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Decision

Matter of: BANC3, Inc.

File: B-416486; B-416486.2

Date: September 10, 2018

Katherine S. Nucci, Esq., Scott F. Lane, Esq., and Jayna M. Rust, Esq., Thompson Coburn LLP, for the protester.

Roshan D. Shah, Esq., Scarinci & Hollenbeck, LLC, for AASKI Technology, Inc., the intervenor.

Jonathan A. Hardage, Esq., Department of the Army, for the agency.

Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and consistent with the solicitation and procurement law and regulations; protester is not an interested party to maintain remaining allegations.

DECISION

BANC3, Inc., of Princeton, New Jersey, protests the award of a contract to AASKI Technology, Inc., of Tinton Falls, New Jersey, under request for proposals (RFP) No. W5KGU-17-R-0010, issued by the Department of the Army, Army Contracting Command-Aberdeen Proving Ground, for technical support services. BANC3 challenges the agency's evaluation of proposals.

We deny the protest.

BACKGROUND

The RFP, issued on August 23, 2017, as a woman-owned small business set-aside, contemplated the award of a contract, for a 1-year base period and three 1-year option periods, to provide all personnel, supplies, and services necessary to perform research and development in support of the United States Army Communications-Electronics Research, Development and Engineering Center (CERDEC), Command Power and Integration (CP&I) Directorate. Agency Report (AR), Tab 4, RFP, Performance Work

Statement (PWS), at §1.1. The CERDEC CP&I Directorate supports the Army in the development of a variety of intelligence, surveillance, and reconnaissance systems and systems integration programs. Id.

Award was to be made on a best-value tradeoff basis, considering the following factors: technical, past performance, and cost/price. AR, Tab 11, RFP § M, at 1. The technical factor was deemed significantly more important than the past performance factor, which was deemed slightly more important than cost/price. The non-price factors, when combined, were significantly more important than cost/price. Id.

The technical factor was comprised of three subfactors: technical capability, management approach, and quality assurance surveillance plan. Id. at 2. The agency was to assign an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable to each subfactor. Id. at 4. The agency would then assign an overall rating for the technical factor based on the assigned subfactor ratings. Id. at 2. To be eligible for award, proposals were required to receive a rating of no less than acceptable for the technical factor and for each of the subfactors. Id. at 1.

The agency received eight proposals in response to the RFP. AR, Tab 1, Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL), at 11. The source selection evaluation board (SSEB) evaluated BANC3's and AASKI's proposals as follows:

	AASKI	BANC3
Technical Overall	Good	Unacceptable
Technical Capability	Good	Unacceptable
Management Approach	Good	Outstanding
QASP	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Proposed Costs	\$36,439,907	\$36,465,717
Evaluated Costs	\$36,439,907	\$36,465,717

AR, Tab 22, Source Selection Decision Document (SSDD), at 3.

The contracting officer, acting as the source selection authority (SSA), reviewed the SSEB's evaluation results and conducted an integrated assessment of proposals against the RFP's evaluation criteria. Id. at 14-15. The SSA found that AASKI's proposal was both higher-technically rated than the only other technically acceptable offeror and offered a lower evaluated price than this offeror. Id. Accordingly, the SSA concluded that AASKI's proposal represented the best value to the agency. Id. at 15. The agency awarded the contract to AASKI on June 7, 2018. AR, Tab 1, COS/MOL, at 20. On June 13, the agency provided a telephonic debriefing to BANC 3. Id. at 20-21. This protest followed.

DISCUSSION

BANC3 raises several challenges to the agency's evaluation of proposals and award decision. The firm argues that the agency unreasonably evaluated the proposals of AASKI and the other acceptable offeror under the management approach subfactor. BANC3 also challenges the agency's assignment of a deficiency and several weaknesses to its proposal under the technical capability subfactor, including alleging that the agency applied a more exacting standard when evaluating its proposal. Additionally, BANC3 asserts that AASKI had an impermissible impaired objectivity organizational conflict of interest which the agency failed to investigate. For the reasons that follow, we find no merit to BANC3's challenges.¹ We note at the outset that in reviewing protests challenging any agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. MSN Services, LLC, B-414900 et al., Oct. 4, 2017, 2017 CPD ¶ 310 at 3.

Evaluation under Management Approach Subfactor

Under the management approach subfactor, BANC3 alleges that the agency incorrectly concluded that AASKI and the other acceptable offeror satisfied the RFP's requirements to submit resumes and letters of intent for all key personnel.² Protester's Comments and Supp. Protest at 19. BANC3 contends that the RFP required the submission of 16

¹ In its initial protest, BANC3 also challenged the agency's evaluation of AASKI's proposal under the past performance factor and alleged that AASKI engaged in an improper "bait-and-switch" of key personnel. Protest at 38-42. BANC3 withdrew these allegations in response to the AR. Protester's Comments and Supp. Protest at 2.

² As a preliminary matter, we conclude that BANC3 is an interested party to challenge the evaluation of AASKI and the other acceptable offeror's proposal, even though we conclude that BANC3's proposal was reasonably found to be technically unacceptable. See discussion, infra. In order for a protest to be considered by our Office, a protester must be an interested party, which means that it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. §§ 21.0(a)(1), 21.1(a); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is generally an interested party to challenge the evaluation of the selected firms' proposals where there is a reasonable possibility that the protester's proposal would be in line for selection if its protest were sustained. Allied Tech. Grp, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 10 n.12. Since AASKI and the other offeror challenged were the only firms determined to have submitted acceptable proposals, if the protest here were sustained, these firms would not be eligible for award and the agency may be faced with resoliciting the requirement. As BANC3 would be eligible to compete under such a resolicitation, BANC3 is an interested party to raise these allegations. See Level 3 Communications LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 10 n.15.

resumes and letters of intent, while AASKI and the other acceptable offeror each only submitted nine resumes and letters of intent. Id. at 20-26. BANC3 asserts that, had the agency evaluated these firms' proposals consistent with the RFP's instructions and evaluation criteria, it would have found them noncompliant, rendering them unacceptable under this subfactor and technically unacceptable overall. Id. at 26.

Under the management approach subfactor, offerors were required to provide key personnel who met the minimum acceptable educational, experiential, and clearance level delineated in PWS § 1.5.7, "Key Personnel." AR, Tab 8, RFP §L, at 5. This section provided that "the follow[ing] are considered key personnel by the [agency]: Program Manager and Deputy Program Manager, Principle Engineer/Scientist, Senior Software Engineer, Senior Systems Engineer, Senior General Engineer, Senior Network Engineer, Senior Test Engineer, and Senior Quality Assurance Engineer." AR, Tab 4, PWS, at 7. Additionally, the RFP stated "[t]he offeror shall provide resume(s) and supporting documentation for Key Personnel." AR, Tab 8, RFP Section L, at 5. The RFP also required signed letters of intent for all key personnel. Id.

BANC3 contends that the agency should have found the proposals of AASKI and the other acceptable offeror noncompliant for failure to provide the requisite resumes and letters of intent. To support its argument, BANC3 asserts that the PWS delineated different "labor categories" of key personnel, but not the quantity of key personnel required to be proposed for each labor category. BANC3 further notes that the RFP required that offerors provide the personnel necessary to satisfy the estimated level of effort (LOE). AR, Tab 8, RFP §L at 5; AR, Tab 6, RFP, Attachment 003, LOE. The LOE specified the estimated annual labor hours for each labor category, including for the key personnel labor categories. AR, Tab 6, RFP, Attachment 003, LOE.

For senior software engineer and senior systems engineer labor categories, the estimated LOE was 7,680 hours and 9,600 hours, respectively. As the RFP also stated that a typical workweek was 40 hours, equating to 1,920 hours annually, BANC3 asserts that an individual employee could not have satisfied the LOE for these two labor categories. Thus, BANC3 argues that these positions necessitated four and five key personnel, respectively, requiring offerors propose a minimum of 16 key personnel with corresponding resumes and letters of intent. Protester's Comments and Supp. Protest at 22-23; Protester's Comments on Supp. AR at 9.

The agency maintains that the solicitation was clear that only nine individuals were considered key personnel and, correspondingly, that only nine resumes and letters of intent were required to comply with the terms of the RFP. Supp. COS/MOL at 9-10. The agency cites the PWS which, as noted above, expressly provided a list which stated the "follow[ing] are considered key personnel," and then listed nine positions. AR, Tab 4, PWS, at 7. Accordingly, the agency argues that the requirement was clear the offerors only needed to provide nine resumes and letters of intent, corresponding to nine expressly stated key personnel. The agency also highlights the question and answer exchange below:

Q 9: Would the Government please confirm that there are total of 9 Key Personnel required for this opportunity? If not, would the government please provide total Key Personnel for each Key Personnel labor category?

A: There is a total of 8 Key Personnel required as indicated in the PWS 1.5.7.1-1.5.7.8. The PWS identifies the Key personnel by labor categories.

Q 11: The RFP & PWS references "Program Manager and Deputy Program Manager . . .," however, (Attachment 0003) LOE is missing the LCAT: Deputy Program Manager [.]. Since LCAT Deputy Program Manager is not included in LOE can the government confirm that [sic] resume for Deputy Program Manager is not needed for submission?

A: A resume will be required for a DPM, IAW with the PWS PM/DPM are both listed as key personnel with the same qualifications.

Tab 47, Questions and Answers Regarding Draft RFP, at 9, 11.

The agency explains that by first answering that there are eight key personnel, and later clarifying that a resume and letter of intent was also required for the Deputy Program Manager, its responses made clear that the RFP required that offerors only proffer nine key personnel, with corresponding resumes and letters of commitment. Supp. COS/MOL at 9-10.

BANC3 responds that the questions and answers do not change the RFP's "clear requirement" to provide, at minimum, 16 resumes and letters of commitment. Protester's Comments on Supp. AR at 8. The firm argues that "Q&A 9 confirmed that the PWS identifies key personnel by labor categories and stated 'there are a total of eight key personnel,' meaning eight key personnel labor categories as described in PWS Section 1.5.7." Id. BANC3 then asserts that "neither the RFP, the PWS nor the Q&A's specified a number of resume/LOIs to be submitted," as the "mandatory LOE necessitated that offerors make their own decisions as to how many key personnel would be needed . . .", but, at minimum, required offerors to submit resumes and letters of intent for 16 key personnel. Id.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec.15, 2005, 2005 CPD ¶ 223 at 2. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id.

Here, we disagree with BANC3's assertion that the agency's interpretation of the solicitation was unreasonable, or that the solicitation was ambiguous. In our view, the solicitation language, read as a whole, including the agency's questions and answers, does not support BANC3's interpretation.³ In this regard, the PWS listed the nine positions it considered to be key personnel. AR, Tab 4, PWS, at 7. This section of the PWS neither references the LOE nor utilizes the plural when denoting the positions. Additionally, through the questions and answers, the agency clearly confirmed that the RFP only contemplated nine key personnel. While BANC3 argues that the questions and answers do not mention "resumes," they do expressly respond with the quantity of individuals the agency considered to be key personnel. As a result, the RFP does not support BANC3's contention that a minimum of 16 key personnel were contemplated by the solicitation. Id.

In sum, we find that BANC3 is effectively advancing an interpretation of the RFP that is inconsistent with the plain language of the RFP and questions and answers. Thus, we find BANC3's interpretation of the RFP to be unreasonable. See Bicallis LLC, B-415639, Feb.1, 2018, 2018 CPD ¶ 90 at 4 (finding protester's interpretation unreasonable where it contradicts the express language of the solicitation).

Having concluded that the protester's interpretation of the RFP was unreasonable, and that no ambiguity existed, we review the agency's evaluation to determine whether it was consistent with the agency's interpretation of the terms of the solicitation. Anders Constr. Inc., supra. As noted above, the RFP required offerors submit resumes and letters of intent for the nine key personnel contemplated by the RFP. AASKI and the other acceptable offeror both submitted nine resumes and letters of intent for these key personnel. AR, Tab 24, AASKI Technical Evaluation, at 12; AR, Tab 53, Technical Evaluation of Other Acceptable Offeror, at 12. Accordingly, we find nothing objectionable about the agency's conclusion that both proposals complied with the terms of the solicitation.

³ If we were to accept BANC3's interpretation as reasonable, the interpretation would be in direct conflict with the information provided in the questions and answers, such that the disconnect would represent a patent ambiguity. See Crew Training International, Inc., B-414126, Feb.7, 2017, 2017 CPD ¶ 53 at 5 n. 9 (noting that where the protester's interpretation of solicitation requirement was in direct conflict with information provided by the agency in the questions and answers, the resulting disconnect represented a patent ambiguity); see also Anders Constr., Inc., B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 6 (explaining that inconsistencies between documentation requirements that are clear on the face of the solicitation created a patent ambiguity). A patent ambiguity must be protested prior to the closing date for the submission of proposals to be considered timely. 4 C.F.R. § 21.2(a)(1); The Aegis Techs. Grp.; Wingbrace LLC, B-412884 et al., June 28, 2016, 2016 CPD ¶ 175 at 9.

Evaluation of BANC3's Proposal under Technical Capability Subfactor

BANC3 challenges the agency's assignment of a deficiency to its proposal under the technical capability subfactor. In this regard, BANC3 argues that the agency unreasonably concluded that its proposal failed to address the requirements of PWS § 5.15.1, Administrative and Business Operation Support. Protest at 20.

Under this subfactor, offerors were required to clearly demonstrate their knowledge and understanding of the requirements delineated in section 5 of the PWS. AR, Tab 11, RFP § M, at 2. Section 5 was comprised of 19 subsections which detailed the services to be rendered under the contract. AR, Tab 4, RFP, PWS, at 16-29. The RFP advised that proposals "will be evaluated to determine whether all of the requirements of the PWS have been completely considered, defined, and satisfied." AR, Tab 11, RFP § M, at 3.

The agency assigned BANC3's proposal a deficiency for failure to sufficiently address the requirements of section 5.15.1 of the PWS. AR, Tab 23, BANC3 Technical Evaluation, at 19. Among other requirements, this section required offerors to address the following:

provide computer support specialist support for content management. The content management support requires experience with MicrosoftSharePoint; MicroSoft Project Server; Army Knowledge Online (AKO); Wikis; and Blogs. The contractor shall provide computer special graphical and design support to websites, briefings, marketing materials, publications and displays for CERDEC.

AR, Tab 4, PWS, at 26.

The agency concluded that BANC3 failed to address the section's requirement to provide a computer support specialist for content management and graphic design support. AR, Tab 23, BANC3 Technical Evaluation, at 9. The evaluation team stated that "[t]he [agency] has a critical need for an experienced computer support specialist to manage its various knowledge management environments, as well as to provide graphic design support to its headquarters and technical divisions...[t]he [o]fferor's proposal did not address this critical function at all which increases the risk of unsuccessful contract performance . . ." Id. The agency assigned BANC3's proposal a deficiency and, pursuant to the terms of the RFP, its proposal was found to be unacceptable⁴ under the technical capability subfactor, as well as unacceptable overall. Id. at 19-20.

⁴ The RFP defined an "unacceptable" rating as "[p]roposal does not meet requirements and contains one or more deficiency. Proposal is unawardable." AR, Tab 11, RFP § M, at 4.

BANC 3 argues that “[w]hile [its] proposal section addressing PWS 5.15 did not use the phrase ‘computer support specialist’ or regurgitate line-by-line the ‘content management support’ tasks outlined” in the section, the proposal did reference its existing administrative and operations support staff, which currently performs several of the requirements delineated in section 5.15.1 of the PWS. Comments and Supp. Protest at 7-8. BANC3 also contends that other sections of its proposal reference a “PR Writer” that has been performing the computer specialist support functions, as well as its experience performing content management tasks. Id.

An offeror has the responsibility to submit a well-written proposal which clearly demonstrates compliance with the solicitation requirements and allows meaningful review by the procuring agency. Bryan Constr., Inc., B-409135, Jan.14, 2014, 2014 CPD ¶ 51 at 6. An offeror that does not affirmatively demonstrate the merits of its proposal assumes the risk that its proposal will be evaluated unfavorably. Id. at 7.

Our review of the record provides us with no basis to object to the agency’s assignment of this deficiency to BANC3’s proposal. Simply put, BANC3’s proposal’s response to this section does not address the requirement to provide a computer support specialist to perform the delineated content management functions. BANC3’s proposal does not even mention a computer support specialist, or the associated content management functions, let alone provide a response that demonstrates an understanding of these requirements and proposes an approach for successfully addressing them. Although BANC3 counters that its proposal contained references in various parts of the proposal to the information demonstrating the requirements of section 5.15.1 of the PWS, the agency was not required to piece together disparate parts of BANC3’s proposal to determine its contents. See James Constr., B-402429, Apr.21, 2010, 2010 CPD ¶ 98 at 4-5.

Moreover, we find no merit to BANC3’s assertion that “it was logical and reasonable that the evaluators would accept offerors’ relevant experience performing such work, in lieu of granular descriptions of the particular requirements” Protester’s Comments and Supp. Protest at 7. Here, BANC3 elected to furnish a proposal that failed to sufficiently address this requirement. We have recognized in certain limited circumstances involving past performance information, an agency has an obligation (as opposed to the discretion) to consider “outside information” bearing on an offeror’s proposal. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. No part of this concept, however, is intended to remedy an offeror’s failure to include information in its own proposal. See Affordable Eng’g Servs., Inc., B-407180.4, et al. Aug. 21, 2015, 2015 CPD ¶ 334 at 13. Where an offeror is in control of the information contained in its proposal--and not reliant on third parties to submit that information--it exercises its own judgment as to the information that the agency should consider. See L-3 Servs., Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 12 n.10. Accordingly, we conclude that the agency had no obligation to seek out and favorably consider information that BANC3 failed to include or address in its proposal. See Navarre Corp., B-414505.6, July 13, 2018, 2018 CPD ¶ 242 at 4-5 (finding that the agency was under no obligation to

consider protester's incumbent experience to remedy its failure to furnish required information in its proposal).

As a result, we find the agency reasonably assigned BANC3's proposal a deficiency for failure to address the requirements of section 5.15.1 of the PWS. In turn, pursuant to the terms of the RFP, as BANC3's proposal received an unacceptable rating for the technical capability subfactor, and technical factor, its proposal was ineligible for award. AR, Tab 11, RFP § M, at 1; AR, Tab 22, SSDD, at 14.

Remaining Challenges

BANC3 raised additional protest allegations, including challenging the agency's assignment of several weaknesses to its proposal, asserting that AASKI had an impaired objectivity organizational conflict of interest that the agency failed to consider, and asserting that AASKI's key personnel failed to satisfy the RFP's experience requirements. We dismiss these remaining allegations because BANC3 is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party if it would not be next in line for award if its protest were sustained. Sotera Defense Solutions, Inc., B-414056 et al., Jan. 31, 2017, 2017 CPD ¶ 46 at 8.

We find that BANC3 is not an interested party to maintain these remaining allegations because it would not be in line for award in the event we sustained any of them. The record shows BANC3 was reasonably found technically unacceptable, and ineligible for award. Further, there was an intervening offeror whose proposal was found to be technically acceptable. As noted above, BANC3's only challenge to the evaluation of this offeror, that it failed to submit the requisite number of resumes and letters of intent for its proposed key personnel, had no merit. Consequently, even if we found that BANC3's remaining allegations regarding AASKI had merit, the other acceptable offeror, rather than BANC3, would be in line for award. Accordingly, we dismiss BANC3's remaining allegations. See Centerra Group, LLC, B-414768, B-414768.2, Sept. 11, 2017, 2017 CPD ¶ 284 at 10.

The protest is denied.

Thomas H. Armstrong
General Counsel