



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Lanmark Technology, Inc.

File: B-408892

Date: December 19, 2013

Theodore P. Watson, Esq., and Nicole L. Carter, Esq., Watson & Associates, LLC, for the protester.

Martha L. Boyd, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, for Corps Solutions, LLC, the intervenor.

Michael S. Martin, Esq., United States Marine Corps, for the agency.

Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging weakness assigned to protester's proposal is denied where solicitation established that agency would evaluate degree to which proposal described how offeror would meet requirements, and where record reflects that protester's proposal lacked detail regarding how some requirements would be met.

2. Protest challenging weakness regarding qualifications of individual named in protester's proposal is denied where solicitation stated agency would evaluate quality of personnel, and where record reflects agency reasonably determined individual may have lacked qualifications related to requirements he would perform.

DECISION

Lanmark Technology, Inc., of Vienna, Virginia, protests the award of a task order to Corps Solutions, LLC (CS), of Stafford, Virginia, under request for proposals (RFP) No. N00024-13-R-3399, issued by the United States Marine Corps, for range and training area support services. Lanmark asserts that the agency's evaluation of proposals was unreasonable in a number of respects.

We deny the protest.

BACKGROUND

The solicitation, which the agency issued as a total small business set-aside on July 11, 2013, contemplated the award of a fixed-price task order with a base period

of one year and two 1-year option periods.¹ Contracting Officer's Statement at 3; RFP at 1-7, 33-34, 47. The solicitation provided that award would be made based on the proposal representing the best value to the government, considering the following factors: understanding and approach; staffing and personnel; past performance; and price.² RFP at 47. The understanding and approach factor was stated to be more important than the staffing and personnel factor; the staffing and personnel factor was stated to be more important than the past performance factor; and the non-price factors, when combined, were stated to be approximately equal to price. Id.

As relevant to this protest, the evaluation criteria for the understanding and approach factor included consideration of

the degree to which the [proposal] describes how the Offeror intends to manage and coordinate the task efforts of this contract, including planning, assigning responsibility, controlling personnel, controlling use of resources, tracking deliveries, and periodically monitoring performance and obtaining feedback.

Id. at 47-48. As also relevant to this protest, under the staffing and personnel factor, the solicitation instructed offerors as follows:

The Offeror shall submit a staffing plan which addresses the roles and responsibilities of personnel proposed for this effort The offeror shall address the education, experience, and expertise of proposed primary personnel. Primary personnel are those individuals the offeror defines as criti[c]al to support the task.

¹ The solicitation was issued under the agency's SeaPort indefinite-delivery, indefinite-quantity (ID/IQ) contract vehicle. Contracting Officer's Statement at 1. Citations to the solicitation in this decision refer to the "conformed" version of the solicitation that was issued as part of solicitation amendment No. 1.

² The solicitation provided that under the past performance factor, proposals would be assigned both a "relevance" rating and a "confidence" rating. RFP at 49. The solicitation established relevance ratings of very relevant, relevant, somewhat relevant, and not relevant, and provided definitions for each rating. Id. at 49-50. The solicitation established confidence ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral), and provided definitions for each rating. Id. at 50. Similarly, for the understanding and approach factor and the staffing and personnel factor, the solicitation established ratings of outstanding, good, acceptable, marginal, and unacceptable, and provided definitions for each rating. Id. at 49.

RFP at 44-45. Also under this factor, the solicitation stated that the agency would evaluate the “quality of personnel.” Id. at 48. Additionally, for primary personnel, the solicitation stated that the agency would evaluate “the education, experience, and expertise proposed and the degree to which those areas demonstrate an ability to successfully complete the . . . requirements.” Id.

The solicitation included a performance work statement (PWS). Id. at 8-25. As relevant to this protest, section 2.1.11 of the PWS required the contractor to provide “service level analytical support.” Id. at 18. This support was to include, among other things, the drafting of several types of “flag-level”³ review documents, such as a specific Marine Corps order, a specific Marine Corps reference publication, and Marine Corps reports to Congress. Id. at 19-20.

The agency received three proposals by the solicitation’s closing date, including proposals from Lanmark and CS. Agency Report (AR), Tab 7, Source Selection Decision Memorandum (SSDM), at 5. A technical evaluation team (TET) evaluated the proposals under the non-price factors; identified proposal strengths, weaknesses, and deficiencies; assigned adjectival ratings; and documented the evaluation results in a report. AR, Tab 5, TET Report. The offerors’ pricing also was evaluated. Contracting Officer’s Statement at 2. During the proposal evaluation process, the third offeror’s proposal was deemed unacceptable. Id. Lanmark’s and CS’s proposal ratings, together with their evaluated prices, are shown in the table below.

	Lanmark	CS
Understanding and Approach	Acceptable	Good
Staffing and Personnel	Marginal	Good
Past Performance Relevancy	Relevant	Very Relevant
Past Performance Confidence	Satisfactory Confidence	Substantial Confidence
Evaluated Price	\$13,135,761.00	\$16,851,104.85

AR, Tab 7, SSDM, at 5.

After reviewing the evaluation findings, the contracting officer, who also served as the source selection authority (SSA), documented a comparative analysis of Lanmark’s and CS’s proposals. Id. at 7. After considering the nature of each

³ According to the agency, “flag-level” as used in this solicitation means “senior military leaders, or civilian equivalents, in the rank of Brigadier General or above.” Memorandum of Law at 9 n.3.

strength and weakness that the TET had identified, the contracting officer found that CS's proposal was significantly superior to Lanmark's proposal under both the understanding and approach factor and the staffing and personnel factor, and that CS's past performance provided a slightly higher level of confidence than Lanmark's past performance. AR, Tab 7, SSDM, at 5. The contracting officer then concluded that CS's proposal represented the best value to the government because "CS's higher value in all non-price factors warrants the \$3.7M price premium for the added benefit and reduced risk that will be received" Id. at 7.

The agency awarded the task order to CS on August 28. Contracting Officer's Statement at 2. After receiving a debriefing, Lanmark filed a protest with our Office.

DISCUSSION

Lanmark asserts that the agency's evaluation of both its and CS's proposals was unreasonable in a number of respects. We have considered all of Lanmark's arguments, and we conclude, based on the record, that none furnish a basis on which to sustain the protest. Below we discuss Lanmark's principal contentions.⁴

Lanmark asserts that the agency unreasonably assigned a weakness to its proposal under the understanding and approach factor. Protest at 10-15; Comments at 3-8. The challenged weakness relates to the preparation of flag-level review documents and was documented by the TET as follows:

The proposal . . . underestimates the scope and complexity . . . required in the PWS (2.1.11.3 - 6). Drafting reports to Congress and flag level reports are significant undertakings and the TET did not feel the technical approach or strategy was fully addressed. The proposal reiterated the requirements in the PWS but did not provide a cogent plan on how these tasks would be performed. There was no stated process for drafting the documents or obtaining government comments or concurrence. Inability to draft these reports correctly would require increased government over-sight and increase risk of unsuccessful performance

AR Tab 5, TET Report, at 15.

According to Lanmark, the weakness reflects that the agency unreasonably failed to consider that the firm's teaming partner--which was to chiefly perform the flag-level

⁴ As the value of this task order is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts. 10 U.S.C. § 2304c(e)(1)(B) (2006).

review document requirement--currently supports "identical" requirements for the agency. Protest at 11-12; Comments at 4-5, 7.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. A protester's disagreement with the evaluation does not show that it lacked a reasonable basis. Kellogg Brown & Root Servs., Inc., supra. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 7.

In response to Lanmark's allegation, the agency asserts that "[b]oth the evaluators and the SSA were aware of what work the protester intended [its teaming partner] to perform, but the weakness . . . was assigned due to the lack of an adequate explanation in the proposal as to how (i.e., what approach) the protester proposed to meet the requirements of PWS 2.1.11.3 through 2.1.11.6." Contracting Officer Statement at 3. For the reasons discussed below, we agree with the agency that this aspect of the evaluation was reasonable.

As stated above, the solicitation's evaluation criteria for the understanding and approach factor included consideration of

the degree to which the [proposal] describes how the Offeror intends to manage and coordinate the task efforts of this contract, including planning, assigning responsibility, controlling personnel, controlling use of resources, tracking deliveries, and periodically monitoring performance and obtaining feedback.

RFP at 47-48 (emphasis added).

The record reflects that Lanmark's proposal does not specifically address how the firm would manage and coordinate the requirement for drafting flag-level review documents. See AR, Tab 4, Lanmark Proposal, at 12, 28. Further, although the proposal generally represents that Lanmark's teaming partner currently supports a requirement for service level analytical support, id. at 12, it lacks detail regarding the process by which that firm would meet the requirement for drafting flag-level review documents. Thus, we see no basis to object to the challenged evaluation finding.

Lanmark also argues that the weakness was unreasonable because the solicitation included a contract data requirements list (CDRL) that, in Lanmark's words, "actually spelled out how [Lanmark] was required to comply" with the requirement to submit the flag-level review documents. Protest at 10, 13-14 (citing Protest, attach. 2, RFP CDRL, at 5); Comments at 7. The CDRL referenced by Lanmark,

however, generally addresses formatting and composition requirements for the flag-level review documents; it does not specify a process by which the offeror would meet the requirement for providing the reports. See Protest, attach. 2, RFP CDRL, at 5. Accordingly, we find this argument unpersuasive.

Next, Lanmark challenges a weakness assigned to its proposal under the personnel and staffing factor. The TET documented the weakness as follows:

The proposal . . . presents [Mr. C] for the service level analytical support (PWS 2.1.11). Drafting reports to Congress and flag level reports are significant undertakings and the panel did not feel the resume had the requisite expertise or background to fully address the task. Specifically, no demonstrated Flag Level writing experience was listed. This will increase the required level of government [oversight] in order to successfully complete the task.

AR, Tab 5, TET Report, at 16.

By way of background regarding this issue, Lanmark's proposal included a section devoted to staffing and personnel. AR, Tab 4, Lanmark Proposal, at 21-31. In addition to providing the qualifications of Lanmark's primary personnel, this section also included the qualifications of individuals who were termed "non-primary personnel candidates." Id. at 22-26. One of these individuals--Mr. C--was designated as Lanmark's service level analyst. Id. at 26. Lanmark's proposal showed that the service level analyst position was responsible for PWS section 2.11.1. Id. at 12, 28, 30.

Lanmark does not refute the agency's findings regarding Mr. C's qualifications. Rather, Lanmark asserts that the weakness was unreasonable because Mr. C was not designated as primary personnel. Protest at 15-18; Comments at 8-9. In this regard, Lanmark argues that since he was not designated as primary personnel, his qualifications were not subject to the solicitation's more stringent evaluation criteria for primary personnel. Protest at 15-18; Comments at 8-9.

Lanmark's argument ignores a key aspect of the solicitation's staffing and personnel factor evaluation criteria--namely, the express provision for consideration of the "quality of personnel." RFP at 48. Consistent with this solicitation language, the record reflects that the agency evaluated the adequacy of Mr. C's qualifications relative to the PWS tasks he was assigned to perform. Accordingly, we see no merit in Lanmark's argument.

Lanmark also argues that the weakness was unreasonable because the agency allegedly failed to consider that Lanmark's teaming partner would have responsibility over performing the tasks in PWS section 2.1.11. Protest at 16-18; Comments at 8-9. In this regard, Lanmark claims that the agency failed to consider

that by virtue of its proposed organizational structure, a program manager employed by Lanmark's teaming partner had ultimate responsibility over performance of these tasks. Protest at 17; Comments at 9.

Because an agency's evaluation is dependent on the information furnished in a proposal, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate. See Moura's Cleaning Serv., Inc., B-402741.4, Sept. 7, 2010, 2010 CPD ¶ 210 at 3; Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. Agencies are not required to adapt their evaluation to comply with an offeror's submission, or otherwise go in search of information that an offeror has omitted or failed adequately to present. See LS3 Inc., B-401948.11, July 21, 2010, 2010 CPD ¶ 168 at 3 n.1; Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 3.

Here, the staffing and personnel section of Lanmark's proposal included a table showing which positions were assigned to perform the different sections of the PWS. AR, Tab 4, Lanmark Proposal, at 29-31. Although multiple positions were assigned to some sections of the PWS, only the service level analyst--i.e., Mr. C-- was assigned to PWS section 2.1.11. Id. The program manager was assigned entirely to PWS section 2.1.9, which encompasses program management requirements that are separate from the service level analytical support requirements of PWS section 2.1.11. Id. at 29; RFP at 17-20. Given that the proposal showed that the service level analyst, and not the program manager, was directly responsible for performing the tasks in PWS section 2.1.11, Lanmark's argument lacks merit. Lanmark's challenge to this proposal weakness is denied.⁵

Lanmark also challenges the agency's evaluation of proposals under the past performance factor. First, Lanmark alleges that the agency failed to meaningfully consider the past performance of its teaming partner. Protest at 19-22. Second, Lanmark alleges that the agency gave CS undue credit for performing as a subcontractor under the incumbent contract. Id. at 22-23.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments

⁵ In its protest, Lanmark points out that its proposal references the program manager's review of "all technical reports to ensure Deliverables comply with associated Government format and content requirements and contractor quality provisions." Protest at 17 (citing AR, Tab 4, Lanmark Proposal, at 15). This isolated reference to one of the program manager's quality control responsibilities does not change our view that the agency reasonably determined that the service level analyst's qualifications may be inadequate for his performance of tasks in PWS section 2.1.11.

are unreasonable, inconsistent with the solicitation criteria, or undocumented. The McConnell Group, Inc., B-405377, Oct. 21, 2011, 2011 CPD ¶ 225 at 3; L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 4. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

With regard to Lanmark's first allegation, the record reflects that the TET and SSA not only considered the past performance of Lanmark's teaming partner, but they considered it to be relevant. AR, Tab 5, TET Report, at 17; AR, Tab 7, SSDM, at 7. With regard to Lanmark's second claim, we see nothing in the record--and Lanmark has cited nothing in the record--to show that the agency considered CS's performance as a subcontractor under the incumbent contract. Rather, the record shows that the agency considered CS's performance of a separate prime contract having requirements similar to those in the solicitation here. AR, Tab 5, TET Report, at 9; AR, Tab 6, CS Proposal, at 31; AR, Tab 7, SSDM, at 6. Thus, we see no merit in either of Lanmark's allegations.

In its comments on the agency report, Lanmark alleges for the first time that the agency treated Lanmark and CS unequally by downgrading Lanmark's proposal for including past performance information for only one prime contract, but not similarly downgrading CS for including past performance information for only one prime contract. See Comments at 10-11. Lanmark in its comments also points out that in her analysis of Lanmark's past performance, the SSA--independent of the TET--found that Lanmark's prime contractor past performance did not demonstrate that the firm could manage a contract as complex as the one being competed here. Id. at 11-12. Lanmark claims that this also reflects unequal treatment because the SSA did not take this consideration into account for CS's proposal. See id.

The basis for Lanmark's allegations is information contained in the TET report and SSDM. See AR, Tab 5, TET Report, at 9, 17; AR, Tab 7, SSDM, at 6-7; see also Comments at 10-11. The agency provided these documents to Lanmark on October 21 in an early document production. Lanmark did not file its comments until November 4, more than 10 days later.⁶

Where a firm files a timely initial protest, and later supplements that protest with new allegations, each new allegation must independently satisfy our timeliness

⁶ The agency transmitted the documents to Lanmark via an e-mail sent at 6:31 p.m. Eastern Time on October 21. Thus, even if we were to consider Lanmark to have received the documents on the next business day, October 22, Lanmark's comments still were not filed until more than 10 days after receipt of the documents.

requirements. Battelle Mem'l Inst., B-259571.3, Dec. 8, 1995, 95-2 CPD ¶ 284 at 4; Curtis Ctr. Ltd. P'ship--Recon., B-257863.3, Mar. 20, 1995, 95-1 CPD ¶ 147 at 3. Such new issues must be filed within 10 calendar days after the protester knew or should have known the basis for its protest. 4 C.F.R. § 21.2(a)(2) (2013). Lanmark's allegations are untimely because Lanmark raised them more than 10 days after receipt of the relevant documents. CH2M Hill Antarctic Support, Inc., B-406325 et al., Apr. 18, 2012, 2012 CPD ¶ 142 at 13 (fact that protester receives documents as part of early document production does not suspend application of GAO timeliness rules); FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9 (same).

Lanmark argues that its allegations are not untimely, stating they are "simply further explanations confirming the original protest arguments" regarding the agency's evaluation of past performance. Lanmark E-Mail to GAO (Nov. 6, 2013) at 1.

The timeliness of specific bases of protest raised after the filing of a timely protest depends on the relationship the later-raised bases bear to the initial protest. Where the later-raised bases present new and independent grounds for protest, they must independently satisfy our timeliness requirements; conversely, where the later-raised bases merely provide additional support for an earlier, timely raised protest basis, we will consider the later-raised arguments. Ti Hu, Inc., B-284360, Mar. 31, 2000, 2000 CPD ¶ 62 at 4; Vinnell Corp., B-270793, B-270793.2, Apr. 24, 1996, 96-1 CPD ¶ 271 at 7.

The allegations in Lanmark's comments are distinct from those in Lanmark's initial protest in that the later-raised allegations are predicated on different facts than the facts forming the bases of the original allegations. Further, while the initial and later-raised allegations both concern the past performance factor, the nature of the allegations is different. Accordingly, the later-raised allegations constitute separate

and independent protest grounds that are untimely based on the failure to satisfy the timeliness requirements of our Bid Protest Regulations.⁷ See Ti Hu, Inc., supra; Vinnell Corp., supra.

The protest is denied.

Susan A. Poling
General Counsel

⁷ Lanmark also challenges the agency's best value determination. Protest at 23-25; Comments at 13-14. This challenge hinges on the numerous above-discussed allegations regarding the agency's evaluation of proposals. Because we have found that these allegations have no merit or are not for our consideration, we see no basis to question the agency's best value determination.