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Decision

Matter of: n-Link/LSG Joint Venture

File: B-411352; B-411352.2

Date: July 1, 2015

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Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's proposal is denied where record shows agency's evaluation was reasonable and consistent with the terms of the solicitation, as well as applicable statutes and regulations.

DECISION

n-Link/LSG Joint Venture, of Bend, Oregon, protests the issuance of a task order to enGenius Consulting Group, Inc. (ECG), of Huntsville, Alabama, under request for proposals (RFP) No. W911S0-15-R-DTFM, issued by the Department of the Army for digital training facility management services. n-Link maintains that the agency misevaluated ECG's proposal.

We deny the protest.

BACKGROUND

The RFP contemplates the issuance of a fixed-price task order to provide management support services at 190 digital training facilities (DTFs) located worldwide to the firm submitting the low-priced, technically-acceptable proposal,

considering technical approach, past performance and price.¹ RFP at 10. The RFP required offerors to provide all personnel necessary to perform the requirement; this included a number of DTF managers (DTFMs) and program management personnel. Offerors were required to identify the labor categories and rates to be paid to all proposed personnel. Proposed workers covered by the Service Contract Act (SCA) were to be paid in accordance with the Department of Labor (DOL) SCA wage rate determinations applicable where the employees would be located. RFP at 3. The RFP included a list of the locations where the agency maintained DTFs within the United States, and referenced the SCA wage determinations that would apply for each of those locations. RFP, attach. 4.

In response to the solicitation, the agency received a number of proposals, including those of the protester and awardee. The agency evaluated initial proposals, established a competitive range comprised of the protester and the awardee, and engaged in several rounds of discussions. Contracting Officer's Statement at 2. After concluding discussions, the agency solicited and obtained final proposal revisions (FPRs). The agency evaluated the FPRs and both proposals were found to be technically acceptable. The task order was awarded to ECG, whose price of \$16,229,183 was lower than n-Link's price of \$17,606,891. This protest followed.

PROTEST

n-Link argues that the agency erred in finding ECG's proposal technically acceptable. We have considered all of n-Link's allegations and find none provide a basis to sustain the protest. We discuss n-Link's principal allegations below, but note at the outset that, in reviewing protests concerning an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2.

ECG's Proposed DTFM Labor Category

n-Link asserts that the agency should have found ECG's proposal technically unacceptable based on the labor category the firm proposed for its DTFMs. In this connection, the record shows that, in its FPR, ECG proposed to use the SCA labor

¹ The RFP contemplates a competition among contractors that hold indefinite-delivery, indefinite-quantity (IDIQ) contracts under the General Services Administration's Alliant small business government-wide acquisition center multiple-award IDIQ contract program. As the value of the task order here exceeds \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

category of Computer Operator I. Agency Report (AR) exh. 12, ECG Technical Proposal, at 6-11. The DOL definition of this position is as follows:

14041 Computer Operator I – The computer operator I works under close personal supervision and is provided written or oral guidance before and during assignments. As instructed, this worker resolves common operating problems and may serve as an assistant operator working under close supervision or performing a portion of a more senior operator's work.

SCA Directory of Occupations, 5th Edition, at 51.² According to n-Link, ECG did not propose supervisory personnel that would be adequate to provide the close personal supervision contemplated by this labor category definition, and ECG's DTFMs would not be given the written or oral guidance it contemplated.

Based on our review of the record we have no basis to sustain this protest allegation. As an initial matter, the record shows that both n-Link and ECG intended to perform the requirement with essentially identical staffing profiles. The protester offered to perform using a program manager, an assistant program manager who also would fulfill the role of quality control manager, [deleted], and 77 full time equivalent DTFMs. Supplemental Agency Report (SAR), exh. 4, n-Link Technical Proposal, at 5, 33-39. Similarly, ECG proposed to perform the requirement using a program manager, an alternate program manager who also would fulfill the role of quality control manager, four regional managers and 77 full time equivalent DTFMs. AR, exh. 12, ECG Technical Proposal, Section 2 at 2; Section 4 at 6-11. The record therefore shows that both firms proposed largely the same number of managers to supervise their proposed DTFMs.

The record also shows that both firms proposed not only similar staffing profiles, but also proposed to use mostly the same individuals to perform the requirement. The protester, the incumbent contractor, proposed to use its existing staff to perform the requirement. SAR, exh. 4, n-Link Technical Proposal, at 2. ECG proposed to recruit the entire incumbent staff, with a specific goal of recruiting at least 90 percent of them, and also represented that, in the past, the firm had been successful at recruiting up to 100 percent of incumbent staff. AR, exh. 12, ECG Technical Proposal, Section 4 at 1.³

² The SCA Directory of Occupations may be found at: <http://www.dol.gov/whd/regs/compliance/wage/SCADirV5/SCADirectVers5.pdf>

³ The intervenor also correctly notes that, under the terms of the SCA, ECG is legally required to offer existing covered employees a right of first refusal. See 29 C.F.R. §§ 9.2, 9.12; Federal Acquisition Regulation § 22.1202.

Third, and most important, the record shows that the identification of a particular labor category by each offeror largely was a matter of form over substance. In this connection, the record shows that ECG originally proposed the SCA labor category of General Clerk II in response to the RFP. AR, exh. 12, ECG Technical Proposal, Staffing Plan, at 7-11. n-Link, the incumbent contractor, originally proposed the SCA labor category of General Clerk I, but noted in response to a discussion question that it was using the SCA labor category of General Clerk II under the predecessor contract. AR, exh. 6, n-Link response to Evaluation Notice 1 at 1. The firm provided the following statement in that same discussion response:

n-Link was recently notified that the Department of Labor is conducting an audit to determine whether the DTFM position has been properly classified under the SCA. At the conclusion of the audit, the Department of Labor will provide a determination of the SCA labor category that applies to the DTFM position.

For our [initial] price proposal, we mapped the DTFM position to the General Clerk I SCA labor category

* * * * *

Because we cannot be sure the Department of Labor will agree with the General Clerk I SCA classification, we are providing four versions of our price proposal, each showing a different potential SCA labor category. The Department of Labor may decide to apply a labor category other than the four we chose. The labor category classifications we chose are:

- General Clerk I
- General Clerk II
- Computer Operator II
- Personal Computer Support Technician

We will wait for further instruction from the Contracting Officer as we work through the investigation with Ms. [A] from the Department of Labor. Per Ms. [A's] investigation to date, the Personal Computer Support Technician is the recommended labor category based on her investigation of the Ft. Carson DTFM's duties.

Id. at 2-3 (emphasis supplied).

After receiving n-Link's proposal that included four different pricing proposals (each using a different SCA wage rate category), the agency asked n-Link to clarify which

of its pricing sheets constituted its proposal. In response, n-Link initially advised the agency that it was using the General Clerk I labor category. AR, exh. 7, n-Link Response to Evaluation Notice 2, at 2. n-Link stated that it was working with DOL to obtain that agency's consent to use the General Clerk I labor category, but if it was unable to obtain DOL's concurrence, it would require a contract modification after award of the task order. Id. After being informed by the agency that there would be no basis to modify the contract based on n-Link's selection of a labor category, the firm then advised the agency that, after consultation with DOL's representative, it would use the SCA labor category of Personal Computer Support Technician in its proposal, but also stated that, in the event DOL agreed with the firm during the "conformance process" that General Clerk I was an appropriate labor category, it would provide the agency with a voluntary price reduction.⁴ Id. at 1.

After these discussions took place, the agency issued an amendment to the RFP. In that amendment, the agency advised offerors that it did not consider any of the General Clerk occupational codes appropriate for contract performance. AR, exh. 8, RFP Amendment No. 3, at 3. The record shows that, in response to that amendment, n-Link proposed to use the Video Teleconference Technician SCA labor category, AR, exh. 15, n-Link Final Pricing Proposal, and ECG proposed to use the Computer Operator I SCA labor category. AR, exh. 14, ECG Response to Amendment No. 3.

As the discussion above demonstrates, both offerors essentially proposed the same staffing profile, as well as essentially the same people, to fulfill the agency's requirement for DTFMs. In addition, it is clear from the record that neither offeror intended to convey meaningful information about the qualifications or skills of their proposed DTFMs by identifying a particular SCA labor category. This is illustrated by the fact that n-Link proposed no fewer than six different SCA labor categories during the course of the acquisition even though, at all times, it was offering the same personnel and staffing plan to perform the requirement.⁵ This point is further

⁴ We assume that, in using the phrase "conformance process", n-Link was referring to the "conforming procedure," a process designed to obtain DOL's binding views on the proper labor category to be used to perform any given requirement. See Federal Acquisition Regulation (FAR) § 22.1019; see also, 29 C.F.R. § 4.6; PacOrd, Inc., B-253690, Oct. 8, 1993, 93-2 CPD ¶ 211 at 9.

⁵ The protester suggests that the awardee obtained an unfair competitive advantage based on the agency's acceptance of its final proposal to use the Computer Operator I labor category because the rates for that category are, in some instances, lower than the rates for the Video Teleconference Technician labor category. However, n-Link's actions in proposing these six different labor categories demonstrate that the firm did not believe either the RFP or the actions of the agency during discussions dictated that it use any particular labor category. In fact, the record shows that n-Link's use of the Video Teleconference Technician

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illustrated by the fact that ECG at all times proposed to perform the requirement using the General Clerk II labor category (the same labor category being used by n-Link to perform the predecessor contract) and only changed its proposed labor category in direct response to the agency's amendment of the RFP eliminating the General Clerk labor categories.

The record also is clear that the offerors' selection of one or another SCA labor category did not have any bearing on the agency's conclusion about the technical acceptability of either firm's proposal. As noted, originally n-Link proposed the General Clerk I labor category (even though it had been performing the requirement using the General Clerk II labor category), and ECG proposed to use the General Clerk II labor category. The agency found both proposals technically acceptable, AR, exh. 17, Source Selection Decision Document (SSDD), at 3, even though the firms proposed to use different SCA labor categories, and even though, ultimately, the agency amended the RFP to preclude use of any of the General Clerk labor categories.

In the final analysis, we have no basis to conclude that the agency acted unreasonably in finding the ECG proposal technically acceptable based on the firm's identification of the Computer Operator I labor category. The record demonstrates that neither offeror intended to convey substantive information about the qualifications of the personnel that would perform the requirement by their respective identification of a particular SCA labor category. In addition, the record shows that DOL actively is engaged in determining which SCA labor category is most appropriate for the DTFMs and, ultimately, DOL, rather than either of the offerors, will make a dispositive determination.⁶ In light of the foregoing considerations, we deny this aspect of n-Link's protest.⁷

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labor category was based on advice it received from a private consultant the firm had retained to advise it on the best labor category to propose. AR, exh. 10, E-Mail from n-Link to the Contracting Officer Transmitting a Letter from n-Link's Consultant. Ultimately, therefore, the record shows that n-Link's decision to propose the Video Teleconference Technician labor category was a matter of the firm's business judgment rather than any response it may have had to action on the part of the agency.

⁶ As noted, throughout the acquisition process, n-Link advised the agency of an ongoing DOL investigation regarding the appropriate SCA labor category for the DTFMs. AR, exhs. 6 and 7, n-Link Discussion Responses.

⁷ n-Link also suggests that the RFP precluded offerors from proposing information technology workforce positions, and that ECG's proposal of the Computer Operator I labor category violated this RFP requirement. In this connection, the performance work statement provided as follows:

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ECG's Program Manager

n-Link also argues that the agency should have found ECG's proposal unacceptable because it offered to have its program manager available at times that were at variance with the RFP's requirements. In this connection, the RFP provided that the program manager (or alternate) was to be available between 8:00 a.m. and 5:00 p.m., Eastern Standard Time or Eastern Daylight Savings Time. Performance Work Statement at 6. The RFP also required the program manager to be available to meet with the government within 15 minutes of the government's request during normal business hours, and within two hours during other times. Id.

ECG's proposal stated that its key personnel (which includes its program manager) would be available for interaction with the government from 8:00 a.m. to 4:30 p.m. Eastern Standard Time on normal business days. AR, exh. 12, ECG Proposal, Project Management Plan, at 8. n-Link maintains that this should have caused the agency to reject ECG's proposal as technically unacceptable.

The agency's source selection evaluation board (SSEB) chairman explains that the intent of the RFP requirement specifying the hours of availability (8:00 a.m. to 5:00 p.m.) was to ensure that the contractor made its program manager available for a 40-hour work week, and the agency found both offerors to have met this requirement. Declaration of the SSEB Chairman at 1. We find the agency's conclusion reasonable.

As noted above, although the hours specified in ECG's proposal varied from the hours specified in the RFP, nonetheless, the program manager is available for 40 hours per week. As for the n-Link proposal, the record shows that n-Link did not

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The DTFMs are not Information Technology (IT) workforce positions and do not require Information Assurance (IA) certification as defined in DoD 8570.01. All Contractor personnel shall complete a NACI personnel security investigation resulting in a favorable review.

Performance Work Statement at 4. The agency explains that the purpose of this provision was to advise offerors that the proposed personnel would not be required to have information assurance certifications as defined in the cited order. We find nothing in the quoted language above that would preclude an offeror from proposing an information technology SCA labor category, and the record shows that n-Link apparently did not read this language as precluding it from proposing an information technology SCA labor category. As the record shows, two of the numerous labor categories n-Link proposed--Computer Operator II and Personal Computer Support Technician--were information technology SCA labor categories.

specify the hours of availability for its program manager, but simply stated, without elaboration: “Our team will work within a 40-hour work week and Federal and State Labor laws.” SAR, exh. 4, n-Link Technical Proposal, at 13. Although it is not apparent from the terms of the n-Link proposal that its program manager would be available during the hours specified in the RFP, the agency concluded that the proposal’s representation satisfied its intended requirement that the program manager be available for a 40-hour work week. In sum, the record shows that the agency reasonably determined that both proposals satisfied the underlying requirement of the RFP for the offerors’ program managers to be available for a 40-hour work week.

The agency also explains that neither offeror affirmatively represented that its program manager would be available within 15 minutes of the government’s request during normal business hours, and within two hours during other times, but that the agency did not view this discrepancy as a basis to find either proposal technically unacceptable. Declaration of the SSEB Chairman at 1. Our review of the record confirms the agency’s statement that neither offeror made an affirmative representation concerning this RFP requirement, and in view of this fact, we have no basis to object to this aspect of the agency’s evaluation.⁸

Recruiting Outside of the Continental United States

n-Link argues that ECG failed adequately to describe its plan for recruiting DTFMs outside of the continental United States (OCONUS). In this connection, the RFP instructed offerors to address how OCONUS personnel would be recruited. RFP at 4. n-Link asserts that ECG’s alleged failure in this regard should have rendered its proposal technically unacceptable.

We find no merit to this aspect of n-Link’s protest. As discussed above, the record shows that ECG’s overall staffing plan involves recruiting and retaining at least 90 percent of the incumbent workforce, including those personnel located OCONUS.

⁸ n-Link asserts that its proposal actually did affirmatively represent that its program manager would be available within the parameters specified in response to a government request. The protester directs our attention to section 2.9.2 of its proposal. That section includes a table that uses the phrase “Upon Request by Government,” but the phrase is used only in connection with two specific types of meetings, periodic process meetings and contract modification meetings. (With respect to the contract modification meetings the table lists only the n-Link contracts administrator, but not the firm’s program manager, as being available upon request by the government.) These vague references cannot reasonably be construed to convey an affirmative commitment by n-Link regarding the availability of its program manager within the parameters specified in the RFP.

AR, exh. 12, ECG Proposal, Staffing Plan, at 1-2. The ECG proposal also specifically describes how the firm intends to leverage the OCONUS recruiting success of one of its subcontractors, SAIC. ECG's proposal provides:

In support of this, we committed 100% of our OCONUS DTF facility support to our subcontract company, SAIC. [In] their 46-year existence, SAIC has extensive OCONUS recruiting and management experience from transition through full execution. Indicative of their experience was their performance on a similar overseas contract supporting CENTCOM. SAIC rapidly transitioned 11 deployed incumbents requiring Top Secret/Sensitive Compartmented Information (TS/SCI) clearances. Each incumbent candidate was interviewed, offered employment, and attended a virtual orientation, never leaving their assigned countries. This approach meant no travel costs and a smooth transition from the incumbent to the team with no adverse effect on the mission. Their long history of OCONUS project management experience leverages a near exact science of effectively designing and implementing recruiting and management procedures and functions specific to all OCONUS contract/program requirements.

Id. at 2-3. The agency states that it relied on these representations to conclude that ECG had a technically acceptable approach to its OCONUS recruitment. Declaration of the SSEB Chairman at 2. Although n-Link maintains that it was unreasonable for the agency to have relied on these representations as adequate, its position amounts to no more than mere disagreement with the agency; such disagreement, without more, is inadequate to show that the agency's evaluation was unreasonable. Herman Constr. Group, Inc., B-408018.2, B-408018.3, May 31, 2013, 2013 CPD ¶ 139 at 3.

The protest is denied.

Susan A. Poling
General Counsel