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Decision

Matter of: Invertix Corporation

File: B-411329.2

Date: July 8, 2015

Jon W. Burd, Esq., and Margaret E. Matavich, Esq., Wiley Rein LLP, for the protester.

Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter, Esq., for Information Management Group, the intervenor.

Maj. Michael G. Pond, Department of the Army, for the agency.

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

DIGEST

1. Protest that awardee engaged in impermissible bait and switch is denied, where the record contains no evidence that the awardee did not intend to staff the task order with the proposed key personnel.
 2. Protest that the agency unreasonably failed to consider the relative merits of the protester's superior past performance in the best value determination is denied, where the terms of the solicitation provided that past performance would be evaluated only as acceptable or unacceptable, and that an offeror without a record of recent and relevant past performance would be rated acceptable.
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DECISION

Invertix Corporation, of McLean, Virginia, protests the Department of the Army's issuance of a task order to Information Management Group (IMG), of Fairfax, Virginia, under request for task order proposals (RTOP) No. W911W4-15-R-0004, for operation and maintenance of the TROJAN Information Technology (IT) Network. Invertix asserts that IMG engaged in a bait and switch when it proposed key personnel whom it did not intend to utilize for contract performance. In addition, Invertix challenges the evaluation of proposals and resulting best value determination.

We deny the protest.

BACKGROUND

The RTOP, issued to all holders of Army Intelligence and Security Command (INSCOM) OMNIBUS III indefinite-delivery/indefinite-quantity (IDIQ) multiple award contracts (Service Area #2), contemplated the issuance of a fixed-price task order, with a 1-year base period and two 1-year options, for maintenance, repair, communications support, system operations support, service desk/center support, COMSEC (communications security), and circuit configuration management for INSCOM's TROJAN IT Network. Performance Work Statement (PWS) § 1.3.¹ The task order was to be issued to the offeror whose proposal represented the best value to the government considering three evaluation factors (in descending order of importance): technical/management approach, past performance, and price. RTOP § M.1.1. Technical/management approach included three subfactors of equal importance: (1) management (key personnel qualifications, staffing/retention, and phase-in plan); (2) TROJAN system maintenance, operation, and repair; and (3) communications security and circuit management. RTOP §§ M.1.4, M.2.3.² When combined, technical/management approach and past performance were significantly more important than price. RTOP § M.1.4.

With regard to key personnel, the solicitation identified ten key positions, set forth minimum qualifications for each position, and instructed offerors to submit individual resumes for proposed key personnel at the time of proposal submission. RTOP § L.6.2.21; PWS § 1.6.11. The solicitation provided that the Army would “evaluate the quality of the qualifications of key personnel (PWS 1.6.11) based on submitted resumes.” RTOP Amend. 0001 at § L.6.2.2.1. Neither the RTOP nor the PWS required offerors to submit letters of commitment from proposed key personnel.

With regard to past performance, the solicitation provided for the agency to assess the “risk probability that the Offeror will meet contract technical and schedule requirements, within estimated prices, by evaluating recent and relevant past performance history.” RTOP § M.3.1. Recent and relevant past performance was defined as work performed under an INSCOM OMNIBUS III ID/IQ contract (Service Area #2) within the last 3 years, with a total contract value of no less than \$1 million, and with a scope and complexity similar to those required by this solicitation. Id. Using “information obtained through the Contractor Performance Assessment

¹ Because the amount of the task order issued to IMG is \$19,113,434, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. See 10 U.S.C. § 2304c(e)(1)(B).

² The possible technical/management ratings included outstanding, good, acceptable, marginal, and unacceptable. RTOP Amend. 0001 § M.2.4.

Reporting System (CPARS) database, such as Past Performance Information Retrieval System (PPIRS) and Federal Awardee Performance and Integrity Information System (FAPIIS) data,” the agency was to evaluate the quality of each offeror’s recent and relevant past performance, assigning the offeror an overall past performance rating of acceptable or unacceptable. RTOP §§ M.3.2, M.3.3. In this regard, an offeror “found to have quality satisfactory recent and relevant past performance history, will receive an ‘Acceptable’ evaluation.” RTOP § M.3.2. The solicitation provided that an offeror “without a record of recent and relevant past performance, upon which to base a meaningful performance risk predication, will be identified as an unknown risk and therefore rated as ‘Acceptable,’ which is neither favorable nor unfavorable.” Id.

Three offerors, including Invertix and IMG, submitted timely proposals in response to the solicitation prior to the February 4, 2015 closing date. Agency Report (AR), Tab 2, Contracting Officer’s Statement of Facts (COS) at 2. The protester’s proposal included a past performance contract reference that met the solicitation’s requirements for recent and relevant. See Invertix Proposal at 39. IMG’s proposal contained no past performance references. See IMG Proposal at 38. Both proposals included resumes for the required 10 proposed key personnel. See Invertix Proposal, Append. A; IMG Proposal at A-LL.

The table below summarizes the agency’s evaluation of proposals under the technical/management factor:

Subfactor	Offeror	
	Invertix	IMG
Management	<u>Marginal</u> 2 strengths 4 weaknesses	<u>Acceptable</u> 1 strength 1 weakness
Maintenance, Operation, Repair	<u>Marginal</u> 4 strengths 3 weaknesses 3 significant weaknesses	<u>Good</u> 1 significant strength 3 strengths 3 weaknesses
COMSEC	<u>Acceptable</u> NONE	<u>Good</u> 1 significant strength
Overall Rating	Marginal	Good

Technical Evaluation Board (TEB), Consensus Report at 1.

Invertix received an overall rating of acceptable under the past performance factor. In this regard, a PPIRS/FAPIIS search produced one reference for Invertix which met the solicitation’s definition of “recent and relevant,” with the PPIRS ratings for this reference ranging from marginal to very good. AR, Tab 12, Past Performance Report at 2-3. A PPIRS/FAPIIS search for IMG revealed no past performance

entries, and, as noted above, IMG's proposal contained no past performance references. Id. at 3. Consequently, IMG was assessed as unknown risk and received an overall rating of acceptable under the past performance factor. Id.

The contracting officer, who was also the source selection authority (SSA), found "that a clear quality break exists in the overall merit" of the offerors' proposals, with IMG's proposal rated as good for the technical/management factor and Invertix's rated as marginal. Source Selection Decision Document (SSDD) at 15. The SSA further noted that while only Invertix of the three offerors had recent and relevant past performance, nevertheless, "in accordance with the past performance assessment criteria identified in Section M," all three offerors were rated as acceptable under past performance. SSDD at 14. In addition, IMG's price (\$19,113,434) was lower than Invertix's (\$21,995,932). SSDD at 10. The SSA accordingly determined that IMG's proposal represented the best value to the government, and the task order was issued to IMG on March 23. SSDD at 15. This protest followed.

DISCUSSION

Invertix asserts that the awardee engaged in an improper bait and switch when it proposed key employees that it had no intention of placing on the contract. In addition, Invertix asserts that the agency improperly failed to consider the relative merits of the protester's superior past performance in the best value determination, and that the agency's evaluation of the technical proposals otherwise was unreasonable. We have considered all of the protester's arguments and find that none provide a basis for questioning the source selection. We discuss several of the arguments below.

Bait and Switch

Invertix first argues that IMG engaged in an improper bait and switch. In this regard, the solicitation required offerors to propose and submit resumes for ten key personnel. RTOP § L.6.2.21; PWS § 1.6.11. IMG's proposal included resumes for the required proposed key personnel. IMG Proposal at A-LL. At the March 30 Post-Award Conference, however, IMG indicated that two key incumbent personnel were to remain in their positions, and requested approval to replace five other proposed key personnel (including the proposed program manager). IMG Comments at 3; Decl. of IMG President, May 11, 2015, at 3-4; AR, Tab 17, Trojan NetOps Current Staffing Status, Mar. 31, 2015. IMG also advertised for personnel that fit the description of the key personnel on this task order. Decl. of IMG President at 4.

Invertix alleges that IMG proposed key employees that it did not intend to utilize for contract performance. Protest at 6-10. IMG responds that it recruited and qualified

each key person for the position for which they were offered, with the intent of staffing the task order with those individuals. Decl. of IMG President at 2.

An offeror's material misrepresentation in its response to a solicitation can provide a basis for disqualification and cancellation of an award based upon the response. See Custom Pak, Inc.; M-Pak, Inc., B-409308 et al., March 4, 2014, 2014 CPD ¶ 73 at 7; Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 4. In this regard, whenever an agency requests resumes as part of the submission of bids or proposals, there is a reasonable expectation that those individuals for whom resumes have been submitted are the personnel who will perform the contract. Coastal Envtl. Group, Inc., B-407563, et al., Jan. 14, 2013, 2013 CPD ¶ 30 at 5-6. An offeror may not propose to use specific personnel that it does not expect to use during contract performance, as doing so would have an adverse effect on the integrity of the competitive procurement system and generally provides a basis for proposal rejection. AdapTech Gen. Scientific, LLC, B-293867, June 4, 2004, 2004 CPD ¶ 126 at 5.

To establish an improper "bait-and-switch," a protester must generally show that the firm in question either knowingly or negligently made a misrepresentation regarding resources that it did not expect to furnish during contract performance, and that the misrepresentation was relied upon by the agency in the evaluation and had a material impact on the evaluation results. Custom Pak, Inc.; M-Pak, Inc., supra; Alamo City Eng'g Services, Inc., B-409072, B-409072.2, Jan. 16, 2014, 2014 CPD ¶ 32 at 6.

Nothing in the record here demonstrates that IMG either knowingly or negligently misrepresented the availability of its proposed key personnel. In this regard, the solicitation required the submission of resumes that included comprehensive information concerning the offered individual's security clearance. See RTOP § L.6.2.2.1.1, Resumes. The record includes a declaration from the president of IMG, as well as supporting contemporaneous emails, which indicate that prior to proposal submission, IMG verified all of the necessary qualifications and security clearance information for each of the ten proposed key personnel. Decl. of IMG President at 2-3, exh. 1-10. The record indicates that, in order to conduct its security clearance verification, IMG requested and received a Social Security number for all ten of the proposed key personnel. Id. IMG's president states that at the time of proposal submission, IMG intended to provide all 10 of the key personnel on day one of the transition. Decl. of IMG President at 3. Consistent with this position, the president of IMG further states that IMG contacted each of the ten proposed key personnel after contract award. Id. at 3-4. According to IMG, as of the time of award, 5 of the originally proposed key personnel were unavailable. Id. As for the posting of job openings, IMG's president states that this is done as "a matter of practice and precaution," in the event that proposed key personnel are not available, or for whatever reason cannot be hired, at the time of task order issuance. Decl. of IMG Pres. at 4

The protester argues that IMG's recruitment efforts after issuance of the task order and the significant number of offered key personnel not available to staff this task order demonstrated that the awardee misrepresented the availability of the ten key proposed personnel. Protest at 6-9. We disagree. The fact that IMG recruited incumbent personnel after award does not establish that the proposed personnel were unavailable to perform the contract work; it is neither unusual nor inherently improper for an awardee to recruit and hire personnel previously employed by an incumbent contractor. CACI Techs., Inc., B-408858, B-408858.2, Dec. 5, 2013, CPD ¶ 283 at 8; see PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 11 n.9; Apache Enters., Inc., B-278855.2, July 30, 1998, 98-2 CPD ¶ 53 at 5. Further, the number of substitutions of key personnel, by itself, provides no basis to sustain an allegation of bait and switch, where there is nothing in the record that indicates that the offeror proposed personnel that it did not expect to actually use during the satisfaction of the requirement. See RGI, Inc., B-243387, B-243387.2, Dec. 23, 1991, 91-2 CPD ¶ 572 at 4-5 (denying protest that awardee had engaged in a bait and switch where the successful offeror proposed substitutions for all but one of its offered personnel, where the agency found no evidence that the offeror did not expect to use the personnel proposed). As for the posting of job openings, we see nothing unreasonable in IMG's explanation that this was done as "a matter of practice and precaution," in the event that proposed key personnel were not available. See Decl. of IMG Pres. at 4. In sum, the record does not establish that IMG misrepresented its intention to staff the task order with the personnel proposed.

Past Performance

Invertix also asserts that the agency failed to consider the relative merits of its superior past performance in the best value determination, including the fact that Invertix had relevant past performance (as defined by the solicitation) and IMG did not. According to the protester, the agency improperly treated Invertix's and IMG's past performance as equal. Invertix Comments at 12-13.

Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7.

Here, the agency's consideration of past performance was reasonable and consistent with the solicitation's evaluation criteria. In this regard, the solicitation provided for the evaluation of past performance on an acceptable/unacceptable basis. That is, the solicitation provided for consideration of the quality of each

offeror's past performance for purposes of rating the offeror's past performance as acceptable or unacceptable, but did not provide for a comparison between offerors of the relative quality (or amount) of their past performance. See RTOP §§ M.3.2, M.3.3. Further, the solicitation provided that an offeror "without a record of recent and relevant past performance . . . will be . . . rated as 'Acceptable.'" RTOP § M.3.2. In these circumstances, there simply was no basis for the agency to give Invertix greater credit for its past performance.

Technical/Management

Invertix asserts that the agency unreasonably evaluated its proposal under the subfactor for TROJAN system maintenance, operation, and repair. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the proposals; rather, we will examine the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5. As explained below, we find the marginal rating for Invertix under this subfactor to be reasonable.

The solicitation provided that, under the subfactor for TROJAN system maintenance, operation, and repair, "[t]he Government will evaluate the Offeror's proposed approach to system operations stated in paragraphs 5.2 through 5.2.4.2 of the PWS." RTOP § M.2.3.1.2. As noted, the agency assessed Invertix's proposal three significant weaknesses under this subfactor. For example, the agency assessed a significant weakness for Invertix's failure to address how it planned to comply with the PWS requirement that "[t]he contractor shall develop briefings, documentation, and reports with sufficient quality and accuracy to be accepted by the government on first submission 90% of the time." PWS § 5.2.3.1; see TEB Report at 11. In this regard, the agency found that, although Invertix's proposal included a section relating to "IT System Operations Planning (PWS 5.2.3)," that section failed to address the acceptance requirement in PWS § 5.2.3.1. Suppl. AR at 16-17.

Invertix asserts that information responsive to the acceptance requirement in PWS § 5.2.3.1 can be found in the section of its proposal entitled "IT System Monitoring (PWS 5.2.1)," Invertix Proposal at 30, rather than in the proposal section addressing PWS § 5.2.3. Id. at 31. In particular, Invertix cites its discussion under PWS § 5.2.1, where it indicated that:

We provide daily briefings and status reports addressing the Trojan enterprise operational health and status. . . . Team Invertix currently provides the required daily briefings as well as monthly status reports . . . we have an established record of 100% on time and accurate.

Invertix Proposal at 30; see Invertix Comments at 7.

Agencies evaluating one section of a proposal are not required to go in search of additional information that an offer has omitted or failed to adequately present. Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558 *et al.*, Nov. 22, 2011, 2011 CPD ¶ 257 at 5. Nevertheless, while the agency does not bear the responsibility of an inadequately written proposal, the agency does not have license to ignore information in a proposal that is readily apparent. J.R. Conkey & Assocs., Inc. dba Solar Power Integrators, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 5.

Here, we need not determine whether the discussion of report acceptance in the section on page 30 of Invertix's proposal addressing PWS § 5.2.1 IT System Monitoring should have been readily apparent to the agency when it reviewed Invertix's discussion of PWS § 5.2.3 IT System Operations Planning on page 31 of its proposal. The discussion Invertix relies upon on page 30, that "we have an established record of 100% on time and accurate," does not address how Invertix will ensure that reports have "sufficient quality and accuracy to be accepted by the government on first submission 90% of the time." PWS § 5.2.3.1. A reference to the success of its prior performance in this area is not a substitute for a discussion of the offeror's proposed approach in the future. Thus, we see no basis to question the agency's evaluation of a significant weakness in this regard.

The protester also argues that its proposal was unreasonably assessed a significant weakness under the TROJAN system maintenance, operation, and repair subfactor for failure to explain how its customer support function worked. Comments on Supplemental AR at 4-5. In this regard, the PWS provided for the contractor to establish a three tier customer support model, including: Tier I, "responsible for gathering enough information so as to make a determination of priority and level of effort of the particular issue," and for resolving "straightforward, simple or recurring requests" using existing Standard Operating Procedures (SOPs) or Knowledge Base; more specialized technicians in Tier II, responsible for reviewing documentation and information previously collected about the incident and/or conducting further investigation/troubleshooting to quickly correct, address or resolve issues; and the final, Tier III subject matter experts, who are "responsible for resolving those issues which could not be addressed by Tier I and Tier II support." PWS §§ 2.1.29, 2.1.30, 2.1.31, 5.2.2. PWS § 5.2.2 further added that:

The contractor shall operate a Tier I customer service capability to provide US Army INSCOM customers a ready source of assistance and support to resolve availability issues. Technical support interacts with Tier II resources to resolve customer issues on site and Tier III resources to resolve IT issues requiring subject matter expertise.

PWS § 5.2.2.

The agency assessed a significant weakness on the basis that Invertix “does not mention how Tier I or Tier II will interact with Tier III if/when required. Tier III is not mentioned at all.” TEB Report at 11; see SSDD at 11. According to the protester, its proposal refers to Tier III support. Further, “[a]lthough the above requirement [PWS § 5.2.2] mentions interaction between Tiers I and II, and separately between Tiers I and III, there is no requirement for interaction between Tiers II and III.” Invertix Supplemental Comments at 4.

As conceded by the agency, Supplemental AR at 13, there was a single reference to Tier III support in Invertix’s proposal--“Technical Support consists of implementing our Tier 1 customer service capability and the direct support to Tier 2 and Tier 3 level network administrative expertise.” Invertix Proposal at 30. However, according to the agency, the significant weakness was focused on the agency’s finding that Invertix had failed to discuss how the three tiers of technical support would interact. Supplemental AR at 13-14. In this regard, as indicated in the agency’s evaluation, there was no specific discussion in Invertix’s proposal as to how Tier I and Tier II support would interact with Tier III support.³ Further, we find to be reasonable the agency’s position that, although the PWS contained no explicit reference to the interaction between Tiers II and III, such interaction is inherent in the operation of a hierarchical, multiple level customer support organization. See AR at 17. That is, issues that cannot be resolved at the Tier II level are elevated to Tier III, PWS § 2.1.31, and such a tiered system of technical support is fundamentally unworkable, if Tier II support personnel do not interact with Tier III personnel. See North Am. Military Housing, LLC, B-289604, Mar. 20, 2002, 2002 CPD ¶ 69 at 5 (in evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria).

The protester also asserts that the agency unreasonably assigned its proposal a weakness under the TROJAN system maintenance, operation, and repair subfactor for failure to guarantee 95% accuracy of the data fields in Remedy, the agency’s trouble ticketing database. Invertix Comments at 10, citing TEB Consensus Report at 11. In this regard, taken together, PWS §§ 5.2.1.2 and 5.2.1.7 imposed three different performance metrics in this area: (i) timely respond to call center calls within performance standards 98% of the time; (ii) timely and accurately resolve call center calls within performance standards 95% of the time; and (iii) ensure that “95% of the data fields in each record within the TROJAN trouble ticketing database

(Remedy) shall be correct,” PWS § 5.2.1.7. The disputed language in Invertix’s proposal provided that:

³ Invertix points out that its proposal indicated that “[DELETED].” Invertix Proposal at 30; see Invertix Comments at 9. As found by the agency, however, this language does not explain how Tier I and Tier II support would interact with Tier III support.

Team Invertix provides timely responses to the need of the TROJAN user/agency requirements. The TNOC's call center is the first entry point for Tier 1 when a user has a problem--open and track Remedy trouble tickets to ensure proper accountability of all TNOC actions and the trouble tickets' data quality is accurate, current and complete [DELETED]. We are committed to rapid response (in accordance with the performance standard in the QCP of 98% response rate--95% of the time) and Data Quality (95%) in all aspects of trouble ticket handling. To achieve high first call resolution rates with the [DELETED] paradigm we implement strict [DELETED] that identify [DELETED].

Invertix's Proposal at 30 (emphasis added). According to the agency, Invertix's reference to "Data Quality (95%)" refers to the accuracy of call center responses, not the accuracy of Remedy data fields. Suppl. AR at 15.

We agree with the protester that the agency's reading of this language is unreasonable. See Invertix Suppl. Comments at 3-4. In our view, the agency's reading of the proposal--that Invertix committed only to 95% accuracy of call center responses but not to Remedy data field quality--is not supported by a plain reading of the proposal. Invertix in its proposal had already committed to a timely response ("98%") and resolution ("95%") of call center calls, such that its subsequent reference to "Data Quality (95%) in all aspects of trouble ticket handling" can most reasonably be read only to refer to the PWS § 5.2.1.7 requirement that "95% of the data fields in each record within the TROJAN trouble ticketing database (Remedy) shall be correct," PWS § 5.2.1.7.

Prejudice, however, is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. Colonial Storage Co.--Recon., B-253501.8, May 31, 1994, 94-1 CPD ¶ 335. Here, our review of the protester's challenges to the evaluation under the technical/management factor furnishes no basis to question the overall evaluation results under that factor. In this regard, as discussed above, we agree with the protester that one of the weaknesses assigned to Invertix's proposal under the TROJAN system maintenance, operation, and repair subfactor was unreasonable. However, Invertix's marginal rating under that subfactor was based on 3 significant weaknesses, 3 weaknesses, and only 3 strengths. (In contrast, IMG's proposal was rated good under that subfactor based on 1 significant strength, 3 strengths and 3 weaknesses.) TEB Report at 1. There simply is no basis for concluding that removing 1 of Invertix's 3 weaknesses, or even also downgrading the significant weakness (one of three) regarding Invertix's approach to the three tier customer support function to a weakness, would raise its evaluation to an acceptable level. In sum, none of Invertix's challenges to the evaluation furnish a basis to question IMG's superiority under the

technical/management factor, where its proposal received an overall rating of good versus Invertix's rating of marginal. Since IMG also offered a lower price and, as defined by the solicitation, the same acceptable past performance rating as Invertix, the selection of IMG's proposal clearly was reasonable.

The protest is denied.

Susan A. Poling
General Counsel