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Decision

Matter of: AOC Connect, LLC

File: B-416658; B-416658.2

Date: November 8, 2018

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Shelly L. Ewald, Esq., and George E. Stewart, Esq., Watt, Tieder, Hoffar & Fitzgerald, LLP, for CenturyLink QGS, the intervenor.
Meredith Skowronski, Esq., Library of Congress, for the agency.
Paula J. Haurilesko, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency failed to properly evaluate the awardee's proposal under the staffing factor is sustained, where the contemporaneous record contains no evidence that the agency evaluated the awardee's proposal in accordance with the terms of the solicitation.
 2. Protest that the agency accepted a proposed technology solution that did not meet the solicitation requirements is dismissed as untimely, where the protester was on notice through a solicitation amendment that the agency was willing to accept the technology solution.
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DECISION

AOC Connect, LLC, a small business of Chantilly, Virginia, protests the award of a fixed-price contract to Qwest Government Services, Inc., d/b/a CenturyLink QGS, of Arlington, Virginia, under request for proposals (RFP) No. 030ADV18R0186, issued by the Library of Congress for dense wavelength digital multiplexing (DWDM) fiber services.¹ AOC Connect contends that the Library misevaluated CenturyLink's proposal and challenges the best-value tradeoff decision.

¹ DWDM is a method of combining multiple circuits into a single optical fiber connection. Comments & Supp. Protest, attach. 1, Expert Report, at 5.

We sustain the protest.

BACKGROUND

The RFP was issued on March 15, 2018, using the commercial item procedures of Federal Acquisition Regulation (FAR) part 12, to provide long-haul telecommunications network connectivity between a new computing facility (referred to as DC4) and three existing Library data centers (referred to as DC1 through DC3). Agency Report (AR), Tab 1, RFP, at 8, 40.

As originally issued, the RFP required offerors to provide dark fiber, DWDM connectivity between the new facility (DC4) and DC2 within 60 days of contract award. Id. at 8. The RFP also required offerors to provide a response time of less than or equal to 10 milliseconds (ms) for each primary path and less than or equal to 30 ms for redundant paths. Id. In addition, the RFP required a 100 gigabyte (GB) wavelength link for the primary path between DC4 and DC2. Id. at 9.

The Library issued five amendments to the RFP that responded to offeror questions and significantly changed the requirements. For example, the RFP was amended to permit offerors to propose a primary link between DC2 and DC4 of no less than 10 GB within 60 days of award and upgrade to 100 GB within 180 days of award. AR, Tab 2.e, RFP amend. 4, at 1. In addition, the RFP was amended by the following:

Q2. Will the Library please accept the use of [optical transport unit-4 (OTU-4)] fiber for this proposal?

A2. Library Response: Yes the Library will accept a proposal for an OTU-4 fiber connection. We would however like to see the whole proposed architecture that is proposed in conjunction with an OTU-4 fiber connection and whether bridging would also be possible as part of the proposed solution.

Id. During discussions, the Library also relaxed the response time from 10 ms to 13 ms. AR, Tab 8.b.iii, AOC Items for Negotiation, at 1.

The RFP stated that award would be made to the offeror whose proposal was determined to provide the best value to the government, considering four evaluation factors, listed in descending order of importance: technical approach, staffing, past performance, and price. RFP at 42. The non-price factors, when combined, were significantly more important than price. Id.

Under the technical approach factor, the RFP stated that the Library would evaluate the degree to which the offeror's technical approach will ensure all requirements are met and minimize risk to the government. Id. Offerors were instructed to include any ground rules, assumptions, exceptions, and/or deviations in their proposals. Id. at 41.

Under the staffing factor, the RFP stated that the Library would evaluate the offeror’s key personnel qualifications. Id. at 42. As relevant here, the RFP also stated that the Library would evaluate the combination of skills and experience of proposed non-key personnel to determine the overall experience and qualifications of the offeror’s proposed team. Id. In furtherance of this, the RFP required offerors to provide an overarching description of their proposed team for each phase of the requirement, including labor category/contract role, relative qualifications and experience for each proposed position, and labor hours per position. Id. at 41.

The Library received three proposals, including AOC’s and CenturyLink’s. Contracting Officer’s Statement (COS) at 4. The Library evaluated proposals and engaged in discussions by issuing “items for negotiation” letters to AOC and CenturyLink.² Id.

After receipt of final proposals, AOC and CenturyLink received the following ratings:³

	AOC	CenturyLink
Technical Approach	Outstanding	Acceptable
Staffing	Outstanding	Acceptable
Past Performance	Low Risk	Low Risk
Price	\$12,635,818	\$6,891,000

AR, Tab 8.d, Contract Award Determination, at 4-5.

As relevant here, under the staffing factor, the evaluators identified four strengths in AOC’s proposal, and assigned an outstanding rating. AR, Tab 8.b.v, AOC Final Evaluation, at 2. The evaluators identified no strengths, weaknesses, or deficiencies in CenturyLink’s proposal, and assigned an acceptable rating. AR, Tab 8.b.vi, CenturyLink Final Evaluation, at 2. The evaluation report contained no discussion of CenturyLink’s proposed staffing. See id.

As part of the selection decision, the source selection authority (SSA), who is also the contracting officer, listed the strengths identified in AOC’s proposal and acknowledged that AOC submitted the highest-rated proposal. AR, Tab 8.d, Contract Award Determination, at 6. The SSA noted that CenturyLink was not the highest-rated offeror but was significantly more affordable and demonstrated a high likelihood of fulfilling the Library’s requirements. Id. at 7. The SSA stated that AOC’s “slightly better

² The third offeror was not included in the competitive range. COS at 4.

³ The source selection plan (SSP) provided for ratings of outstanding, good, acceptable, marginal, and unacceptable for the technical approach and staffing factors. AR, Tab 8a, SSP, at 10-11.

performance” was not worth nearly twice the price of what CenturyLink could provide. Id. In this regard, the SSA noted that AOC could provide a 10 ms response time compared to CenturyLink’s proposed 13 ms, and that AOC could provide 100 GB within 60 days where CenturyLink proposed providing 100 GB within 180 days. Id. The SSA concluded that 180 days was acceptable because the Library’s existing links between some of the data centers can continue to be used until the new connectivity is established and tested. Id. On this basis, the SSA selected CenturyLink for contract award. Id.

After receiving a debriefing, AOC protested to our Office.

DISCUSSION

AOC raises multiple challenges to the Library’s evaluation of CenturyLink’s proposal and the selection decision. For example, AOC contends that the Library unreasonably assigned CenturyLink’s proposal an acceptable rating under the staffing factor because CenturyLink failed to provide information required by the RFP and the agency provided no explanation for the acceptable rating. Comments & Supp. Protest at 10 n.7. As discussed below, we conclude that the contemporaneous record is devoid of evidence the agency considered CenturyLink’s proposed staffing, and we sustain the protest on this basis.

The Library states that the solicitation gave it discretion to determine whether offerors’ proposals satisfied solicitation instructions. Supp. Memorandum of Law (MOL), Nov. 1, 2018, at 1. The Library also states that CenturyLink’s proposal discussed all required staffing and expertise relevant to accomplishing its proposed solution. In this regard, the Library states that CenturyLink “interspersed” explanations throughout its proposal of the expertise and services to be provided by personnel as related to design support, network engineering support, network monitoring, and maintenance. Id. at 2-3.

In reviewing an agency’s evaluation of proposals and source selection decision, we will examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Mission Servs., Inc., B-415136.3, B-415136.4, May 22, 2018, 2018 CPD ¶ 222 at 11. While we will not substitute our judgement for that of the agency, we will sustain a protest where the agency’s conclusions are inconsistent with the solicitation’s evaluation criteria, undocumented, or not reasonably based. Conley & Assocs., Inc., B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 5. It is a fundamental principle of government accountability that an agency be able to produce a sufficient record to allow for a meaningful review where its procurement actions are challenged. See e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8 (even for procurements conducted under simplified acquisition procedures, an agency must have a sufficient record to allow for a meaningful review). Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source

selection decision. Global Aerospace Corp., B-414514, July 3, 2017, 2017 CPD ¶ 198 at 10.

The record does not support the agency's position. As relevant here, the RFP stated that under the staffing factor, the Library would "evaluate the combination of skills and experience of the offeror's proposed non-key personnel to determine the overall experience and qualifications of the contractor's proposed team, relative to the requirements of the solicitation." RFP at 42. Offerors were instructed to provide an overarching description of their proposed team for each phase of the requirement that included labor category/contract role, relative qualifications and experience for each proposed position, and labor hours per position. Id. at 41.

The evaluation record contains no evidence that the evaluators considered whether CenturyLink's proposal included information concerning the skills and experience of CenturyLink's non-key personnel. See, AR, Tab 8.b.vi, CenturyLink Final Evaluation, at 2. Here, the evaluation report contained no discussion at all of CenturyLink's proposed staffing. Id. Rather, the evaluation simply concludes, without explanation, that CenturyLink's proposal is acceptable. Id.

In response to the protest ground, the agency identified sections of CenturyLink's proposal that it contends contains information pertaining to the "skills and experience of the offeror's proposed non-key personnel" that were to be evaluated under the solicitation. See Supp. MOL, Nov. 1, 2018, at 2-3. However, the contemporaneous record does not demonstrate how these sections of CenturyLink's proposal contain information pertaining to the "skills and experience of the offeror's proposed non-key personnel" that were to be evaluated under the solicitation. For example, CenturyLink's proposal generally states that its "core team will be supported by the assets and support resources of CenturyLink's engineering, provisioning, installation, and operational support teams to provide the full complement of life-cycle support needed for this effort." AR, Tab 7.a, CenturyLink's Proposal, at I-17. Another section concerning network engineering support states that "[w]e have provided services to the Library under the existing [General Services Administration] WITS 3 contract and the Networx contract, and will use this experience and understanding of Library requirements in providing any engineering support needed under this contract." Id. at I-6. Another section cited by the agency differentiates CenturyLink's network operations center fault management process from proactive monitoring, but does not discuss the qualifications and experience of personnel. Id. at I-7. In sum, the agency has failed to demonstrate that its evaluation of CenturyLink's proposal under the staffing factor was reasonable.

Other Protest Grounds

As noted above, AOC raises additional challenges to the agency's evaluation of CenturyLink's proposal. We have reviewed the record and find that none of the protester's additional arguments provide a basis to sustain the protest. For example, AOC contends that the Library erred in evaluating CenturyLink's proposal because the

awardee's proposed solution using an OTU-4 fiber connection cannot meet at least six solicitation requirements. AOC Supp. Comments at 3.

The Library states that its first set of answers amending the solicitation specified that a proposal using OTU-4 would be considered an acceptable solution. Supp. MOL, Sept. 24, 2018, at 2. The Library contends that, as a result, AOC was aware that the Library considered OTU-4 to be acceptable in meeting the solicitation requirements, but did not raise concerns about scope or inconsistencies in the solicitation until after the agency notified the company of the agency's award decision. Id.

In essence, AOC's argument is an untimely challenge to the Library's amendment of the solicitation to permit an OTU-4 solution. As previously noted, in response to a question, the Library stated that it would accept a proposal for an OTU-4 fiber connection. See AR, Tab 2.e, RFP amend. 4, Question & Answer No. 2. To the extent this amendment created an inconsistency with the rest of the solicitation's requirements, AOC was required to protest the ambiguity prior to the date for receipt of proposals. In this regard, a patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error (e.g., where the solicitation provisions appear inconsistent on their face). Umicore Optical Materials USA, Inc., B-415546, B-415546.2, Jan. 19, 2018, 2018 CPD ¶ 89 at 7. A patent ambiguity must be protested prior to the next closing time for the submission of proposals in order to be considered timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 11. Because AOC was aware that the agency was willing to accept an OTU-4 solution prior to receipt of proposals, this protest ground is dismissed as untimely filed. See Knight Point Sys., LLC, B-414802, Sept. 20, 2017, 2017 CPD ¶ 306 at 6.

RECOMMENDATION

We recommend that the Library reevaluate CenturyLink's proposal in accordance with the terms of the solicitation and document both its evaluation and a new source selection decision. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel