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Decision

Matter of: Leader Communications, Inc.

File: B-412819; B-412819.2

Date: June 13, 2016

Steven J. Koprince, Esq., Matthew T. Schoonover, Esq., and Matthew P. Moriarty, Esq., Koprince Law LLC, for the protester.

Francis E. Purcell, Jr., Esq., Thomas O. Mason, Esq., Christopher J. Kimball, Esq., and Erin M. Estevez, Esq., Cooley LLP, for Knight Point Systems LLC, the intervenor.

Barbara L. Walthers, Esq., Department of Homeland Security, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's assertions that the agency unreasonably evaluated protester's proposal by, among other things, applying unstated evaluation criteria, are denied where the solicitation put offerors on notice regarding the assessments the agency would make, and the record reasonably supports the agency's various judgments.

2. Protest that awardee's proposal failed to comply with the solicitation requirements is denied where the terms of the solicitation and the record do not support the protester's allegations.

DECISION

Leader Communications, Inc. (LCI), of Oklahoma City, Oklahoma, protests the Department of Homeland Security's (DHS) award of a task order to Knight Point Systems, LLC (KPS) of Reston, Virginia, pursuant to solicitation No. HSSCCG-16-R-00007, to provide various information technology (IT) support services for DHS's U.S. Citizenship and Immigration Services (USCIS). LCI protests that the agency improperly evaluated LCI's and KPS's proposals.

We deny the protest.

BACKGROUND

On November 10, 2015, the agency issued a Notification of Intent (hereinafter “NOI” or “the solicitation”) to award a task order under one of the EAGLE II (Enterprise Acquisition Gateway for Leading Edge Solutions II) indefinite-delivery, indefinite-quantity (IDIQ) contracts held by service-disabled veteran-owned small businesses (SDVOSB). The solicitation provided that the successful offeror would provide “professional agile IT development services . . . [to] support web and mobile-based application development of Commercially Available Off-The-Shelf (COTS), proprietary OpenSource Technology, Java 2 Platform Enterprise Edition (J2EE), and Section 508 compliant user interfaces which are consistent across multiple business processes and systems.” Agency Report (AR), Tab 6, NOI Statement of Work (SOW), at 1.

The solicitation was issued pursuant to the “fair opportunity” provisions of Federal Acquisition Regulation (FAR) § 16.505; contemplated award of a time-and-materials task order for a 10-month base period and four 12-month option periods; and provided for a best-value award based on the following equally-weighted evaluation factors: technical approach,¹ management approach,² and price. AR, Tab 6, NOI, at 14. In evaluating the non-price factors, the solicitation stated that the agency would make confidence assessments with regard to whether an offeror “understands the requirement, proposes a sound approach, and will be successful in performing the contract.”³ Id.

With regard to personnel, the solicitation listed various labor categories, with associated levels of effort, for which offerors were required to propose fixed labor rates, and identified certain key personnel positions along with the minimum qualifications for each position. AR, Tab 6, NOI, at 2-4; NOI SOW, at 26-27. However, the solicitation directed that proposals “shall not include the names or resumes of [the] proposed personnel.”⁴ AR, Tab 6, NOI at 12. The agency

¹ Under the technical approach factor, the solicitation provided that the agency would evaluate an offeror’s commitment to providing qualified employees, and its understanding of the performance risks. AR, Tab 6, NOI at 14.

² Under the management approach factor, the solicitation provided that the agency would evaluate the offeror’s corporate experience and its ability to attract and retain quality personnel. Id.

³ Specifically, the solicitation provided that proposals would be assigned ratings of high confidence, some confidence, or low confidence under each of the non-price evaluation factors. Id. at 14-15.

⁴ The solicitation stated that “[t]he contractor shall provide statements of qualifications for [the] Key Personnel within five (5) days from the task order award.” AR, Tab 6, NOI Statement of Work, at 26.

explains that, under a predecessor contract for similar services, employee turnover had been high because “employees skilled in the use of the specified open source tools [required by this contract]” are able to “command higher salaries under . . . newer contracts.” AR, Contracting Officer’s Statement, at 1-2. Accordingly, in preparing this solicitation, the agency opted not to establish what it describes as “the more traditional focus on how the offerors would initially staff and then manage the contract,” and instead focused on an offeror’s commitment and ability to “recruit and retain quality personnel, both key and non-key, over the term of the contract.” Id.

In this regard, rather than having offerors propose specific individuals for the various positions, the solicitation directed offerors to discuss and explain their commitments to recruit and retain employees that will meet and exceed the solicitation’s requirements. The solicitation provided further insight into this approach, stating:

For example, if this were a fair opportunity consideration for dining hall services, an offering contractor might make a binding commitment that fully half of all of its Cook III employees will have graduated the prestigious Betty Crocker Culinary Masters course and that all of its Cook II employees will have at least two years of substantive cook experience.

The proposal shall not include the names or resumes of proposed personnel.

AR, Tab 6, NOI at 12.

On November 24, the agency received proposals from seven offerors, including LCI and KPS. Thereafter, the agency evaluated LCI’s and KPS’s proposals as follows:⁵

	Technical Approach	Management Approach	Price
KPS	High Confidence	High Confidence	\$58,973,010
LCI	Some Confidence	Some Confidence	\$55,069,382

AR, Tab 14, Source Selection Decision Document, at 1.

In evaluating KPS’s proposal as instilling high confidence under both the technical approach and management approach evaluation factors, the source selection authority (SSA) concluded that:

⁵ The other offerors’ proposals, and the agency’s evaluation thereof, are not relevant to this protest and are not further discussed.

[KPS's proposal] demonstrated a thorough understanding of the tasks required for performance as well as the risks. It provided ample evidence of skills that meet and go beyond the requirements of the SOW, including considerable experience with DevOps [development and operations] and tools available to support DevOps, and experience with a wide range of tools used in software development at USCIS or potentially useful. Their emphasis on innovation also gives High Confidence in their ability to meet and go beyond the requirements of the SOW. [KPS] inspired confidence in their ability to hire the best talent through its emphasis on hiring people with problem solving skills, which I consider to be a good way to distinguish good technical talent from mediocre.

AR, Tab 14, Source Selection Decision, at 3.

In contrast, with regard to LCI's proposal, which was assigned ratings of only some confidence under both non-price evaluation factors, the SSA stated that the proposal "did not inspire the same High Confidence as the others⁶ because [LCI] did not give a fully convincing explanation of how they will attract talent," adding that LCI's proposal "did not inspire confidence in their ability to even meet the minimum standards required for their labor categories under Eagle II." Id. at 2, 3.

On February 1, 2016, the SSA selected KPS's proposal for award, noting that the superiority of KPS's proposal under the non-price evaluation factors warranted payment of its somewhat higher price. LCI's protest followed.⁷

DISCUSSION

In its initial protest, LCI challenged the agency's evaluation of LCI's proposal under the non-price evaluation factors. Following receipt of the agency report, LCI submitted a supplemental protest challenging the agency's evaluation of KPS's proposal. As discussed below, none of LCI's assertions provides a basis for sustaining its protests.

Evaluation of LCI's Proposal

⁶ LCI's proposal was the lowest-rated of all the proposals under the non-price evaluation factors. AR, Tab 14, Source Selection Decision, at 1.

⁷ The estimated value of the task order at issue is greater than \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1).

LCI asserts that the agency unreasonably assigned its proposal ratings of only some confidence under both the technical approach and management approach evaluation factors, maintaining that its proposal should have received ratings of high confidence under both factors. Protest, Mar. 7, 2016, at 1. In challenging the agency's evaluation, LCI makes various assertions, including complaints that the agency applied unstated evaluation criteria, failed to adequately document its evaluation, ignored information in LCI's proposal, and reached inconsistent conclusions. We have reviewed LCI's multiple allegations and find no merit in them.

For example, in evaluating LCI's proposal under the technical approach evaluation factor, the agency concluded that LCI's proposal "does not make a strong case for going beyond the requirements established in the SOW." AR, Tab 12, Technical Evaluation Committee (TEC) Report, at 13.

LCI protests that the agency's assessment applied unstated evaluation criteria, asserting that, "[h]ad USCIS wanted LCI to go beyond the stated requirements . . . it should have advised LCI of these benchmark criteria in the Solicitation"; further complains that "[n]othing in the Solicitation . . . explained how offerors were to make 'a strong case' to go beyond the requirements established in the SOW"; and finally, notes that the solicitation "instructed offerors to merely 'provide an *adequate* number of assigned personnel'." Protest at 10 (*italics in original*).

A solicitation must inform offerors of the basis for proposal evaluation by identifying the evaluation factors and their relative importance. FAR § 16.505(b)(1)(iv)(C); Morpho Detection, Inc., B-410876, Mar. 3, 2015, 2015 CPD ¶ 81 at 5-6; Harmonia Holdings Group, LLC, B-410633, B-410633.2, Jan. 20, 2015, 2015 CPD ¶ 46 at 7. Nonetheless, a solicitation need not specifically identify each and every element an agency considers during an evaluation where such elements are intrinsic to, or reasonably subsumed within, the stated evaluation factors. Id.

Here, contrary to LCI's assertion that the agency applied unstated evaluation criteria by assessing the extent to which proposals exceeded the stated requirements, the solicitation expressly put offerors on notice that the agency would make such an assessment, stating: "The Government will evaluate the offering contractor's binding commitment to providing employees with skills, certifications, and experience going beyond the requirements established in [the] SOW." AR, Tab 6, NOI at 14. In short, the solicitation clearly notified offerors of the agency's intent to evaluate the extent to which proposals exceeded the stated requirements. LCI's protest regarding this matter is without merit.

By way of another example, in evaluating LCI's understanding of performance risks,⁸ the agency's evaluation report concluded:

[LCI's] understanding of risk is not all encompassing. The risks listed are small in number (only 4 listed) and focused on [redacted], perhaps aligning most with [redacted], but not aligning well with other areas of risk such as application development activities (SOW 4.2 and 4.3), which are core to the work [the agency] performs. For example, the risk listed [redacted] aligns somewhat with SOW 4.2 and 4.3 but it is only 1 risk and rather broad in scope.

AR, Tab 12, TEC Report, at 13-14.

LCI protests that the agency's criticism of LCI's proposal was unreasonable because the solicitation "did not advise offerors of a number of risks that had to be listed, nor what they should apply to[,], nor whether they should be narrow or broad in scope." Protest at 14.

The evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. MILVETS Systems Technology, Inc., B-411721.2, B-411721.3, Jan. 14, 2016, 2016 CPD ¶ 42 at 9-10. In reviewing an agency's evaluation, our Office will not reevaluate proposals; rather, we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Id. Finally, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that demonstrates its clear understanding of the solicitation requirements. See, e.g., Synaptex Corp., B-410898.6, Feb. 29, 2016, 2016 CPD ¶ 78 at 12.

Here, based on our review of the record, including LCI's technical proposal, we find no basis to question the reasonableness of the agency's criticism of LCI's proposal regarding LCI's understanding of performance risks. In this regard, the solicitation specifically advised offerors that the agency would "evaluate the offering contractor's assessment of the risks." AR, Tab 6, NOI at 14. Accordingly, the burden was on the offeror--not the agency--to perform the risk assessment, and to demonstrate its understanding of the potential risks to be encountered during

⁸ As noted above, the solicitation provided that evaluation under the technical approach factor would include two elements: (1) commitment to providing qualified employees and (2) understanding of risks. AR, Tab 6, NOI, at 14. For the latter, the solicitation provided that the agency would evaluate an offeror's assessment of the risks of successful task order performance and its plan for ameliorating those risks. Id.

contract performance. Here, in concluding that LCI's proposal instilled only some confidence that LCI understood the requirements, the agency's evaluation documentation specifically noted that LCI's proposal failed to comprehensively address potential risks associated with activities that are "core" to the required efforts. On this record, LCI's complaints that the agency failed to identify a particular "number of risks . . . what they should apply to[,] [or] whether they should be narrow or broad in scope," supports--rather than refutes--the agency's concerns regarding LCI's understanding of the contract requirements. Accordingly, LCI's protest challenging the agency's evaluation regarding LCI's assessment and understanding of performance risks is without merit.

Finally, in rating LCI's proposal as instilling only some confidence under the management approach evaluation factor, the agency concluded that "[LCI] does not do a good job explaining how to attract talent." AR, Tab 12, TEC Report, at 15.

LCI protests that this criticism was unreasonable, complaining that the solicitation "does not explain how one does 'a good job' attracting talent." LCI further asserts that "USCIS ignore[d] that [LCI's] proposal does a *great* job explaining how to attract talent"--and quotes the following general statement from its proposal as support: "We use established, documented processes to maximize our *recruiting* and retention procedures." Protest at 16 (*italics in original*). LCI also notes that its proposal discussed its prior success in hiring [redacted]. On this record, LCI maintains that the agency was required to assign a high confidence assessment to its proposal under the management approach evaluation factor.

The agency responds, among other things, that LCI's proposal focused on its initial staffing, including the hiring of [redacted], but failed to discuss how it would retain highly skilled, qualified employees who are in high demand once the transition is over. The agency notes, as discussed above, that in preparing this solicitation, it was concerned with both the recruitment and retention of personnel throughout the life of the contract--not just during transition. Accordingly, it maintains that it properly evaluated LCI's proposal as reflecting only some confidence in this regard.

As noted above, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. MILVETS Systems Technology, Inc., supra. Further, an offeror's disagreement with the agency's evaluation, without more, is insufficient to render the evaluation unreasonable. Id.

Here, our review of the record provides no basis to question the agency's evaluation under the management approach evaluation factor. Clearly, the agency's concerns regarding an offeror's ongoing capabilities and methodologies for attracting and retaining high quality personnel throughout the life of the contract were encompassed within the stated evaluation factors, and LCI's protest has identified

no basis for questioning the reasonableness of the agency's concerns, other than LCI's disagreement with the agency's judgment. Accordingly, LCI's protest challenging the agency's evaluation of its own proposal is denied.⁹

Evaluation of KPS's Proposal

Following receipt of the agency report, LCI filed a supplemental protest challenging the agency's evaluation of KPS's proposal. Specifically, LCI asserts that KPS's proposal should have been evaluated as unacceptable for: (1) failing to propose qualified key personnel; and (2) failing to propose the level of effort required by the solicitation. LCI's assertions are without merit.

1. Key Personnel Position

LCI asserts that KPS's proposal should have been rejected as unacceptable because "one of [KPS's] proposed key employees . . . did not meet the Solicitation's stated requirements." Supp. Protest, Apr. 1, 2016, at 1.

In this regard, the solicitation's SOW identified five key personnel positions that would be required during contract performance, and identified various qualification requirements for each position. AR, Tab 6, NOI SOW, at 26-27. One of the key positions was a "Linux Systems Engineer," for which the solicitation provided that the personnel filling this position "[s]hall possess at a minimum: Red Hat Linux Certified Engineer, 5 years of direct Linux development experience." *Id.* at 27.

Under the heading "Binding Commitment To USCIS," and directly over the signature of KPS's President and Chief Executive Officer, KPS's proposal stated: "KPS is fully committed to meeting or exceeding the required skills, certifications, and experience necessary to successfully perform the work on the . . . contract." AR, Tab 10, KPS Technical Proposal, at 4. Consistent with the solicitation provisions that the agency would evaluate the extent to which proposals exceeded the minimum qualifications, KPS's proposal also identified various qualifications that went beyond the minimum requirements for each of the key personnel positions; however, in light of its statement that it would meet all requirements, its proposal did not repeat all of the minimum requirements for each position.

In evaluating KPS's proposal, the agency noted that the proposal "does not list 5 years of direct Linux development experience for the Red Hat Linux Systems Engineer." AR, Tab 12, TEC Report, at 17. Accordingly, upon review of the agency report and the evaluation record, LCI asserted that "[KPS's] proposed Linux

⁹ In its various protest submissions, LCI has made arguments that are in addition to, or variations of, those discussed above. We have considered all of LCI's assertions and find no basis to sustain its protest.

Systems Engineer failed to meet the minimum requirements,” and that “[KPS’s proposal] should have been deemed unacceptable and excluded from the award.” Supp. Protest at 2.

As noted above, an agency’s evaluation must be consistent with the evaluation factors identified in the solicitation. FAR § 16.505(b)(1)(iv)(C); Morpho Detection, Inc., supra; Harmonia Holdings Group, LLC, supra. Nonetheless, the evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. MILVETS Systems Technology, Inc., supra. In reviewing an agency’s evaluation, our Office will not reevaluate proposals; rather, we will examine the record to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and applicable procurement statutes and regulations. Id.

Here, LCI’s protest appears to be based on the assumption that offerors were required to propose specific personnel to fill the key personnel positions. As discussed above, the solicitation explicitly advised offerors that proposals “shall not include the names or resumes of proposed personnel.” AR, Tab 6, NOI at 12. Rather, the agency stated that it would make confidence assessments regarding the likelihood of an offeror’s successful contract performance by evaluating, among other things, the offeror’s commitment to providing employees with the required skills, certifications, and experience. Id. at 14.

On the record here, we reject LCI’s assertion that, because KPS’s proposal did not specifically list the requirement for 5 years of direct Linux development experience in the portion of its proposal that addressed key personnel positions, the proposal took exception to that requirement. To the contrary, as noted above, the solicitation did not contemplate the proposal of specific individuals, and KPS’s proposal explicitly committed to providing personnel with “the required skills, certifications, and experience.” AR, Tab 10, at 4. Accordingly, LCI’s assertion that KPS’s proposal was unacceptable with regard to filling the key personnel positions is denied.

2. Level of Effort

Finally, LCI protests that KPS’s proposal failed to comply with the solicitation requirements regarding the level of effort to be performed. In this regard, the solicitation identified various labor categories, along with associated levels of effort for each category, and required offerors to submit fixed-price labor rates for the identified levels of effort. AR, Tab 6, NOI at 2-4. LCI acknowledges that KPS’s proposal reflected “exactly [the] amount of hours” specified in the solicitation. Supp. Protest, Apr. 1, 2016, at 4; see also AR, Tab 11, KPS Price Proposal, at 3. Nonetheless, because KPS’s proposal also stated that each of its employees would

receive “a week of technical training each year . . . at no additional cost to the government,” see AR, Tab 10, KPS Technical Proposal, at 15, LCI asserts that KPS’s proposal should have been evaluated as offering 40 hours per year, per employee, below the required level of effort. Supp. Protest at 4. LCI asserts that it will be “impossible” for KPS employees to take a week of training per year in addition to performing the level of effort required under the solicitation.¹⁰ Id. On this basis, LCI argues that KPS’s proposal should have been rejected as unacceptable.

LCI’s assertion regarding the proposed level of effort provides no basis for sustaining the protest. As LCI acknowledges, KPS’s proposal committed to provide the level of effort required. In this regard, as the agency points out in responding to this allegation, the manner in which KPS manages its resources to provide the required hours, as well as an additional week of training for its personnel, is a matter of contract administration outside the review of this Office’s bid protest purview. See 4 C.F.R. § 21.5(a).

The protest is denied.

Susan A. Poling
General Counsel

¹⁰ Contradicting this assertion, the face of LCI’s supplemental protest specifically acknowledges that KPS may “simply . . . require its workers to attend a week’s worth of training off-the-clock.” Supp. Protest at 4 n.4.