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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Res Rei Development, Inc.

File: B-410466.7

Date: October 16, 2015

Richard D. Brion, for the protester.

Maj. Jason R. Smith, Esq., Department of the Air Force, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably found protester's proposal to be technically unacceptable where the proposal was substantially a direct restatement of the agency's requirements and the offeror failed to provide details and insight into how its technical approach would effectively manage and execute the contemplated task orders.

DECISION

Res Rei Development, Inc., of Alexandria, Virginia, protests the United States Special Operations Command's (SOCOM) exclusion of its proposal from the competitive range under request for proposals (RFP) No. H92222-14-R-0019, for mission support services. Res Rei challenges the conduct of the procurement and the evaluation of its proposal.

We deny the protest.

BACKGROUND

The SOCOM Wide Mission Support (SWMS) program envisions a series of contracts which will provide services to SOCOM headquarters, components and theater Special Operations Commands. Agency Report (AR) at 1. The acquisition was conducted under three groupings, including Group C, the procurement at issue in this protest. Id. The Group C RFP here, posted on FedBizOpps on July 30, 2014, as a service-disabled, veteran-owned small business set-aside, provided for award of a single indefinite-delivery/indefinite-quantity contract to furnish requirements generation and analysis, acquisition, budget planning, management

and execution, business process reengineering, and program planning services. RFP, Statement of Work (SOW) § 3.0.

Award was to be made to the offeror whose proposal represented the best overall value considering three evaluation factors: technical, including subfactors for program management and task order management; past performance; and cost. Technical was more important than past performance, which was more important than cost; when combined, the non-cost factors were significantly more important than cost. RFP at 43-44.

Relevant here, under the task order management subfactor, offerors were required to propose a technical approach to managing and executing two task orders: (1) a task order management plan for acquisition management, procurement, and financial management support for SOCOM's Special Operations Research, Development, and Acquisition Center (SORDAC); and (2) a task order management plan for planning, budgeting and execution, research and analysis of accounting transactions, systems support, and training for SOCOM's Special Operations for Financial Management (SOFM) group. RFP at 39; AR, Tab 5, SORDAC SOW § 1.1; AR, Tab 4, SOFM SOW § 2.0.1. The task order management plan for each task order was required to address personnel, transition plan, and quality. RFP at 38-39. In addition, with regard to both task order management plans, the RFP required offerors to "demonstrate their task order technical approach to execute all of the requirements" in accordance with a designated statement of work (SOW). RFP at 39. Both task order SOWs set forth detailed, specific requirements, totaling approximately 20 pages for the SORDAC and 10 pages for the SOFM task order SOWs. SOFM SOW § 4.0; SORDAC SOW § 3.0.

The RFP provided that the technical subfactors would be rated outstanding, good, acceptable, marginal and unacceptable. RFP at 45-46. The RFP further provided that an unacceptable rating for a subfactor means that the "[p]roposal does not meet requirements and contains one or more deficiencies. Proposal is un-awardable." RFP at 46 (emphasis added).

On September 4, the agency amended the solicitation to require that all proposal submissions be emailed to a designated SOCOM email address, but limited the maximum size of "any files coming through on any one email" to 20 megabytes (MB). RFP, Amend. No. 2, at 6-7. A subsequent amendment extended the proposal due date to 4:30 p.m., Eastern Time, September 15, 2014. RFP, Amend. No. 4, at 4.

At 6:41 p.m. on September 13, 2014, Res Rei submitted to the agency the first of what was intended to be four emails, submitting its technical proposal. Protest, Attach. A, at 1. Res Rei's email was addressed to the swms@socom.mil address specified in the RFP as well as to the contracting officers. At 6:48 p.m., Res Rei received an "undeliverable" message with regard to all three email addresses,

advising that its first submission had failed: “A problem occurred while delivering this message to this email address. Try sending this message again. If the problem continues, please contact your helpdesk.” Id. at 2, 4, 6. At 6:50 p.m., Res Rei re-sent its Volume I Technical Proposal to the original addressees. Id. at 8. At 6:57 p.m., Res Rei received an identical “undeliverable” message with regard to all three addressees. Id. at 9, 11, 13.

At 5:39 a.m., on September 15, the closing date, after being advised by Res Rei of the continuing problems in submitting its proposal, Protest, Attach. A, at 19, the contracting officer replied: “Please try to resubmit to swms@socom.mil. Thank you.” Id. at 22. Beginning at 7:08 a.m. that same day, Res Rei began to resubmit its proposal. Id. at 25-28. At 7:43 a.m., Res Rei received an “undeliverable” message with regard to its first technical volume email, indicating “size limit exceeded.” Id. at 35. At 7:51 a.m., upon being advised of the rejection of Res Rei’s proposal on the basis of email size, the CO instructed Res Rei: “Please try submitting the document in multiple emails.” Id. at 42. After an exchange of emails with the contracting officer, Res Rei, at 8:50 a.m., advised the contracting officer that: “We are working to reduce the file size” Id. at 51. At 9:40 a.m. Res Rei began resubmitting its technical proposal. Id. at 55. At 10:12 a.m., more than 6 hours prior to the 4:30 p.m. closing time, the CO advised Res Rei as follows:

Good afternoon. This email acknowledges the receipt of Res Rei proposal for the subject RFP. It is not an acknowledgement of the contents or a determination of responsibility. The following documents have been received. Thank you.

Volume I Technical (pdf)
Volume II Past Performance (pdf)
Volume III Costs (1-pdf, 1-Excel worksheet)
Volume IV Administrative Material (pdf)

Id. at 60 (emphasis added).

On September 25, another offeror, Federal Acquisition Services Team, LLC (FAST), filed a protest with our Office asserting that its attempt to submit its proposal by email prior to the closing time had been improperly rejected by the agency server. By decision dated December 31, 2014, we denied FAST’s protest on the basis that, while FAST had attempted to submit its proposal prior to the closing time, the transmitting email was rejected as undeliverable by the agency server for exceeding the applicable size limitation, and the proposal could not be considered because it could not be located on the agency’s systems. Further, in response to the protester’s contention that there were problems with the agency server’s implementation of the solicitation’s limitation on the size of proposal submissions, we found that the record did not support a conclusion that there was a systemic failure of the agency’s systems for receiving proposals. In this regard, we noted

that the agency successfully received 15 proposals, including two which initially were rejected by the SOCOM server on September 15 for exceeding the size limit, but were successfully resubmitted by means of smaller emails. Federal Acquisition Services Team, LLC, B-410466, Dec. 31, 2014, 2015 CPD ¶ 20 at 3-4.

In the meantime, Res Rei's proposal was evaluated as marginal under the program management subfactor of the technical factor and unacceptable under the task order management subfactor. In this latter regard, Res Rei's proposal received an unacceptable rating for its SORDAC support task order management plan (TOMP) approach, with 19 deficiencies (and only one strength), in large part because, according to the agency: "The business process as depicted in [Res Rei's] proposal is a direct restatement of the government's SOW requirements and the offeror failed to provide details and insight into 'how' their technical approach will effectively manage and execute" the requirements in the task order SOW. Debriefing at 5-9; see AR, Tab 6, Source Selection Evaluation Board (SSEB) Initial Report, at 47-49; AR, Tab 7, "Annex L," at 2-7 (a "detailed evaluation write up" for Res Rei, Agency Email to GAO, Sept. 8, 2015).

Res Rei's proposal also received an unacceptable rating for its SOFM support task order management plan approach, in large part because Res Rei in its proposal under this subfactor cited SORDAC SOW requirements and did not discuss SOFM SOW requirements. Further Res Rei's SOFM task lead's resume did not indicate the required experience. Debriefing at 9; see SSEB Initial Report at 49-50; Annex L at 7-8. (In addition, the agency evaluated Res Rei's proposal as "unknown" for past performance.) The agency concluded that Res Rei's proposal "cannot be made acceptable without a major rewrite," and on that basis excluded it from the competitive range. AR, Tab 9, Competitive Range Notification.

Upon receiving a written, January 26, 2015, debriefing, Res Rei protested to our Office. The agency subsequently provided a report responsive to Res Rei's protest. After receiving Res Rei's comments on the report and a supplemental protest, however, FAST filed a bid protest with the United States Court of Federal Claims (COFC), challenging SOCOM's failure to consider its proposal under this RFP. Federal Acquisition Services Team, LLC, v. United States, Fed. Cl. No. 15-78C. On April 8, 2015, we dismissed Res Rei's protest, finding that the matter was the subject of litigation before a court of competent jurisdiction. Res Rei Development, Inc., B-410466.5, B-410466.6, Apr. 8, 2015; see 4 C.F.R. § 21.11(b); Dept. of the Navy--Recon., B-253129.4, Sept. 30, 1993, 96-2 CPD ¶ 175 at 2.

On July 10, Res Rei filed a new protest with our Office, essentially reasserting its prior protest grounds. In response to Res Rei's claim that it had learned that there had been a decision on the FAST protest at COFC, and in response to our inquiry to the SOCOM, the agency advised as follows:

The Government received a verbal order from the judge in the COFC case in May 2015. However, the judge has not yet issued a written decision, nor has an order been entered on the Electronic Court Filing (EFC) system. The agency expects to eventually receive a written decision, but does not know when the written decision will issue. Since the judge's order directed action by the Government, SOCOM has initiated actions in accordance with that order. After receipt of this protest, the Agency inquired with the Department of Justice (DOJ) lead counsel regarding the finality of the COFC case, and the DOJ lead counsel has opined that the May 2015 order is a final decision.

Agency Request for Summary Dismissal, July 24, 2015, at 2. Although there is as yet no written decision on the FAST protest against the agency refusal to evaluate its proposal, the agency has further advised that the action directed by the Court was to evaluate FAST's proposal. Based on this information, we will consider Res Rei's protest challenging the evaluation of its proposal.

DISCUSSION

Res Rei generally asserts that it was improperly required to reformat its proposal; the evaluation of its proposal was improper; and the agency improperly failed to seek clarification of any errors in its proposal. Res Rei concludes that the agency improperly excluded its proposal from the competitive range.

Contracting agencies are not required to retain a proposal in a competitive range where the proposal is not among the most highly rated. FAR § 15.306(c)(1); Unified Business Technologies, Inc., B-411056, May 1, 2015, 2015 CPD ¶ 151 at 3. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to either omitted or merely inadequate information addressing fundamental factors. Am. Med. Depot, B-285060 et al., July 12, 2000, 2002 CPD ¶ 7 at 6-7.

We have considered all of Res Rei's arguments and we conclude, based on our review of the record, that none furnishes a basis on which to sustain the protest. We discuss Res Rei's principal contentions below.

As an initial matter, Res Rei argues that a certain number of the evaluated deficiencies in its proposal resulted when it reformatted its proposal submission into smaller emails. In this regard, Res Rei asserts that its initial emails complied with the solicitation limitation on the permissible size of email submissions (20 megabytes), see RFP, Amend. No. 2, at 6-7, but that the agency servers

nevertheless improperly rejected its initial submissions. According to the protester, when it was required to reformat its proposal submissions as a result of the improper agency action, certain errors were introduced into the proposal.

Res Rei's protest that it was improperly required to reformat its proposal submissions, thus leading to the introduction of errors into the proposal, is untimely. In this regard, our Bid Protest Regulations provide that defects in the acquisition that are apparent prior to closing must be protested prior to closing. 4 C.F.R. § 21.2(a)(1). Here, the record indicates that Res Rei and the contracting office engaged in a continuing exchange of emails on September 13-15, in which Res Rei made several attempts to submit its proposal, altering its submission in an attempt to pass the agency firewall, and finally resulting in Res Rei's reformatting its email submissions into sufficiently small emails as to be accepted by the agency's servers approximately 6 hours prior to the closing time. See Protest, exh. A, Emails.

We have repeatedly held that an offeror may not participate in an allegedly flawed competitive process, and then wait to complain about the process only after the firm was not selected for award. Cherokee Information Services, B-287270, April 12, 2001, 2001 CPD ¶ 77 at 5. To the extent that Res Rei believes that its proposal submissions were compliant with the solicitation requirements and were improperly rejected by the agency servers, it was on notice prior to the closing time for receipt of proposals of any problem in the agency provisions for accepting electronic proposals, and thus could have protested prior to the closing time for receipt of proposals. Although Res Rei argues that it was unaware until the exclusion of its proposal from the competitive range that it had introduced errors into its proposal when reformatting its email submissions, Res Rei's contemporaneous emails indicate its awareness of this very risk:

Are you asking me to break the file up into more than one PDF and transmit it? If so, and I cannot get the single file smaller, how should I label the emails to ensure each section is identified adequately for reassembly into the Volume I document? This unfortunately will drastically alter the presentation of my Volume I.

Protest, Attach. A, at 45. In any case, it was Res Rei's responsibility to submit an adequately written proposal, and we see no basis for relieving the protester of responsibility for errors it introduced into its own proposal.

Res Rei next challenges several aspects of the agency's evaluation of its proposal. The evaluation of technical proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and for identifying the best methods for accommodating those needs. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In this regard, our Office will not reevaluate technical proposals; rather, we will review a challenge to an agency's evaluation to determine whether the agency acted reasonably and in accord with the solicitation's evaluation

criteria and applicable procurement statutes and regulations. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 7. A protester's disagreement with the agency's judgments, without more, does not render the evaluation unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6. Here, we find that the agency reasonably evaluated Res Rei's proposal as unacceptable.

As noted, Res Rei's proposal received an unacceptable rating for its SORDAC support task order management plan approach, with 19 deficiencies. These deficiencies largely resulted from the agency's conclusion that Res Rei's proposed approach was simply "a direct restatement of the government's SOW requirements," with Res Rei "fail[ing] to provide details and insight into 'how' their technical approach will effectively manage and execute" the requirements in the task order SOW. Debriefing at 5-9; see SSEB Initial Report at 47-49; Annex L at 2-7. According to the evaluators:

By not addressing these elements of the SOW the government has no confidence in the offeror's ability to satisfy this RFP requirement. This is a material failure to meet all requirements of the RFP and increases risk of unsuccessful contract performance to an unacceptable level.

Annex L at 2.

Res Rei objects to the agency's evaluation approach on the basis that it was inconsistent with solicitation's evaluation criteria. In this regard, Res Rei identifies the following "discrepancy" in the agency's evaluation approach:

Specifically, USSCOM references that the **business process** must demonstrate[] how we effectively manage and execute the work; however, the evaluation criteria clearly focus[] on the personnel when it comes to elements of the SOW, not the business process.

Protest at 16 (emphasis in original). The protester further asserts that the solicitation did not require that offerors describe how they will "manage and execute specific, line-by-line elements of the SOW." Id. at 16-17.

These arguments are without merit. As noted by the agency, the solicitation required not merely a general approach to performing the task order, or only a discussion of key personnel, see AR, Tab 3, RFP at 38 (key personnel), but instead required that offerors

shall demonstrate their task order technical approach to execute all of the requirements in accordance with the attached SORDAC Support Statement of Work. The offeror's proposal shall demonstrate the ability to meet the requirements without introducing unacceptable risk.

RFP at 39.

Here, as noted by the agency, Res Rei's proposed plan amounted to only "a general management approach, an indiscriminate flow chart, identification of one position per subtask which would act as the lead, and a restatement of the requirements of the SOW." AR at 23; see Res Rei Technical Proposal § 3.0, at 9-15. Res Rei's approach of largely restating the SOW requirements was not only inconsistent with the above specific task order management plan requirements, but also was contrary to the RFP's instructions that "[t]he proposal should not simply rephrase or restate the Government's requirements, but shall address how the Offeror intends to meet these requirements." RFP at 36; see Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 9 (restatement of the RFP's requirements without an explanation of how offeror would meet those requirements failed to satisfy the solicitation requirement that offerors describe their processes in a detailed manner); IVI Corp., B-310766, Jan. 23, 2008, 2008 CPD ¶ 21 at 3 (merely restating the RFP's requirements is no better than an unacceptable blanket offer of compliance). In this regard, our review of Res Rei's proposal under Subfactor 2a, SORDAC TOMP, in comparison to the Subfactor 2a SOW, indicates a substantial similarity between the two documents. Compare Res Rei Proposal at 65 (Figure 3-1) with SORDAC SOW at 2-6; compare Res Rei Proposal at 67 with SORDAC SOW at 6-7; compare Res Rei Proposal at 67 with SORDAC SOW at 6-7; compare Res Rei Proposal at 68 with SORDAC SOW at 7-16; compare Res Rei Proposal at 69 with SORDAC SOW at 16.

Given Res Rei's response to the SORDAC support task order management plan requirements, consisting largely of a generic management approach and a restatement of the SORDAC SOW requirements, see AR at 28-29, we find reasonable both the agency's assessment that Res Rei failed to demonstrate a task order technical approach to execute all of the requirements of the SORDAC SOW, and its consequent assignment of an unacceptable rating in this area.

Res Rei also challenges the evaluation rating of unacceptable for its SOFM support task order management plan approach. In this regard, the evaluators found that Res Rei's proposal included a chart (Figure 3-16; "Subtask Lead: Lead Senior Budget/Financial Analyst") that related to the SORDAC SOW, rather than to the SOFM SOW. Annex L at 8. (Likewise, our review indicates that figure 3-16 in Res Rei's proposal appears to be a substantial duplicate of figure 3-7, included in Res Rei's proposal with regard to the SORDAC TOMP. Compare Res Rei Proposal at 79 (figure 3-16) with id. at 65 (figure 3-7)). As a result of this apparent error, the evaluators found:

The offeror's approach to managing the task order fails to discuss any of the SOFM SOW requirements (7 FTEs). By not addressing these elements of the SOW the government has no confidence in the offeror's ability to satisfy this RFP requirement. This is a material

failure to meet all requirements of the RFP and increases risk of unsuccessful contract performance to an unacceptable level.

Annex L at 8. The protester challenges the agency's evaluation, asserting:

due to the systemic failure of USSOCOM's proposal receipt system to accept proposals in accordance with the terms of the RFP, Res Rei was required to revise the proposal document to reduce the file size by more than 30% of what the RFP stated was the maximum allowed size.

Protest at 19. As indicated above, however, we find that Res Rei's protest with regard to its need to reformat its proposal submission into smaller emails amounts to an untimely solicitation challenge, and, in any case, does not relieve the offeror of its obligation to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6 (offeror has the burden of submitting an adequately written proposal, and risks that its proposal will be evaluated unfavorably when it fails to do so). Likewise, for the reasons discussed above, we find similarly unavailing Res Rei's reiteration of its argument that "there is no requirement for offerors to discuss specific elements of the SOW." Protest at 20. In this regard, we agree with the agency that it is not evident, and the protester does not explain, how an offeror could adequately "demonstrate their task order approach to execute all of the requirements" of the SOW without discussing specific SOW requirements.

In addition, the SOFM task lead was required to have a bachelor's degree in business administration and a "working knowledge" of the COGNOS query tool, and a "working knowledge of other query tools such as TOAD, Discoverer and SQL." SOFM SOW § 6.0. The evaluators found that Res Rei's proposal only generally referred to its proposed task lead having a "Business Administration" education, with no indication of having earned a bachelor's degree, and did not state that the task lead had a working knowledge of the referenced query tools. Annex L at 9; see Res Rei Proposal at 84-85. The evaluators concluded that this failure to demonstrate that its proposed SOFM task lead had the requisite knowledge and experience was another material failure to meet the RFP requirements which increased the risk of unsuccessful contract performance to an unacceptable level. Annex L at 9.

Res Rei asserts that the proposed SOFM task lead was well known to SOCOM, which should have known that she possessed the requisite knowledge and experience. Protest at 23. As noted by the agency, however, the RFP provided that: "Offerors shall assume that the Government has no prior knowledge of their facilities and experience. The Government's evaluation will be based on the information presented in the proposal." RFP at 36; AR at 30. Likewise, our cases recognize that agencies are not required to infer information from an inadequately

detailed proposal, or to supply information that the protester elected not to provide. See Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17. Further, where a solicitation states that the qualifications of key personnel will be evaluated, and a proposal fails to demonstrate that key personnel hold qualifications that the solicitation requires them to possess, the proposal may be evaluated as unacceptable. See Computer World Servs. Corp., B-410567.2, B-410567.3, May 29, 2015, 2015 CPD ¶ 172 at 6.

In sum, given Res Rei's failure to propose a plan specific to the SOFM task order which demonstrated its ability to meet the requirements of the SOFM SOW, AR at 28, and its failure to demonstrate that its proposed SOFM task lead meets the solicitation knowledge and experience requirements, we find reasonable the agency's rating of unacceptable for Res Rei's SOFM task order management plan approach. Further, since the agency also reasonably rated Res Rei's SORDAC task order management plan approach as unacceptable, there is no basis to question the overall unacceptable rating for Res Rei's proposal under the task order management subfactor. Finally, under the terms of the solicitation, Res Rei's unacceptable subfactor rating meant that its "Proposal is un-awardable." RFP at 46.

Lastly, the protester also asserts that the contracting officer was required to permit it to correct deficiencies in its proposal with regard to its SOFM support task order management plan approach through clarifications. Protest at 9-10, 23-24. We disagree. FAR § 15.306 describes a range of exchanges that may take place when the agency decides to conduct exchanges with offerors during negotiated procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. Dellew Corp., B-410251.3, May 13, 2015, 2015 CPD ¶ 169 at 7; see FAR § 15.306(a). In any case, clarifications are not to be used to cure proposal deficiencies or material omissions, or materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. American Material Handling, Inc., supra; see eMind, B-289902, May 8, 2002, 2002 CPD ¶ 82 at 5. Here, the clarifications that Res Rei proposes would not be "minor or clerical errors," but rather modifications of Res Rei's proposal to correct material omissions that resulted in the proposal being found technically unacceptable. This is quintessentially the nature of discussions, not clarifications. International Waste Industries, B-411338, July 7, 2015, 2015 CPD ¶ 196 at 5.

The protest is denied.

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General Counsel