1 CPD ¶ 49 at 8-9. Additionally, this aspect of CASE's protest essentially is an allegation that the RFP should have been more restrictive of competition and excluded offerors that might not have met the agency's earlier, more stringent, proposal requirements; our Office generally does not

¹ In its initial protest CASE also asserted that the agency must have treated the offerors disparately because, if the agency had evaluated the other offerors as it had evaluated CASE, it would have eliminated all of the proposals from the competitive range. We advised the parties prior to the submission of the agency report that this aspect of CASE's protest failed to state a basis for protest and therefore would not be considered. 4 C.F.R. §§ 21.1 (f), 21.5 (f) (2011).

consider protest allegations that a procurement should be more restrictive. Id. We therefore dismiss this aspect of CASE's protest.

CASE asserts that the agency failed to engage in meaningful discussions with it. According to the protester, it was never apprised by the agency's discussion questions that the agency viewed CASE's proposal as including deficiencies or weaknesses, and CASE was advised only that the discussion questions contained "items for negotiation."

We find no merit to this aspect of CASE's protest. When an agency affords a firm discussions, it must, at a minimum, advise the offeror of deficiencies, significant weaknesses and adverse past performance information to which the offeror has not yet had an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.306 (d)(3). In other words, the only reason for an agency to engage in discussions with a firm is to advise it of deficiencies and significant weaknesses found in its proposal. The fact that the agency may have labeled its discussion questions as "discussions items" or "items for negotiation" does not mean that the agency was not identifying deficiencies or weaknesses in CASE's proposal, and a reading of the discussion questions themselves demonstrates that the agency was, in fact, identifying deficiencies or weaknesses in the CASE proposal. For example, one of the agency's discussion questions provided:

[deleted]

AR, exh. 5, at unnumbered page 8.² The numerous references to instances in which CASE's proposal does not address the [deleted] effectively advised CASE that this had been identified as a weakness or deficiency in its proposal.

In the final analysis, CASE does not take issue with the substance of the discussion questions, but only with the fact that the agency did not expressly advise it that it was identifying weaknesses or deficiencies in its proposal. This, without more, provides no basis for our Office to find that the agency failed to engage in meaningful discussions with CASE. We therefore deny this aspect of CASE's protest.

CASE asserts that the agency applied an unstated evaluation factor in finding its proposal unacceptable. In this connection, CASE asserts that the agency eliminated the management subfactor when it revised the RFP's evaluation scheme, but that all of the weaknesses or deficiencies identified in its proposal by the agency were based on the adequacy of its proposal under the management subfactor.

² The agency report includes BATES numbers, but those numbers on our copy of the agency report are, in some instances, illegible.

We have no basis to find that the agency applied an unstated evaluation factor in evaluating CASE's proposal. The record shows that all of the deficiencies identified in the CASE proposal related either to the qualifications of one or another of its proposed key personnel, or to the adequacy of its proposed staffing. In this latter regard, the agency downgraded the CASE proposal either because of the labor categories that CASE intended to use to perform various aspects of the requirement, or because of the adequacy of the proposed quantity or location of its proposed staffing. AR, exh. 10, at 2-5. As noted above, although the agency did change the evaluation subfactors under the technical/management factor during the acquisition, it nonetheless advised offerors that it would evaluate the adequacy of the firms' proposed staffing plan, both in terms of the labor hours and mix of labor proposed, and also that it would evaluate the qualifications of the offerors' proposed key personnel. RFP amend. 6, at 3. The record therefore shows that the agency's evaluation took into consideration precisely the elements the RFP stated would be evaluated. We therefore deny this aspect of CASE's protest.

CASE takes issue with all six of the deficiencies identified by the agency in the evaluation of its proposal. According to the protester, all of the deficiencies identified by the agency were unreasonable. In this connection, in considering protests challenging an agency's evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. A protester's mere disagreement with a procuring agency's judgment is insufficient to establish that the agency acted unreasonably. CIGNA Gov't. Serv's., LLC, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 16.

We have reviewed all of CASE's allegations and find them to be without merit. We discuss two of the deficiencies identified by the agency for illustrative purposes.

As noted above, during discussions the agency advised CASE that its proposed labor mix for [deleted] did not meet the RFP's required skill sets. In response to the agency's discussion question, CASE advised that it would adjust the titles for the labor categories and modify its proposed personnel support numbers during the transition to correspond to all of the government's support requirements and the unique requirements that would come to light during the transition. AR, exh. 7, at 1249.

The agency found this to be a deficiency because CASE had proposed no change to the labor categories for [deleted] and still proposed the same labor mix for [deleted]. The agency concluded:

Utilizing inappropriate labor categories in the proposal does not ensure that the proper level of expertise is available in the respective functional task areas or that the proposal is properly costed to provide the required labor categories, which results in a significant increase of risk to the government of mission degradation or failure due to unsatisfactory performance.

AR, exh. 10, at 4. CASE disagrees with the agency's evaluation finding and essentially argues that, because the RFP did not specify a particular labor mix for the FTAs and called upon offerors to propose their own staffing mix to meet the solicitation's requirements, it was inappropriate for the agency to downgrade its proposal for offering the labor mix that it in fact offered. However, CASE has not demonstrated that the agency's criticism was unreasonable, or that the labor mix it offered would actually meet the requirements of the RFP. CASE's disagreement with the agency's finding, without more, does not establish that the agency's evaluation was unreasonable.

The record shows that the agency also found CASE's proposal deficient because it included as one of its key personnel [deleted] (as opposed to appropriate service desk technical support personnel), despite the fact that the RFP did not call for [deleted]. In this regard, the RFP provided that the service desk would be managed by a government employee as opposed to a contractor employee. During discussions, the agency pointed out to CASE that it was proposing [deleted] where one was not called for. AR, exh. 5, at unnumbered page 4. In its revised proposal, although CASE represented that it did not intend to provide functional management for the service desk, AR, exh. 7, at 1242, it nonetheless continued to include a key personnel resume for [deleted]. *Id.* at 1212. In finding a deficiency in CASE's proposal for this aspect of the requirement, the agency noted that CASE's proposal was contradictory on this question, but that it nonetheless continued to include [deleted] as one of its key employees where that was not required. AR, exh. 10, at 4.

While CASE argues that the agency's evaluation of this aspect of its proposal was unreasonable, it has not shown that the agency misinterpreted its proposal, or that it did not, in fact, offer [deleted] as one of its key employees; the most that can be said is that CASE's proposal was contradictory on this point, as noted by the agency evaluators. While CASE may have intended to convey to the agency in one portion of its proposal that it did not intend to provide [deleted], the fact remains that it

continued to propose a [deleted] as one of its key employees, which was inconsistent with the requirements of the solicitation. We therefore have no basis to object to the agency's evaluation of this aspect of CASE's proposal.

The protest is denied.

Lynn H. Gibson
General Counsel