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United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Mission Essential Personnel, LLC

File: B-404218.2; B-404218.3

Date: June 14, 2011

Craig A. Holman, Esq., William S. Speros, Esq., and Emma V. Broomfield, Esq., Arnold & Porter LLP, for the protester.

James J. McCullough, Esq., Michael J. Anstett, Esq., and Brian M. Stanford, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Science Applications International Corp., the intervenor.

Maj. Max D. Houtz and Nicole P. Wishart, Esq., Defense Intelligence Agency, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency evaluation is sustained where record reflects that agency failed to consider one of evaluation factors established by terms of solicitation.

DECISION

Mission Essential Personnel, LLC (MEP), of Columbus, Ohio, protests the Defense Intelligence Agency's (DIA) issuance of an order to Science Applications International Corp. (SAIC), of McLean, Virginia, under request for quotations (RFQ) No. HHM402-10-R-0063, for translation and other linguistic services for the National Media Exploitation Center.¹ The protester argues that the agency's evaluation and trade-off determination were unreasonable.

We sustain the protest.

¹ The order was issued against SAIC's General Services Administration Federal Supply Schedule (FSS) contract.

BACKGROUND

The RFQ, which was issued on April 18, 2010, contemplated issuance of an order for a fixed-price level-of-effort labor contract with a 1-year base period and four 1-year options to the FSS contract holder whose quotation represented the best value to the government. Best value was to be determined based on a consideration of price and several non-price factors, with the non-price factors being given greater importance. The non-price evaluation factors specified in the RFQ were: (1) management plan; (2) quality control plan; (3) transition plan; (4) resumes; (5) past performance risk; (6) small business subcontracting plan; and (7) facility clearance (which was to be rated on a pass/fail basis). The RFQ established the management plan factor as being the most important factor; the quality control plan factor was the second most important factor; the transition plan and resumes factors were of equal weight, and ranked third in terms of importance; and the past performance risk and small business subcontract plan factors were of lesser importance. Under all of the foregoing factors except past performance risk, quotations were to be rated as exceptional, very good, acceptable, or unacceptable. Under the past performance risk factor, performance risk was to be rated as low, moderate, high, or neutral. Vendors' proposed prices were to be evaluated for reasonableness and realism.

As it relates to the protest, the solicitation provided that under the management plan factor, the agency would consider the vendor's reporting mechanisms; the relevant experience of its proposed management team "in relation to the scope and context of the Statement of Work [(SOW)]"; the proposed continuing education, professional development, and retraining opportunities for employees; and the vendor's experience in hiring and retaining qualified personnel. RFQ at 63. Regarding the resumes factor, the RFQ required vendors to submit resumes for certain key personnel (*i.e.*, floor manager, workflow manager, workflow coordinator, outsource coordinator, and database operations coordinator). The RFQ further provided that the resumes would be evaluated in accordance with the following standard:

Each resume will be evaluated against the requirements in the SOW and will receive its own rating from the Factors above. Resumes failing to meet the minimum requirements will be rated as Unacceptable. The overall evaluation for the Resume factor per company will be the average of each panel member's rating for each resume.

RFQ at 62.

On August 5, 2010, the agency received quotations in response to the solicitation from SAIC and MEP, among others. After completing its evaluation of the quotations, the agency notified the unsuccessful competitors on September 20, 2010 that it was issuing the order to SAIC.

On October 12, one of the unsuccessful competitors, AllWorld Language Consultants, Inc., protested the selection of SAIC to our Office, arguing that the agency’s evaluation and best value determination were unreasonable. DIA subsequently notified our Office that it would take corrective action in response to the protest, whereupon we dismissed AllWorld’s protest as academic. AllWorld Language Consultants, Inc., B-404218, Nov. 16, 2010.

By letter of November 23, the contracting officer notified MEP that the agency would be reopening the evaluation process, engaging in “communication exchanges” with the vendors, and inviting the submission of revised quotations.²

After taking the above steps, the source selection panel evaluated the revised submissions and, based on the reevaluation, rated the quotations submitted by MEP and SAIC as follows:

FACTOR	MEP	SAIC
Management plan	[deleted]	[deleted]
Quality Control plan	[deleted]	[deleted]
Transition plan	[deleted]	[deleted]
Resumes	[deleted]	[deleted]
Small Bus. Subcontracting Plan	[deleted]	[deleted]
Past Performance Risk	[deleted]	[deleted]
Facility Clearance	[deleted]	[deleted]
Overall	[deleted]	Very Good

Source Selection Decision Document (SSDD) at 18. MEP’s evaluated price was [deleted], and SAIC’s was \$34,053,894. With regard to the resumes factor, specifically, the SSP memorandum reflects the identical entry for MEP and SAIC, indicating that they were both [deleted] without identifying any “advantages” or “disadvantages.” AR, Tab 19, SSP Memorandum, at 9-10, 11.

In his source selection determination, the SSA essentially reiterated the statements from the SSP Memorandum, including the findings under the resumes factor. He concluded that there were several advantages associated with SAIC’s quotation that provided “significant value” to the Government, including SAIC’s detailed account of the roles and responsibilities of its [deleted]. He further concluded that these advantages outweighed MEP’s [deleted] advantage. Id. at 33. By notice of February 24, DIA notified the protester that SAIC had again been selected to receive the order, and on March 7, MEP protested to our Office.

² The agency did not suspend performance by SAIC while the corrective action was implemented.

DISCUSSION

MEP takes issue with multiple aspects of the agency's evaluation, arguing, among other things, that the agency failed to evaluate vendors' quotations under the resumes factor as contemplated by the RFQ. We sustain MEP's protest on this issue.

When an agency conducts a formal competition under the FSS program for award of a task order contract, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 4.

MEP argues that the agency did not evaluate vendors' quotations under the resumes factor as provided for by the terms of the RFQ. As noted above, the solicitation required vendors to submit resumes for several key personnel and provided for evaluation of each resume against the SOW requirements. In addition, the RFQ provided that each resume would receive its own rating, that resumes failing to meet minimum requirements would be rated as unacceptable, and that the agency would determine an overall rating under the resume factor by averaging the rating of each panel member for each resume. RFQ, at 62.

The agency concedes that it did not evaluate the resumes in the manner described by the RFQ. Contracting Officer's (CO) Statement at 6. Instead, the agency explains that due to an "administrative oversight," the evaluators were given an incorrect evaluation standard for the resumes factor. That is, rather than being advised of the above standard, the evaluators were instructed simply to verify that the vendors had furnished resumes for the key personnel positions. Applying this instruction, the evaluators essentially reviewed the resumes factor on a pass/fail basis—i.e., they merely determined whether vendors had provided resumes for their key personnel and did not further review the resumes to determine any strengths or weaknesses for the purpose of determining a rating under the resumes factor. Since both MEP and SAIC submitted the required resumes, they both simply received an [deleted] rating. Id. The fact that the evaluators did not further evaluate vendors' quotations with respect to the resumes factor is further confirmed by the fact each evaluator worksheet for this factor is completely blank, with no documentation of any evaluation or assignment of relative strengths or weaknesses. See AR, Tab 17, MEP worksheets, at 4, 8, 12; Tab 18, SAIC worksheets, at 4, 18, 12.

Notwithstanding this clear deviation from the evaluation criteria established by the RFQ, the agency attempts to excuse its admitted error by suggesting that it effectively considered the qualifications of the vendors' key personnel under the management plan factor, which provided for consideration of the relevant experience of the proposed management team in relation to the SOW.

The agency's analysis conflates two evaluation factors that the RFQ established as separate and distinct from one another, and, in so doing, undermines the significance

of the resumes factor. By considering the resumes factor as subsumed under the management plan factor, rather than assigning it the separate adjectival rating and weight provided for in the RFQ, the agency conducted its evaluation in a manner that was contrary to the evaluation scheme expressly established by the RFQ.

Moreover, the single management plan factor standard upon which the agency relies was qualitatively different from the evaluation contemplated under the resumes factor. Specifically, the relevant management plan standard provided for a general assessment of the relevant experience of the vendors' key personnel "in relation to the scope and context" of the SOW, whereas under the resumes factor, evaluators were specifically to rate resumes "against the requirements in the SOW." In this regard, the SOW established specific minimum qualification requirements, as well as highly desired skills and proficiencies, which do not necessarily translate to an evaluation based solely on experience.³

Finally, the record reflects that the agency's failure to adhere to the evaluation scheme set forth in the RFQ resulted in the failure of the agency to recognize that a resume submitted by SAIC for a key position did not in fact identify the individual as possessing the appropriate minimum security clearance. [deleted] Given the agency's failure to evaluate vendors' quotations according to the ground rules established by the RFQ, MEP's protest of the agency's evaluation under the resumes factor is sustained.

Other Issues

We have reviewed the protester's remaining arguments, and, with the exception of MEP's contention that the agency failed to consider the past performance surveys

³ By way of example, each of the key personnel was required to "possess a [Top Secret/Sensitive Compartmentalized Information] TS/SCI clearance"; in addition, with respect to the floor manager position, the resume was required to demonstrate that the proposed individual had a minimum of 3 years experience as a hands-on manager and proficiency in Microsoft office suite, was comfortable in briefing senior Government personnel, and was able to "multi-task [and] be organized and adaptable to changing/evolving requirements." RFQ, at 10.

submitted by the vendors' references, we find them to be without merit.⁴ With regard to the protester's complaint that the evaluators ignored the contents of the past performance surveys, the agency's past performance evaluation record does not contain any evidence to suggest that the agency considered the past performance surveys it received from the vendors' references, and the agency did not substantively respond to the protester's arguments in this regard. Rather, the entire record of the evaluation under the past performance risk factor consists of excerpts of superlatives from the vendors' quotations, notwithstanding the fact that, in several instances, the agency received substantive comments regarding the vendors' contract performance from their identified references, some of which suggested performance problems. Given the nature of the evaluation record in this regard, and the fact that we are sustaining MEP's protest on other grounds, we suggest that the agency also review its evaluation of vendors under the past performance risk factor.

Recommendation

We recommend that the agency reevaluate vendors' quotations consistent with our decision, reopen discussions if necessary, and make a new source selection decision.⁵ If, upon reevaluation of vendors' quotations, another firm's quotation is found to offer the best value to the government, DIA should terminate SAIC's contract for convenience of the government and issue the order to that firm. We also recommend that MEP be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2010). MEP should submit its certified claims for costs directly to the contracting agency within 60 days after receipt of this decision. *Id.*, § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel

⁴ For example, one of MEP's principal contentions is that the agency's evaluation of SAIC's pricing was flawed. According to MEP, the agency should have adjusted SAIC's total price based on the labor rates contained in SAIC's proposal as initially awarded. MEP argues that such an adjustment was necessary to account for the fact that for 5 months of the base year, SAIC had performed and actually charged the government based on the rates in its initially awarded proposal. MEP's argument in this regard is without merit since the solicitation did not provide for the type of prorating of vendors' labor rates suggested by MEP, and the agency did exactly what the solicitation called for, which was to evaluate vendors' prices based on the rates they proposed in their final revised quotations.

⁵ In light of our decision, we need not address MEP's arguments concerning the propriety of the agency's best-value tradeoff decision.