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Decision

Matter of: Tele-Consultants, Inc.

File: B-414738.4

Date: January 29, 2019

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DIGEST

1. Protest that agency improperly rejected protester's proposal is denied where the proposal did not contain information required by the solicitation, and where failure to provide the information resulted in an unacceptable rating under one of the solicitation's evaluation factors.
 2. Protest alleging that discussions were not meaningful is denied where the agency was under no obligation to advise the protester of newly-created defects introduced by the protester in its revised proposal.
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DECISION

Tele-Consultants, Inc. (TCI) of Alpharetta, Georgia, protests its nonselection for award pursuant to request for proposals (RFP) No. W15P7T-15-R-0008, issued by the Department of the Army, U.S. Army Materiel Command for knowledge based services to support the Army and other federal government agencies. The protester alleges that the agency failed to evaluate its corporate experience and past performance in accordance with the solicitation's evaluation criteria, and that the Army failed to conduct meaningful discussions.

We deny the protest.

BACKGROUND

On March 25, 2015, the Army issued the RFP for the acquisition of command, control, communications, computer, intelligence, surveillance, and reconnaissance knowledge

based support services for the Army and other parts of the Department of Defense. Agency Report (AR), Tab 16, RFP at 1, 14. The RFP anticipated the award of a multiple-award indefinite-delivery, indefinite-quantity contract with a five-year base period and one five-year option. Id. at 30.

The RFP contemplated the award of contracts on a best-value tradeoff basis, taking into consideration the following factors: corporate experience; past performance; and total evaluated cost. Id. at 129-132. Corporate experience was to be evaluated on an acceptable or unacceptable basis. Id. Only offerors with acceptable corporate experience ratings would be considered for award, which was to be based on a tradeoff involving the remaining two factors, with past performance being more important than total evaluated cost. Id.

The RFP provided that contracts could be awarded in two separate phases. Id. at 130. During phase 1, only proposals that met certain minimum RFP criteria were eligible for award.¹ Id. During phase 2, the government reserved the right to conduct discussions pursuant to Federal Acquisition Regulation part 15 with those offerors that were not awarded contracts under phase 1.² Id. Only those offerors that submitted proposals in response to phase 1 of the solicitation were eligible for an award during phase 2, and any revisions to proposals would only be accepted as a result of the Army's decision to open discussions with an offeror after phase 1. Id. There was no predetermined limit to the number of awards that could be made during phase 2. Id. at 129.

On May 6, 2015, TCI submitted a timely proposal in response to the RFP. Combined Contracting Officer Statement and Memorandum of Law (COS/MOL) at 10. After phase 1 of the solicitation concluded on May 16, 2017, the Army awarded 56 contracts. COS/MOL at 3; RFP at 7, 129. TCI was not awarded a contract in phase 1. AR, Tab 44, Phase 1 Compliance Screening, at 7. The Army entered into discussions with TCI, issuing evaluation notices (EN) on May 16, 2017, to allow TCI to revise its proposal and be considered for award under phase 2. COS/MOL at 3; AR, Tab 15, TCI Discussion Letter, at 1. As relevant here, the agency's EN notified TCI that its initial proposal was rated unacceptable under the RFP's corporate experience factor, and was also deemed to be non-compliant with regard to the instructions for the submission of past performance information. AR, Tab 15, TCI Discussion Letter, at 3. These determinations were based on TCI's failure to include a commercial and government

¹ The minimum criteria established by the RFP were as follows: an acceptable corporate experience rating; a past performance confidence rating of satisfactory, substantial, or unknown (neutral); a proposed fee of 7 percent or less (12 percent or less for experimental, developmental, or research work) for cost-plus-fixed-fee task orders and contract line item numbers; and proposed costs for sample labor categories that were determined by the agency to be fair, reasonable, and realistic. RFP at 130.

² The solicitation notified offerors that the government reserved the right not to conduct phase 2 evaluations if sufficient awards were made during phase 1. Id.

entity (CAGE) code, a data universal numbering system (DUNS) number, and a North American Industry Classification System (NAICS) code for the same three examples it submitted under both the corporate experience and past performance portions of its proposals. Id. In response, TCI submitted a revised proposal to the Army on June 14, 2017. COS/MOL at 12.

On October 18, the Army awarded 198 contracts under phase 2 of the solicitation. COS/MOL at 3; AR, Tab 40, Source Selection Decision Document (SSDD), at 85. TCI was not among those offerors that received an award. COS/MOL at 20. On October 24, TCI received a written debriefing from the Army explaining why the company did not receive a contract. AR, Tab 41, TCI Written Debriefing, at 1-25. TCI filed this protest with our Office on October 29.

DISCUSSION

TCI challenges the Army's decision to not award it a contract under the solicitation. The protester asserts that the agency failed to evaluate its proposal in accordance with the terms of the solicitation's evaluation criteria for the corporate experience and past performance factors. The protester also contends that the agency failed to conduct meaningful discussions because TCI was never notified about, or given an opportunity to address, the discrepancies between the CAGE codes in its revised proposal.

Corporate Experience Evaluation

During phase 2 of the procurement, the agency's corporate experience evaluation team reviewed TCI's revised examples and again assigned an unacceptable rating to TCI under the corporate experience factor. AR, Tab 37, TCI Corporate Experience Evaluation, at 1. The evaluators concluded that TCI's corporate experience merited an unacceptable rating because the CAGE code associated with two of the examples did not match the CAGE code provided by TCI in its proposal cover letter.³ Id. at 12, 20. The evaluators also found a number of other concerns with TCI's revised proposal. Specifically, the agency found that TCI failed to describe the relationship between the companies that performed the work in the examples and their relationship with the offeror, while also failing to include an affirmative statement that the examples were performed by the same legal entity as the offeror and were not performed by a subcontractor or a teammate. Id.

TCI alleges that its proposal was improperly rejected because the agency failed to evaluate its proposal in accordance with terms of the RFP. The protester argues that

³ TCI's proposal cover letter identified its CAGE code as 588X2. AR Tab 30, TCI Proposal Cover Letter, at 1. TCI's revised proposal identified the following CAGE codes for the three examples provided under both corporate experience and past performance examples: (1) 588X2; (2) 39313; and (3) 5RX70. AR, Tab 31, TCI's Corporate Experience Proposal, at 1, 4, 7; Tab 32, TCI's Past Performance Proposal at 1, 4, 7.

because the different CAGE codes provided with the examples in its proposal all belonged to TCI, there was no reason TCI should have been required to explain why different CAGE codes were associated with each example. In this regard, according to the protester, the RFP only required an explanation for different CAGE codes when an offeror submitted corporate experience and past performance examples that were performed by an entity other than the offeror. Protest at 10-12; Comments at 12-17.

In response, the agency explains that the Army reasonably rejected TCI's proposal because it did not comply with the RFP's instructions. In this regard, the agency contends that the solicitation required offerors to provide an explanation in their proposals when the CAGE codes for an offeror's corporate experience examples did not match the CAGE code used by that offeror in its proposal cover letter. COS/MOL at 24-27.

In reviewing protests challenging the evaluation of an offeror's proposal, or as here, 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 statutes and regulations. Distributed Solutions, Inc., B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. Where a proposal omits required information, the offeror runs the risk that its proposal will be rejected. Id.

We deny this protest allegation because we find nothing unreasonable with the agency's decision to reject TCI's proposal based on the protester's failure to comply with the RFP's instructions for the submission of its corporate experience information.

For corporate experience, the RFP instructed offerors to submit three examples of government contracts or task orders to demonstrate the company's ability to perform the types of services required by the RFP. RFP at 117. As relevant here, for each of the three examples, offerors were required to include the relevant contract number, order number, CAGE code, DUNS number, and NAICS code.⁴ Id. Offerors were not permitted to propose the corporate experience of subcontractors or teammates. Id. The RFP also expressly required: "If an offeror proposes an example under a different CAGE from the offeror, the offeror shall describe the relationship within the legal entity of the offeror and include an affirmative statement that the example was performed by the same legal entity as the offeror and is not the experience of a subcontractor or teammate." Id.

⁴ The solicitation also required offerors to provide additional information for the evaluation of corporate experience. RFP at 117. For example, offerors were required to provide a description of the specific tasks or activities performed by the offeror under each corporate experience example, and to also provide an explanation of how the example related to the work required under the instant solicitation. Id.

Proposals were to be evaluated under the corporate experience factor using information required by the RFP to determine if an offeror's proposed experience met the solicitation's minimum requirements. Id. at 130-131. Proposals could only be assigned a rating of either acceptable or unacceptable. Id. Offers that did not clearly meet the minimum requirements of the RFP were to be assigned an unacceptable rating and were not eligible for award. Id. at 129, 131.

Here, TCI's proposal failed to comply with the RFP's instructions for the submission of corporate experience information because its revised proposal included CAGE codes that did not match the CAGE code used in TCI's proposal cover letter, and because TCI's proposal failed to explain these discrepancies. Moreover, the solicitation expressly informed offerors that their proposals would be evaluated as either acceptable or unacceptable based on their compliance with the RFP's corporate experience information submission instructions.⁵ Id. at 130-131. The solicitation also made clear that in order to be considered for award, an offeror had to receive an acceptable rating under the corporate experience factor. Id. at 129. Accordingly, we find nothing unreasonable with the agency's decision to reject the protester's proposal based on the unacceptable rating that was assigned under the corporate experience factor. See Advetco, Inc., B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 8 ("Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation.").

Although the protester raised a number of arguments to support its interpretation of the RFP's terms, we have reviewed all of TCI's assertions and find that none provides a basis to sustain its protest. For example, the protester explains that prior to the submission of its proposal, TCI's corporate offices had been located in Fairfax, Virginia, and prior to that, in Alpharetta, Georgia. TCI further explains that the two examples associated with CAGE codes that did not match the CAGE code used in TCI's proposal cover letter, were each associated with one of its prior corporate office locations. In this regard, the protester asserts that the different CAGE codes did not represent a change in anything more than the address of TCI's corporate office location and so it should have been clear to the agency that the three CAGE codes all belonged to TCI. Comments at 19-20.

While we note that TCI's protest now explains why three different CAGE codes were included in its revised proposal, the RFP's instructions required this explanation to be included in TCI's offer and not in a subsequent protest. Because the protester's proposal contained no such explanation, we find that the agency reasonably evaluated TCI's proposal as unacceptable due to the protester's inability to comply with the RFP's instructions. See Optimal Solutions & Techs., B-310213.2, Sept. 21, 2007, 2007 CPD ¶ 172 at 3 (agency reasonably found proposal to be noncompliant when the protester

⁵ The RFP stated: "[i]n order to be rated acceptable, an offeror shall meet all of the minimum requirements for [v]olume 1." RFP at 130. The solicitation defined volume 1 as the corporate experience section of an offeror's proposal. Id. at 115.

did not prepare its proposal in accordance with the preparation instructions and the evaluation criteria provided that the agency would evaluate proposals based on such compliance); accord McCann-Erickson USA, Inc., B-414787, Sept. 18, 2017, 2017 CPD ¶ 300 at 4 (agency may conduct a compliance check with proposal preparation instructions when the evaluation criteria provides that proposals will be evaluated on that basis). Accordingly, this protest allegation is denied.

Past Performance Evaluation

The agency's past performance evaluation team, on the other hand, concluded that TCI's revised proposal should be assigned a substantial confidence rating under the past performance factor. AR, Tab 38, Army's Past Performance Evaluation, at 24. Those evaluators concluded that TCI merited a substantial confidence rating for the overall past performance factor because of the quality of performance and relevance of the examples that were submitted. Id. Notably, the evaluators determined that TCI's proposal still merited a substantial confidence rating, despite finding that TCI's proposal failed to comply with the solicitation's instructions for the submission of past performance information. Id.

TCI contends that the agency improperly rejected its proposal for failing to comply with the RFP's instructions for the submission of past performance information. The protester asserts that because the agency confirmed through outside information that all of TCI's past performance examples belonged to the same company (TCI)--and not to a subcontractor or teammate--no explanation for the different CAGE codes was required. Comments at 20-21.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 17; Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

Here, we recognize that the RFP's terms required the agency to evaluate an offeror's past performance differently from its corporate experience.⁶ We need not, however,

⁶ Although the instructions for the submission of corporate experience and past performance information were indeed similar, the RFP did establish different terms for the evaluation of these two factors. RFP at 117-118; 130-131. For instance, under the corporate experience factor, proposals were to be rated either acceptable or unacceptable and evaluated to determine whether the offer complied with the solicitation's instructions. Id. at 129-131. Moreover, the solicitation made clear that "[i]n order to be considered for award, an offeror shall be rated acceptable for the corporate experience factor." Id. at 129. On the other hand, past performance was to be

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address the protester's past performance evaluation because we find reasonable the agency's decision to reject the protester's proposal based on its failure to comply with the RFP's instructions for the submission of corporate experience information. In this regard, even if we found merit to the protester's argument challenging the Army's evaluation of TCI's past performance proposal, the agency's decision not to award a contract to the protester would still be grounded on a valid separate and independent basis--TCI's unacceptable corporate experience rating, as previously discussed. See Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7 (determining that prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, our Office will not sustain a protest, even where a protester may have shown that an agency's actions were arguably improper).

Meaningful Discussions

Alternatively, TCI argues that our Office should sustain its protest because the Army failed to conduct meaningful discussions. In this regard, the protester contends it was improper for the agency to engage in discussions without notifying TCI that it was required to include an explanation for the different CAGE codes in its revised proposal. Comments at 21-25.

Discussions, when conducted, must identify proposal deficiencies, and significant weaknesses that reasonably could be addressed in order to materially enhance the offeror's potential for receiving award. Serco Inc., B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. However, as we have repeatedly found, an agency is not required to reopen discussions to afford an offeror an additional opportunity to revise its proposal where a weakness or deficiency is first introduced in the firm's revised proposal. Family Health Int'l, B-414621, July 28, 2017, 2017 CPD ¶ 356 at 14; Research Analysis & Maintenance, Inc., B-410570.6, B-410570.7, July 22, 2015, 2015 CPD ¶ 239 at 10.

On this record, we find no basis to question the agency's decision not to reopen discussions to address deficiencies that were introduced by TCI in its revised proposal.⁷ Here, TCI correctly points out that it was placed on notice of its failure to identify the

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evaluated for both relevance and confidence. Id. at 131. Furthermore, in contrast to the corporate experience factor, there was nothing in the RFP to indicate that the agency would perform a minimum compliance review with regard to the past performance sections of offerors' proposals. Id. Finally, unlike corporate experience, the RFP established that proposals would be evaluated and assessed an adjectival rating for past performance. Id. Moreover, any proposal with a substantial, satisfactory, or neutral rating for past performance could be considered for award. Id.

⁷ Our analysis with regard to this allegation may have been different if TCI's initial proposal contained the deficiency the agency used as the basis to reject the protester's offer. Such facts are not present in the instant protest.

CAGE codes for the corporate experience and past performance examples that were included in TCI's initial proposal. Comments at 23. In spite of these defects, the Army decided to open discussions with TCI, and provided it with an opportunity to submit a revised proposal under phase 2. COS/MOL at 3; AR, Tab 15, TCI Discussion Letter, at 1-4. Although TCI's revisions addressed the deficiencies that were identified in its initial proposal (at phase 1), the revisions to TCI's proposal also introduced at least one new deficiency (i.e., the unexplained differing CAGE codes). Accordingly, the Army was under no obligation to reopen discussions. See, e.g., Family Health Int'l, supra; Research Analysis & Maintenance, Inc., supra.

The protest is denied.

Thomas H. Armstrong
General Counsel