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Decision

Matter of: Valkyrie Enterprises, LLC

File: B-414516

Date: June 30, 2017

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DIGEST

Protest that agency was required to seek clarification before rejecting the protester's proposal as technically unacceptable is denied where the agency was under no obligation to seek clarifications regarding the protester's failure to submit an accurate resume for key personnel.

DECISION

Valkyrie Enterprises, LLC, a small business of Virginia Beach, Virginia, protests its elimination from the competitive range under request for proposals (RFP) No. N00023-15-R-3550, issued by the Department of the Navy for engineering and logistics-support services for naval surveillance radar at Virginia Beach, Virginia. Valkyrie contends that the agency erred in finding its proposal unacceptable and eliminating it from the competition without first seeking clarifications, and, furthermore, that its proposal was acceptable on its face at the time of evaluation.

We deny the protest.

BACKGROUND

The agency issued the solicitation on March 10, 2016, with a closing date of April 22, 2016. Agency Report at 2. The solicitation contemplated the issuance of a single cost-plus-fixed-fee task order under the Navy's Seaport-Enhanced indefinite-delivery, indefinite-quantity (IDIQ) multiple-award contract. Id. The contemplated task order

would have a base period of performance of 1-year and four 1-year options, and an estimated value of \$205,237,680 (inclusive of option years).¹ Id.

The solicitation indicated that offers would be evaluated on the basis of three factors: (1) technical and management; (2) past performance; and (3) total evaluated cost. RFP at 94. Additionally, the first factor was further subdivided into three sub-factors: (1) plan to accomplish; (2) personnel qualifications and experience; and (3) transition plan. Id. The solicitation noted that an unacceptable rating in any one factor or subfactor would render a proposal ineligible for award. Id. Further, the solicitation indicated that a factor or subfactor would be rated as unacceptable if the relevant portion of the proposal did not meet the solicitation's requirements and contained one or more deficiencies, defining a deficiency 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. RFP at 95.

Of particular relevance to this protest, the solicitation provided that the personnel qualifications and experience subfactor would be evaluated by assessing the resumes submitted to determine how well the offeror has demonstrated the individual's qualifications and capabilities, level of relevant education and training, and the depth of relevant experience working on similar requirements. Id. at 96. With respect to relevant experience, the solicitation required that various positions be filled by personnel with a specified minimum number of years of relevant experience. Id. at 19-22. For example, the solicitation required that the proposed senior acquisition manager (SAM) position must have 12 years of experience in acquisition management associated with combat systems. Id. at 20.

The solicitation indicated that the government did not intend to hold discussions, but reserved the agency's right to request clarifications as described in Federal Acquisition Regulation (FAR) § 15.306(a). RFP at 78. However, the solicitation provided that the agency intended to evaluate proposals and award a task order based upon initial proposals, and that, therefore, the offeror's initial proposal should contain its best terms from both a price and a technical standpoint. Id. at 78-79.

Valkyrie submitted its proposal by the RFP's April 22nd closing date. Agency Report at 5. In evaluating the proposal, the agency determined that the resume submitted for Valkyrie's proposed SAM reflected only 11 years of acquisition management experience, not the 12 years required by the solicitation. Id. The agency assessed Valkyrie's proposal as unacceptable with respect to that subfactor, and then notified

¹ Since the value of the task order exceeds \$25 million, this procurement meets the current jurisdictional threshold of \$25 million for our Office to hear protests related to the issuance of task orders under multiple-award, IDIQ contracts awarded pursuant to Title 10 of the United States Code. 10 U.S.C. § 2304(d)(1)(B); National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000, § 835 (amending jurisdictional threshold to \$25 million, effective December 23, 2016).

Valkyrie, on March 22, 2017, that it would be eliminated from the competition on that basis. Id. at 6. This notice further indicated that the notice constituted a pre-award debriefing and clarified that no further debriefing would be provided. On March 24, Valkyrie requested a telephonic debriefing, and notified the agency that the resume in question contained a clerical error. Protest at 2. Specifically, Valkyrie explained that the proposed SAM had more than the required twelve years of acquisition management experience, which was not reflected on the included resume because the resume had been inadvertently truncated. Id. The agency did not reply to Valkyrie's request for a telephonic debriefing, and, on March 27, this protest followed.

DISCUSSION

Valkyrie contends that the agency's decision not to seek clarifications concerning the SAM's resume was unreasonable and contrary to law, regulation, and the terms of the solicitation. Protest at 7. Specifically, Valkyrie argues that several factors both intrinsic and extrinsic to its proposal should have alerted the evaluators to Valkyrie's clerical error, and that the agency therefore erred in not seeking such clarifications.² Protester's

² Valkyrie also advanced an alternative argument that, due to the passage of time between proposal submission and proposal evaluation, the SAM's resume reflected 12 years of acquisition management experience on its face at the time the agency actually completed its evaluation. Comments at 3. We do not reach the merits of this argument as Valkyrie introduced it for the first time in its response to the agency's request to dismiss the protest on April 5, 2017, and it is therefore untimely. Protester's Opposition to Agency Request for Dismissal at 3-4. Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Additionally, in cases where a debriefing is required, the initial protest shall be filed not later than 10 days after the date on which the debriefing is held. Id. In this regard, the protester was aware of the basis for its exclusion from the competition as a consequence of the March 22 notice of award and debriefing, and this ground of protest was not introduced until 14 days later on April 5. Valkyrie argues that its belated introduction of this protest ground is timely as the protester did not (and still does not) know the precise date on which the evaluation had taken place, and wanted to avoid filing a speculative protest as it did not know for certain whether the SAM had 12 years of acquisition experience at the time of evaluation. Protester's Supplemental Briefing on Timeliness. However, Valkyrie had no better knowledge of when the evaluation took place when it introduced this protest ground on April 5, than it did on March 22. In any case, a protester need not await perfect knowledge before filing a protest, a protest need only include allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will

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Comments on the Agency Report at 5. Based on our review of the record, we find no basis on which to sustain the protest.

Valkyrie argues that the agency abused its discretion by not seeking clarifications in this case because the factual context made the need for clarifications clear. Comments at 5. For example, Valkyrie notes that other parts of its proposal were inconsistent with the resume in question, which should have alerted the agency to the need for clarifications. Id. Specifically, Valkyrie argues that its staffing plan noted that the SAM had 31 years of related professional experience, which was inconsistent with the 11 years of acquisition management experience displayed on the truncated resume. Protest at 4. Additionally, Valkyrie argues that its SAM currently works in an acquisition management capacity on the incumbent contract, has done so since November of 2004, and thus is well-known to the agency. Comments at 5, n.6. Furthermore, Valkyrie argues that its certification (made as part of submitting its proposal) that all key personnel identified in its proposal met the required qualifications should also have alerted the agency to the necessity of clarifications. Comments at 5. Finally, Valkyrie contends that when viewed in the context of these circumstances, the agency's refusal to seek clarification was unreasonable.³ Id.

As a general matter, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. An offeror is responsible for affirmatively demonstrating the merits of its proposal and, as here, risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. In reviewing protests challenging the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4.

Additionally, the Federal Acquisition Regulation (FAR) describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. See FAR § 15.306. Clarifications are limited exchanges

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prevail in its claim of improper agency action. See Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Because this protest ground was filed 14 days after protester knew, or should have known, the basis for protest, it is untimely, and is dismissed.

³ Although our decision does not specifically address each of the protester's arguments, we have considered all of its assertions and find none furnishes a basis for sustaining its protest.

between the agency and offerors that may occur when contract award without discussions is contemplated. FAR § 15.306(a). As a baseline matter, our cases have generally concluded that agencies may, but are not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors.⁴ See e.g. Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2.

With respect to Valkyrie's argument that its proposal was inconsistent on its face, Valkyrie maintains that it should have been obvious to the agency, based on Valkyrie's staffing plan, either that its SAM had the relevant experience, or that there was an error in the proposal. Protest at 4. However, the agency notes, and we agree, that the two portions of the proposal were not necessarily inconsistent. Agency Report at 8-9. The solicitation called for 12 years of acquisition management experience, but the staffing plan merely notes 31 years of "related professional experience." Id. The two categories are not equivalent, and, in our view, it is reasonable to conclude that the category of related professional experience includes work experience other than acquisition management experience. This reading is reinforced by protester's concession that only 19 of the SAM's 31 years of related professional experience were actually in acquisition management. Comments at 3.

The fact that the SAM had 19 years of acquisition management experience was in no way discernible from Valkyrie's proposal as submitted. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. See LexisNexis, Inc., B-299381, Apr. 17, 2007, 2007 CPD ¶ 73 at 6-7 n.6 (an agency is under no obligation to parse a protester's proposal to try to determine whether the proposal offers comparable sources of information). Therefore, we see no basis to conclude that information contained in the protester's proposal should have alerted the agency to an error with the SAM resume.

⁴ The agency contends that the error in Valkyrie's proposal is not a minor clerical error, but rather is a material omission which may not be cured through clarifications. The agency is correct that clearly-stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5; Outdoor Venture Corp., B-288894.2, Dec. 19, 2001, 2002 CPD ¶ 13 at 2-3. However, in this case, both parties concur that the SAM proposed by Valkyrie does, in fact, conform to the agency's requirements. Valkyrie's proposed clarification would involve correcting a factual inaccuracy in its proposal, which would not materially alter its proposed technical approach or staffing plan. See, e.g., Nat'l Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 11-12 (correction of mistaken characterization of an item of supply that did not change the terms and details of the proposal was a permissible clarification).

Valkyrie's argument that the agency impermissibly ignored information allegedly in its possession concerning their SAM's relevant experience is similarly groundless. Valkyrie is correct that our Office has recognized that in certain limited circumstances, an agency evaluating a proposal has an obligation to consider certain information that is "too close at hand" to ignore. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. This doctrine, however, is not intended to remedy an offeror's failure to include information in its proposal. Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 8; FN Mfg. LLC, B-407936 et al., Apr. 19, 2013, 2013 CPD ¶ 105 at 3. Additionally, our decisions on this point have been limited to consideration of past performance information known to the agency; we have generally declined to extend the doctrine to include information related to the qualifications of key personnel because they relate to technical acceptability rather than past performance.⁵ See, e.g. Consummate Computer Consultants Sys., B-410566.2, June 8, 2015, 2015 CPD ¶ 176 at 6 n.6; Enterprise Solutions Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9.

An offeror that fails to submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable. Healthstar VA, PLLC, June 22, 2007, 2007 CPD ¶ 114 at 2. The agency, therefore, was not obliged to consider any knowledge it may or may not have had concerning the SAM's experience in this case.

The protester further contends that the agency should have been alerted to the error in Valkyrie's proposal because Valkyrie certified that all personnel met the requirements of the solicitation as part of the submission process for the proposal. Comments at 5. However, we note, again, that the agency is not obliged to parse the protester's proposal to try to determine whether the proposal offers comparable sources of information. See, e.g., Alares, LLC, B-407124, Nov. 7, 2012, 2012 CPD ¶ 316 at 4-5 (protest of agency's evaluation of protester's proposal is denied where the proposal failed to address compliance with infection control procedures and provide a construction safety plan, as required by the solicitation, and agency was not required to seek clarification or infer or piece together such information from the protester's proposal). If a routine certification of compliance coupled with a non-compliant proposal were sufficient to compel an agency to seek clarifications, clarifications would, in effect, be universally required.

⁵ The only scenario in which we have suggested that the agency is obliged to consider information it possesses that relates to the technical evaluation of a proposal is in the narrow case where multiple offerors rely on the same subcontractor, and where the agency evaluates the experience or technical capability of that subcontractor differently. See, e.g., BC Peabody Construction Services, Inc., B-408023, May 10, 2013, 2013 CPD ¶ 120 at 5; Consolidated Engineering Services, Inc., B-279565.2; B-279565.3, June 26, 1998, 99-1 CPD ¶ 75 at 5-6. While the protester cites our decision in BC Peabody in support of its argument, the underlying factual scenario is not present here, so it is inapplicable. Protester's Opposition to Agency Request for Dismissal at 5.

Finally, protester contends that, while any of these elements individually may not have made the agency's refusal to seek clarifications unreasonable, the circumstances, when taken together, should have compelled the agency to seek clarifications.⁶ Agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. Alltech Engineering Corp., B-414002.2, Feb. 6, 2017, 2017 CPD ¶ 49 at 6. We see no basis in the protester's arguments, singly or in combination, to conclude that the agency acted unreasonably by failing to seek clarifications in this case.

The protest is denied.

Susan A. Poling
General Counsel

⁶ In this connection, the protester correctly notes that we have concluded, on at least one occasion, that an agency was required to seek clarification from an offeror. Protester's Opposition to Agency Request for Dismissal at 3, citing Southern Systems, Inc., B-224533, Feb. 25, 1987, 87-1 CPD ¶ 214. However, that case is clearly distinguishable from this one, as in that case: (1) the meaning of the allegedly erroneous provision was not clear on the face of the proposal; (2) the disputed provision was inconsistent with prior offers in the context of multiple rounds of discussions; and (3) the agency's proposed reading of the disputed provision was not reasonable. See Southern Systems, Inc., *supra*. In the instant case, there were no ongoing discussions, no ambiguity in the submitted resume, and the agency's reading of the resume as submitted was entirely reasonable.