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Decision

Matter of: Nexagen Networks, Inc.

File: B-416947; B-416947.2

Date: January 11, 2019

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DIGEST

1. Agency reasonably determined that protester's proposal was unacceptable where the protester failed to submit an adequately written technical proposal in accordance with the solicitation's instructions.

2. Protest challenging agency's technical evaluation is denied where the agency evaluated proposals in accordance with the stated evaluation criteria and did not treat offerors unequally.

DECISION

Nexagen Networks, Inc. (Nexagen), of Morganville, New Jersey, protests the issuance of a task order to DataPath, Inc., of Duluth, Georgia, under request for task execution plan (RTEP) No. RTEP-S8G-002, issued by the Department of the Army for support for the United States Northern Command's (USNORTHCOM) mission to provide homeland defense and assistance to civilian authorities.¹ Nexagen challenges the Army's evaluation and award decision.

¹ Contractors were to provide technical support for communications capabilities, including commercial satellite-based communications and related hardware and software. Joint Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5.

We deny the protest.

BACKGROUND

On August 1, 2018, the agency issued the RTEP to the 20 firms holding contracts under the Army's Global Tactical Advanced Communication Systems multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract vehicle. COS/MOL at 5. The solicitation contemplated the issuance of a hybrid fixed-price, cost-plus-fixed-fee, and cost-reimbursable task order with a 1-year base period and two 1-year option periods. Agency Report (AR), Tab 3, RTEP, at 1, 7. The RTEP stated that the task order would be issued on a best-value tradeoff basis, conducted in accordance with Federal Acquisition Regulation (FAR) § 15.101-1, considering technical and cost/price.² Id. at 14. The technical factor consisted of four parts: Part 1, Service Desk Plan; Part 2, Logistics and Asset Management; Part 3, Transition Plan; and Part 4, Service Desk Location.³ Id. at 16. The technical factor would be significantly more important than cost/price. Id. at 14.

The RTEP stated "**OFFERORS ARE INSTRUCTED TO SUBMIT PROPOSALS IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH WITHIN THIS RTEP ONLY.**" Id. at 1 (emphasis in original). In addition, the RTEP's basis of award provided that "**IT IS IMPERATIVE THAT THE OFFERORS ENSURE THAT THEIR [PROPOSAL] MEETS ALL OF THE SUBMISSION REQUIREMENTS OF THE RTEP.**" Id. at 15 (emphasis in original). The RTEP also advised that each volume shall be properly identified, numbered, clearly indexed, logically assembled, and tabbed. Id. at 2. In addition, the RTEP stated "[e]ach factor **shall** contain clearly identified sections" and all pages shall be appropriately numbered. Id. (emphasis in original). Additionally, the RTEP identified the TEP contents and provided the following directions:

Volume I – Technical TEP . . . shall be organized as follows:

Part 1, Service Desk Plan:

At a minimum, the Offeror shall provide a response that will meet the following Government requirements as outlined in Performance Work Statement (PWS) sections 3.1, 3.2, 3.3, and 3.4⁴. . . .

² The RTEP requested that offerors submit task execution plans (TEP). RTEP at 1. For ease of understanding, we refer to the TEP as a proposal.

³ The RTEP stated that Part 1, Service Desk Plan would be significantly more important than Part 2, Logistics and Asset Management. Id. at 16. Part 3, Transition Plan and Part 4, Service Desk Location would be of equal value. Id. Parts 1 and 2 combined were to be significantly more important than Parts 3 and 4 combined. Id.

⁴ Section 3.1 required a contractor to provide key personnel and service desk support; section 3.2 identified the service desk requirements for USNORTHCOM systems;

(continued...)

* * * * *

Part 4, Service Desk Location:

At a minimum, the Offeror shall provide a response that will meet the following Government requirements as outlined in [PWS] sections 3.2 and 3.3

Id. at 4-6 (emphasis in original). Additionally, the RTEP explicitly placed on each offeror the responsibility to include sufficient details to permit a complete, thorough, and accurate evaluation of its proposal. Id. at 4.

In evaluating proposals, Parts 1 and 2 of the technical factor would be evaluated and assigned adjectival ratings,⁵ while Parts 3 and 4 would be evaluated on an acceptable/unacceptable basis. Id. at 16. As relevant here, an unacceptable rating under Parts 3 or 4 would be assigned to a proposal that did not clearly meet the minimum requirements of the RTEP and/or a proposal that failed to follow the RTEP instructions and provide all of the submission requirements. Id. The RTEP advised that such a proposal would be assigned a deficiency, i.e., a material failure of the proposal to meet a government requirement, or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful performance to an unacceptable level. Id. at 17.

The RTEP informed offerors that proposals would be evaluated and award made without any questions or clarifications. Id. at 14. In establishing the basis of award, the RTEP advised offerors that regardless of proposed cost, if the proposal was unclear or inconsistent, contained an omission, or failed to follow the RTEP instructions, it may be rated unacceptable, and be ineligible for award. Id. Additionally, the RTEP also informed offerors that to be considered for award, an offeror must: (1) receive no less than an acceptable rating on the four technical parts and the overall technical factor, (2) follow all instructions of this RTEP, and (3) provide all submission requirements for the technical and cost/price factors. Id.

(...continued)

section 3.3 identified service support requirements for Army North; and section 3.4 identified other services, such as in-house support, and training. AR, Tab 4, PWS, at 5-19.

⁵ Ratings, from highest to lowest, were to be blue/outstanding; purple/good; green/acceptable; yellow/marginal; and red/unacceptable. RTEP at 17-18. As relevant here, a proposal rated green/acceptable met requirements and indicated an adequate approach and understanding of the requirements, with risk of unsuccessful performance no worse than moderate. Id. at 17.

Three offerors submitted proposals. COS/MOL at 10. After evaluating proposals, the final ratings for DataPath and Nexagen were as follows:

	DataPath	Nexagen
Technical Factor	Acceptable	Unacceptable
Part 1 - Service Desk	Acceptable	Acceptable
Part 2 - Logistics and Asset Management	Acceptable	Acceptable
Part 3 - Transition Plan	Acceptable	Acceptable
Part 4 - Service Desk Location	Acceptable	Unacceptable
Cost/Price Factor		
Most Probable Cost⁶	\$32,913,223	\$32,532,863

AR, Tab 11, Source Selection Decision Document (SSDD), at 4.

As relevant here, Nexagen’s proposal under the technical factor included sections that were labeled as follows: “3.1 Part 1 - Service Desk Plan”; “3.2 Part 2, Logistics and Asset Management”; and “3.3 Part 3, Transition Plan.” AR, Tab 6, Nexagen Technical Proposal, at 2, 8, 22, and 27. The proposal did not include a section labeled as Part 4, Service Desk Location; instead, under Part 3, Transition Plan, the proposal listed “3.3.3 Service Desk Location.” Id. at 2, 28.

The technical evaluation team (TET) concluded that Nexagen’s proposal under Part 4 of the technical factor was unacceptable. AR, Tab 10, Nexagen Final Technical Evaluation, at 9. In this regard, the TET stated that Nexagen’s proposal “clearly identified Parts 1, 2, and 3 and further lists each section. . . however Part 4 was not listed in their table of contents, nor was it addressed later in their Volume I technical submission.” Id. The TET determined that the proposal failed to include a response to Part 4, Service Desk Location, as required by the RTEP instructions, and concluded that the failure to respond was a deficiency. Id. Accordingly, the TET rated the proposal unacceptable. Id.

In making award, the contracting officer (CO), acting as the source selection authority (SSA), stated that the CO, contract specialist, TET, and the cost/price analyst evaluated responses and determined that Nexagen’s and the third offeror’s proposals were unacceptable and thereby ineligible for award. AR, Tab 11, SSDD, at 4. The SSA also stated that a tradeoff analysis was not possible because only DataPath’s proposal was eligible for award. Id. Thus, the agency concluded that DataPath’s proposal offered the best value to the government. Id. at 5.

⁶ The awarded value of the task order at issue exceeds \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts established under the authority of Title 10 of the U.S. Code. 10 U.S.C. § 2304c(e)(1)(B).

On September 26, the Army notified offerors of award to DataPath. After requesting and receiving a debriefing, Nexagen timely protested to our Office on October 5.

DISCUSSION

Nexagen raises various challenges to the agency's evaluation of its own and DataPath's proposals. Additionally, Nexagen contends that the agency unequally evaluated proposals. We discuss Nexagen's principal contentions below; to the extent its arguments are not specifically discussed, we have considered them and deny those aspects of Nexagen's protest.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Sumaria Sys., Inc.; COLSA Corp., B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 5. Rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Sallyport Glob. Holdings, Inc., B-415460, B-415460.4, Jan. 9, 2018, 2018 CPD ¶ 23 at 4. A protester's disagreement with the agency's conclusions does not render the evaluation unreasonable. Telecommunication Support Servs., Inc., B-407305, Dec. 4, 2012, 2012 CPD ¶ 347 at 3.

Evaluation of Nexagen's Proposal

The protester contends that the agency unreasonably found its proposal unacceptable. Essentially, Nexagen contends that "while the numbering of the proposal and nomenclature used in the table of contents is slightly confusing," the agency was required to interpret section 3.3.3 Service Desk Location as Nexagen's Part 4 response. Protest at 10, 12. The agency disagrees, observing that the RTEP clearly notified offerors that proposals could be found unacceptable for failure to comply with RTEP instructions and not providing all the submission requirements. COS/MOL at 31. In this regard, the agency asserts that it reasonably determined that the proposal was unacceptable because it failed to include a separately identified Part 4, Service Desk Location, and that the "unclear proposal structure and ambiguous titling of its Part 3 proposal" created confusion among the TET as to how to treat section 3.3.3 Service Desk Location. COS/MOL at 31; Supp. COS/MOL at 11-12.

Here, the solicitation provided explicit instructions for preparing proposals, *i.e.*, requiring proposals to properly identify, number, and clearly index volumes; clearly identify sections under each factor; and organize the information required to address the technical factor by part and corresponding requirements. RTEP at 2, 4-6. The RTEP also advised offerors of their responsibility to ensure their proposal met all submission requirements and to provide sufficient details to permit a complete, thorough, and accurate evaluation. *Id.* at 4. The RTEP notified offerors that proposals that were unclear or inconsistent, contained omissions, or failed to follow the RTEP instructions, could be rated unacceptable and therefore be ineligible for award. *Id.* at 14. Finally, the

RTEP stated that in order to be acceptable, an offeror's proposal must be acceptable under all technical parts, and must follow RTEP instructions. Id.

We find that it was reasonable and consistent with the solicitation for the agency to assign an unacceptable rating for this factor.⁷ It is an offeror's responsibility to submit an adequately-written proposal in order to establish that what it proposes will meet the government's needs; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. See Herndon Sci. and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46 at 4. Here, Nexagen's proposal explicitly identified Parts 1, 2, and 3 and provided a corresponding response, but did not clearly identify similar information for Part 4. In this regard, the agency found that Nexagen's proposal omitted a response for Part 4, Service Desk Location, and found the proposal unacceptable because it failed to meet the requirements of the solicitation. To the extent Nexagen contends that the agency should have recognized that section 3.3.3, Service Desk Location, should have been interpreted as its Part 4 response because its proposal referenced Part 4 in another section of the proposal, see Protest at 11-12, we disagree. The agency was not required to piece together disparate parts of Nexagen's proposal to determine its intent. See James Constr., B-402429, Apr. 21, 2010, 2010 CPD ¶ 98 at 5. Since offerors are expected to respond explicitly to RFP requirements, the protester acted at its own peril in not submitting a clear and appropriately organized proposal. Id.

Evaluation of DataPath's Proposal

Nexagen also contends that DataPath's proposal omitted material requirements that should have resulted in the agency finding DataPath's proposal technically unacceptable, and that the agency unequally evaluated proposals.⁸ We first address Nexagen's challenges to the acceptability of DataPath's proposal.

In this regard, Nexagen argues that various sections of DataPath's proposal under Parts 1 and 2 of the technical factor should have been found unacceptable, alleging that the proposal had "glaring omissions" that the agency ignored. Comments and Supp. Protest at 15. The agency asserts that its evaluation was reasonable, and cites to the

⁷ We reach our conclusions based on our review of the agency's final technical evaluation of Nexagen's proposal.

⁸ Given our conclusion that the agency reasonably found that Nexagen's proposal was ineligible for award, a protester in Nexagen's position ordinarily would lack the requisite interest to challenge other aspects of the evaluation. However, since only DataPath's proposal was found acceptable, if the protest here were sustained, DataPath also would be ineligible for award, and the agency would be faced with resoliciting the requirement. Since Nexagen would be eligible to compete under such a resolicitation, Nexagen is an interested party for purposes of challenging the evaluation of DataPath's proposal. See CGI Fed., Inc., B-410714, Jan. 28, 2015, 2015 CPD ¶ 67 at 5 n.2.

specific sections of DataPath's proposal on which it relied to determine that DataPath's proposal was acceptable. Supp. COS/MOL at 17-20. Additionally, for Part 2, the agency explains that DataPath's proposal provided its system capabilities and described how those capabilities would be utilized to meet the government's minimum requirements. Id. at 16. In response, Nexagen contends that the agency's citation of DataPath's "deficient proposal language" and reliance on "nothing more than statements about the separate functions" in DataPath's proposal shows that the agency's evaluation was flawed. Supp. Comments at 9-10.

Based on our review of the record, we find that none of Nexagen's various arguments provides a basis to sustain the protest. For example, the protester argues that DataPath's proposal failed to address a material requirement under Part 1, Service Desk Plan. Comments and Supp. Protest at 16. In this regard, the RTEP required offerors to provide their organizational structure, and a detailed staffing plan that addressed staff management; proposals were to illustrate the offeror's ability to operate the service desk while simultaneously fulfilling other service desk requirements, such as in-house support, on-site technical support, exercise and operational support, and training. RTEP at 4. In this context, Nexagen contends that DataPath's proposal failed to demonstrate that it had the ability to provide simultaneous support for service desk operations and the other service requirements. Comments and Supp. Protest at 17.

In its evaluation, the agency found that DataPath's proposal indicated a thorough approach and understanding of daily operational requirements and what is needed to sustain daily operation capabilities while simultaneously deploying for other service requirements. AR, Tab 7, DataPath Final Evaluation, at 2. In this regard, the agency cites DataPath's statement that it has a "proven track record" of providing such simultaneous support and DataPath's supporting discussion of how its proposed staffing would allow the firm to handle the service desk and the deployed mission support for this requirement. Id. at 2. Additionally, the agency noted that DataPath's proposal provided a detailed organizational structure and staffing plan in Figure 1 and Table 1, respectively. Id.; Supp. COS/MOL at 17. The agency also observed that DataPath's staffing plan listed key personnel and provided a thorough description of their education and certification levels. Id. On this record, we find no basis to question the agency's evaluation.

Disparate Treatment

Nexagen also asserts that the agency unequally evaluated proposals by expansively interpreting information in DataPath's proposal, while interpreting information in Nexagen's proposal more narrowly. Comments and Supp. Protest at 24. In this regard, Nexagen contends that DataPath's proposal failed to address material requirements under Parts 1 and 2 of the technical factor, and rather than treat this alleged failure as an omission of material requirements and find DataPath's proposal unacceptable--as it did with Nexagen's proposal based on a "readily identifiable organizational issue"--the agency gave DataPath's proposal "a pass" and found it acceptable. Supp. Comments at 14-15. The agency disagrees and explains that "all of the elements required for

evaluation of Parts 1 and 2 were [actually] included” in DataPath’s proposal under the submissions for Parts 1 and 2. Supp. COS/MOL at 20.

It is a fundamental principle of government procurement that agencies must treat offerors equally, which means, among other things, that they must evaluate proposals in an even-handed manner. Credence Mgmt. Sols., LLC; Advanced Concepts & Techs. Int’l, LLC, B-415960 et al., May 4, 2018, 2018 CPD ¶ 294 at 10. Where a protester alleges unequal treatment in an evaluation, we will review the record to determine whether the differences in ratings reasonably stem from differences in the proposals. Id.; Red River Co. Company, Inc.; MIS Sci. Corp., B-414183.8 et al., Dec. 22, 2017, 2018 CPD ¶ 7 at 12.

We find no merit to these arguments. We find unavailing the protester’s contention that it was unreasonable for the agency to look at the totality of the Part 2 response in DataPath’s proposal, when the numbering and titling of subsections identified the requirements that the subsection was purporting to address, while refusing to evaluate Nexagen’s proposal based on “the totality of information contained in the proposal” when evaluating Nexagen’s Part 4 response. Comments and Supp. Protest at 25. While the protester is correct that the agency’s evaluation of DataPath’s Part 2 response looked at subsections within the whole of the Part 2 response, in our view, relying on information identified in the proposal under Part 2 to meet the requirements of Part 2, regardless of subsections, is not the same as relying on information that was clearly identified under Part 3 to meet the requirements for Part 4. Additionally, the protester fails to show that the agency’s evaluation was unreasonable or prohibited by the terms of the solicitation, which stated that each part under the technical factor would be evaluated and assigned a corresponding rating. See RTEP at 14.

The protest is denied.

Thomas H. Armstrong
General Counsel