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Decision

Matter of: CDO Technologies, Inc.--Reconsideration

File: B-409686.15

Date: December 12, 2014

Thomas Coulter, Esq., and Nicole Hardin Brakstad, Esq., LeClair Ryan, PC, for the protester.

Christine C. Piper, Esq., Marvin K. Gibbs, Esq., Behn M. Ayala, Esq., Capt. Eric J. Singley, Maj. Jeremy D. De Roxas, Lt. Col. Mark E. Allen, Col. Barbara E. Shestko, Col. Robert J. Preston II, and Col. Graeme S. Henderson, Department of the Air Force, for the agency.

Brent Burris, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's discussions with the protester were meaningful and not misleading where agency reasonably led the offeror into area of its proposal that needed amplification or correction.

DECISION

CDO Technologies, Inc. (CDO), of Dayton, Ohio, a small business, requests reconsideration of our decision in Intelligent Decisions, Inc., et al., B-409686 et al., July 15, 2014, 2014 CPD ¶ 213, denying CDO's protest of the award of multiple contracts under request for proposals (RFP) No. FA8771-09-R-0019 issued by the Department of Air Force for a wide array of information technology services and products.

We deny the request for reconsideration.

BACKGROUND

The RFP, issued to small business concerns on September 28, 2010, solicited proposals to provide network operations, infrastructure and service-oriented architecture information and transformation services and solutions to the Air Force and other Department of Defense agencies at locations worldwide. Contracting Officer Statement of Facts (CO Statement) at 1. The solicitation anticipated the

award of six to nine indefinite-delivery/indefinite-quantity (IDIQ) contracts, but the agency reserved the right to make more, fewer, or no awards. RFQ at 224.

The RFP provided that award would be made on a best-value basis using a past performance and cost/price tradeoff procedure where past performance would be significantly more important than cost/price.¹ Id. at 223. Offerors were advised that the agency would evaluate proposals for technical acceptability on a pass/fail basis and that only those proposals found to be technically acceptable would be included in the tradeoff analysis. Id.

As part of the past performance evaluation, the RFP instructed offerors that they could submit up to ten past performance examples. Id. at 214. Offerors were to describe each past performance example on a separate past performance information sheet (PPIS), using a form provided with the RFP. Id. The solicitation directed offerors to identify only one contract on each PPIS, or if the past performance example was for work performed under an IDIQ contract, offerors were to identify only one task order performed under that contract. Id. For each PPIS, the RFP instructed offerors to identify a point of contact (POC) for the customer of the contract. Id. at 215. Offerors were also directed to send a past performance questionnaire (PPQ), which was included as a form with the RFP, to the POC identified for each PPIS. The PPQs were to be completed by the customers of the contracts and returned directly to the Air Force. Id. The solicitation provided that the Air Force would not consider a past performance example in its evaluation if the agency could not verify the offeror's performance with the customer of the contract. Id. at 227.

The agency received 29 initial proposals by the solicitation's November 18, 2010 closing date, including a proposal from CDO. CO Statement at 2, 8. Following receipt of initial proposals, the agency amended the solicitation several times with revised proposals received on November 7, 2012. Id. at 8. During the time between the receipt of initial and revised proposals, the Air Force communicated individually with offerors regarding PPQs that had not been received by the agency. On May 10, 2011, the Air Force informed CDO in writing that the agency had not received a PPQ for one of the PPISs submitted by CDO, which the agency identified as citation 2. Agency Report (AR) Tab 4, CDO.001, CDO Missing PPQ. The agency further informed CDO that because the agency had not received a PPQ for citation 2, it had not included this past performance example as part of its evaluation and requested an updated POC for the contract, if available. Id. In response to this letter, CDO provided the agency a new POC for citation 2. CO Statement at 18. On October 22, 2012, the Air Force again notified CDO in writing

¹ For past performance, the RFP provided the following possible ratings: substantial confidence; satisfactory confidence; limited confidence; no confidence; and unknown confidence.

that it had not received a PPQ for citation 2 and as such, could not include it in CDO's past performance evaluation. AR, Tab 20, CDO.044, CDO Missing PPQ. Although CDO did not acknowledge receipt of the October 22 communication, CDO changed its POC for citation 2 when it submitted its revised proposal on November 7. CO Statement at 19.

Discussions with CDO

Following receipt of revised proposals, the agency evaluated the proposals, developed initial ratings, and conducted discussions. Id. at 8-9. As part of discussions, the agency provided offerors evaluation notices (ENs) and a written evaluation briefing, which advised offerors of their initial ratings and the bases for those ratings. Id. Prior to conducting oral discussions, the Air Force also gave offerors an opportunity to submit questions regarding their ENs and evaluation briefings. Id.

As relevant to this request for reconsideration, CDO received a written evaluation briefing and five ENs regarding its past performance. AR, Tab 20, CDO.033, CDO E-mail Docs Charts at 12-16. CDO's evaluation briefing indicated that CDO had received an initial past performance rating of limited confidence. Id. at 15. In the first briefing slide addressing past performance, the agency summarized the past performance data it had collected. Id. at 12. This slide showed that the Air Force had received only nine of CDO's ten PPQs. Id.

The next briefing slide included a chart that identified the ten past performance examples submitted by CDO and summarized the agency's evaluation of those contracts. Id. at 13. In the first column of the chart, titled "PPQ/CPARS," the agency placed the values of 0/0 for citation 2, indicating that no PPQs had been received and no rating had been identified in the contractor performance assessment reporting system (CPARS) for citation 2. Id. Further, citation 2 was the only past performance example with values of 0/0 in the PPQ/CPARS column; all other citations reflected values of 1/0 or 1/1. Id. The chart also indicated at the bottom of the PPQ/CPARS column that the agency had received a total of nine PPQs. Id. In CDO's first past performance EN, identified as "NETS-CDO-P-00-001", the agency provided further explanation of the evaluation briefing chart. AR, Tab 20, CDO.035, CDO E-mail Docs ENs at 17-19. This EN provided the following explanation with regard to the PPQ/CPARS column:

This column indicates the number of PPQs and CPARS reviewed for the indicated contract. Citations showing 0/0 were not evaluated because the government was unable to verify any work either with the POC identified in the proposal or through the CPARS reporting system. For these citations, a separate Evaluation Notice has been issued.

Id. at 18.

The past performance chart also contained a column labeled “Contract Type”, under which, for citation 2, the agency placed the abbreviation “IDIQ.” AR, Tab 20, CDO.033, CDO E-mail Docs Charts at 13. The Air Force explained in EN No. NETS-CDO-P-00-001 that a designation of IDIQ in this column meant that the citation was not evaluated because the PPIS for citation 2 identified an IDIQ contract but not an individual task order. AR, Tab 20, CDO.035, CDO E-mail Docs ENs at 18. The agency also provided in EN No. NETS-CDO-P-00-001 that a separate EN had been issued for citations marked IDIQ. Id. In this regard, for the citation 2 PPIS that CDO submitted with its revised proposal, CDO listed the IDIQ contract number and the associated task order number on the same line of the form, despite the fact that a separate line was provided for the task order number. AR, Tab 3, CDO.015, CDO Past Performance Proposal at 8. As a result, the Air Force concluded that CDO had failed to identify a specific task order as required by the RFP. AR, Tab 20, CDO.035, CDO E-mail Docs ENs at 20. Thus, CDO received EN No. NETS-CDO-P-00-002, which stated the following: “Citation 02 is an IDIQ contract with no specific task order cited and therefore was not evaluated.” Id.

After receiving the evaluation briefing and ENs described above, CDO submitted 19 questions to the agency that CDO sought to have addressed during oral discussions. CO Statement at 8-9. None of those questions related to the Air Force’s evaluation of CDO’s past performance. Id. At the conclusion of oral discussions, CDO’s representatives stated that they understood all of the ENs issued and that the Air Force had answered their questions regarding those ENs. Id.

Evaluation of CDO’s Final Proposal Revision

After the conclusion of discussions, final proposal revisions (FPR) were received on May 16, 2014. Id. at 9. In submitting its FPR, CDO responded to EN No. NETS-CDO-P-00-002 by identifying the task order number for citation 2 on the correct line of the PPIS. AR, Tab 3, CDO.014, PCAG CDO FPR at 8. On May 22, the Air Force contacted the POC provided for citation 2 in CDO’s revised proposal and requested that the individual provide the completed PPQ. AR, Tab 10, CDO.031, E-mail Regarding Past Performance on CDO at 1-3. However, the POC indicated that he was unable to provide information as to the performance of CDO on the contract identified. Id. at 1. As a result, the Air Force did not consider citation 2 when evaluating CDO’s past performance. CO Statement at 22. CDO’s FPR received a rating of satisfactory confidence under the past performance evaluation factor and was not selected for award. Id. at 22-23.

DISCUSSION

CDO argues that our Office made errors of law and fact in finding that the Air Force's discussions were meaningful and not misleading with regard to citation 2. CDO contends that the Air Force failed to inform it during discussions that the agency had yet to receive a PPQ for citation 2. Request for Reconsideration at 2, 6-9. CDO also contends that the Air Force's discussions were misleading because the agency did not, as it had indicated, issue an EN specifically addressing the fact that the agency had not received a PPQ for citation 2. Id. at 7-8. These arguments are without merit. As discussed below, notwithstanding the lack of a separate EN, the discussion documents provided by the Air Force clearly communicated to CDO the fact that the agency had not received a PPQ for citation 2.

The FAR requires agencies conducting discussions with offerors to address, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." Federal Acquisition Regulation (FAR) § 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. Nonetheless, an agency needs not "spoon feed" an offeror as to each and every item that could be revised to improve an offeror's proposal. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 15.

CDO's contention that the agency failed to inform it of the fact that a PPQ had not been received for citation 2 is not supported by the record. The evaluation briefing document provided to CDO during discussions clearly communicated--in multiple ways--that the Air Force had not received the PPQ. The first slide of the past performance evaluation briefing unambiguously advised CDO that the agency had received only nine PPQs, notwithstanding the fact that CDO had submitted ten past performance examples. AR, Tab 20, CDO.033, CDO E-mail Docs Charts at 12. Moreover, the next page of the briefing summary specifically identified that there were zero PPQs received and zero CPARS ratings identified for citation 2. Id. at 13. The agency also explained that "[c]itations showing 0/0 were not evaluated because the government was unable to verify any work either with the POC identified in the proposal or through the CPARS reporting system." AR, Tab 20, CDO.035, CDO E-mail Docs ENs at 18. Finally, at the bottom of the PPQ/CPARS column, the agency again indicated that the total number of PPQs received was nine. AR, Tab 20, CDO.033, CDO E-mail Docs Charts at 13. We find that this information was more than sufficient to put CDO on notice that a PPQ had not been submitted to the agency for citation 2 and thus the discussions were meaningful.

For the same reasons, we find unconvincing CDO's contention that it was misled during discussions. In this regard, CDO argues that the Air Force stated in EN No. NETS-CDO-P-00-001 that it had provided ENs for any missing PPQs, yet the

only EN CDO received regarding citation 2 indicated that the citation had not been evaluated because CDO had not identified a task order for the citation. Request for Reconsideration at 7-8. While the agency did not provide a separate EN stating that no PPQ had been received for citation 2, we find that CDO could not have reasonably been misled by this, given that the agency clearly communicated to CDO in the evaluation briefing that a PPQ for citation 2 had not been returned. Moreover, CDO does not offer any explanation as to how it was misled by the evaluation briefing's clear statements that only nine PPQs were received and that no PPQ was received for citation 2. Further, the Air Force's communications with CDO prior to discussions regarding the missing PPQ for citation 2 should have made it even more obvious to CDO that the agency had not received the PPQ at the time of discussions. The record reflects that the Air Force twice informed CDO before conducting discussions that it had not received a PPQ for citation 2. Thus, when the agency again advised CDO during discussions that only nine of ten PPQs had been received, CDO should have realized that the status of the citation 2 PPQ remained unchanged. As such, we find that the agency's discussions were meaningful and not misleading with regard to the lack of a PPQ for citation 2.

The request for reconsideration is denied.

Susan A. Poling
General Counsel