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Decision

Matter of: Wyle Laboratories, Inc.

File: B-412964; B-412964.3

Date: May 27, 2016

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DIGEST

Protest is denied where the agency reasonably rejected the protester's proposal as unacceptable because it failed to demonstrate compliance with a material solicitation requirement.

DECISION

Wyle Laboratories, Inc. (Wyle), of El Segundo, California, protests the issuance of a task order to Booz Allen Hamilton, of McLean, Virginia, under request for task order proposals (RFTOP) No. N00024-14-R-3370, issued by the Department of the Navy, Naval Air Command (NAVAIR), for engineering knowledge based services for the F-35 Joint Program Office. The protester challenges the agency evaluation of the protester's and awardee's proposals.

We deny the protest in part and dismiss it in part.

BACKGROUND

The F-35 Joint Lightning II Program is a joint, multi-national program and is the Department of Defense's (DoD) focal point for defining affordable next generation strike aircraft weapon systems among the United States Air Force, Navy, Marine Corps, and allies composed of eight cooperative international partners and

three foreign military sales (FMS) customers.¹ RFTOP § C.2. The F-35 program objective is to develop and deploy a three variant family of strike fighter aircraft that affordably meets the needs of the various military departments and U.S. allies. RFTOP §§ C.2, C.2.1. As the solicitation here provides, the F-35 program mission is “extremely complex” and “subject to unpredictable variations in the level of effort (LOE) required.” RFTOP § C.2.1. With an estimated acquisition cost of nearly \$400 billion, the F-35 Joint Strike Fighter is DoD’s most costly acquisition program and is classified as a DoD Acquisition Category 1D program. RFTOP § C.2; Protest at 4.

The F-35 Joint Program Office supports the F-35 program and consists of more than 2,000 personnel, including U.S. military and civilian personnel, partner nation military and civilian personnel, and DoD support contractors. RFTOP §§ C.2.1, C.2.1.1; Protest at 5. In particular, support contractors are integrated into the F-35 Joint Program Office, filling defined staff positions. The protester explains that many support contractors, including Wyle employees, “are the sole source of specific acquisition, engineering, or logistics capabilities within the [Joint Program Office].” Protest at 5.

On January 7, 2015, the agency issued the subject solicitation for a cost-plus-fixed-fee level-of-effort task order under the Seaport-e Multiple Award Zone 2 (National Capital Zone) indefinite-delivery, indefinite-quantity (IDIQ) contract.² Contracting Officer’s (CO) Statement, May 6, 2016, at 1-2; RFTOP §§ G, L.1.1, L.1.3. The solicitation provided for a period of performance of one base year and four option years. RFTOP § B. The solicitation contemplated an array of engineering knowledge based services to support the F-35 Joint Program Office in four core task areas: (1) program management support; (2) systems engineering and technical support; (3) engineering, technical, and analytical support to the integrated product and functional teams; and (4) FMS technical and engineering support. RFTOP § C.4.

The solicitation anticipated award on a best-value basis. RFTOP § M.1. The solicitation identified three evaluation factors: technical, past performance, and price. Id. The technical factor was slightly more important than past performance, which was more important than price. RFTOP § M.1.1. The technical factor included three subfactors, in descending order of importance: workforce, understanding the work, and management plan. Id. Of relevance here is the

¹ The eight cooperative international partners are: the United Kingdom, Italy, the Netherlands, Turkey, Canada, Australia, Denmark, and Norway. RFTOP § C.2. The FMS customers are: Israel, Japan, and South Korea. Id.

² The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

agency's evaluation of Wyle's proposal under the workforce technical subfactor, which provides as follows:

The Government will evaluate personnel and the supporting information to determine how well the team is suited to perform the tasks under the [statement of work]. In addition, personnel will be evaluated on labor qualifications, including education, experience, and security clearance levels, that the offeror proposes to utilize in the performance of this effort.

RFTOP § M.2.1.

In connection with the workforce subfactor, subsection L.2.1.3 of the solicitation instructed offerors to provide resumes for proposed key personnel containing the following information:

2.1.3 KEY PERSONNEL RESUMES

2.1.3.1 For any proposed Key Personnel provide a resume of the work assignments, training, etc., that demonstrates the experience and specialized qualifications of each key person proposed.

Resumes shall contain, at a minimum, the following information:

- Employee name
- Years of employment experience including narrative description of duties and responsibilities
- Current position, title and employer
- Educational history
- Institution name, degree or certification earned, and year for all degrees or certifications earned
- Current level of security clearance and status (final, interim, or pending).

2.1.3.2 The Government may check educational background to verify degrees or certifications received.

RFTOP § L.2.1.3 (emphasis in original). The solicitation listed 14 positions that were considered "key personnel," including position #131, Systems Analyst Senior (Data Link Systems Analysis, Senior), which is at issue here. RFTOP § L.2.1.2.1.1. Subsection L.2.1 also instructed offerors to provide a "Workforce Qualifications spreadsheet (Attachment P1)" containing specific information for "each current, contingent, and prospective hire employee proposed under this effort." RFTOP §§ 2.1.1, 2.1.1.2.

The format for Attachment P1 is reflected as follows:

Ref #	Position Description/Labor Category	Employing Company	Employee Status	Type of Degree Earned, Field of Study, and Concentration	If applicable, List Second Degree Earned, Field of Study and Concentration	Current Security Clearance Level	SOW Functional Area to be Supported
1	Program Manager						
Description of Qualifications Relevant to Functional Area							

RFTOP § L.2.1.1 & Attach. P1. Offerors were required to provide this information for all 173 labor categories or full-time equivalents (FTEs) specified in the solicitation, including the 14 key personnel. RFTOP, Attach. P1; Attach. 18, “FOUO Labor Category Qualifications.”

The requirements in subsection L.2.1.3, pertaining to the resumes for the 14 key personnel, and the requirements in subsection L.2.1.1, pertaining to Attachment P1, do not reference each other. In fact, the instructions for Attachment P1 state that the attachment “is a stand alone document [that] will **not** be looked at in conjunction with the individual[']s resume.” RFTOP, Attach. P1, Mandatory Instructions (emphasis in original). Accordingly, the requirement to provide resumes for key personnel and the requirement to provide information related to the fields specified on Attachment P1 were separate and distinct.

Section L of the solicitation alerted offerors that “[p]roposals that do not comply with these instructions may be considered deficient and may render the offeror ineligible for award.” RFTOP § L.1.10.1. Section M of the solicitation further cautioned offerors that “[f]ailure to address each of the areas identified in Section L will impact the resulting evaluation ratings and a deficiency or lack of responses to factors and/or sub[]factors may be used as a basis for eliminating a proposal from further consideration.” RFTOP § M.1.1. The solicitation defined a “[d]eficiency” as “a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” RFTOP § M.5.4.1 (citing Federal Acquisition Regulation (FAR) § 15.001).

With respect to evaluation ratings, the solicitation provided that each technical subfactor would be assigned one of the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. RFTOP §§ M.5.1, M.5.2. Relevant here, a rating of “Unacceptable” was defined as “[p]roposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.” RFTOP § M.5.2.

The agency received four timely offers, including offers from Wyle and the awardee, Booz Allen Hamilton (BAH). CO Statement at 2, 25. The agency conducted two rounds of discussions with all offerors. Id. at 3, 4. Final revised proposals (FRPs) were due on November 19. Id. at 4. Both Wyle and BAH submitted FRPs.

In its final technical proposal, Wyle provided a resume for Ms. [DELETED], a current Wyle employee, for position #131. Agency Report (AR), Exh. 7, Wyle Technical Proposal (excerpt), [DELETED] Resume. In Attachment P1 of its technical proposal, Wyle provided information for an unnamed candidate for position #131, who was a contingent employee with academic credentials that differed from those listed in Ms. [DELETED]'s resume. AR, Exh. 5, Wyle Technical Proposal (excerpt), Attach. P1. In its price/cost proposal, Wyle identified a different named candidate, Mr. [DELETED], for the position and included a letter of intent signed by Mr. [DELETED].³ Protest, Exh. 3, Wyle Price/Cost Proposal, at 8, E-11.

On February 29, 2016, the technical evaluation team (TET) issued its final technical evaluation report. AR, Exh. 8, Final Technical Report, at 2. The TET rated Wyle's technical proposal as "Unacceptable" because it determined that the proposal "does not meet requirements and contains one or more deficiencies," and, therefore, "is un-awardable." Id. Specifically, under the workforce subfactor, the TET could not decipher which candidate Wyle proposed for position #131. Id. at 2-3. The TET's evaluation report explained as follows:

One of the deficiencies is that the technical team cannot decipher who will be performing Key Position [Labor Category] #131 In the Technical Volume, Attachment P2, under Key personnel resumes, the resume provided against [Labor Category (LCAT)] #131 is for Ms. [DELETED]. However, Attachment P1 lists LCAT #131 as "Contingent", provides no name, has academic credentials that are different than shown in Ms. [DELETED]'s resume, but includes identical security clearance date. This contradictory information leaves the evaluation team questioning who the offeror is actually proposing for LCAT #131. As this is a Key Position requiring a valid resume, valid security clearance information to determine [Special Access Required] eligibility and a commitment to hire this individual for a minimum of 6 months as "key" staff, the proposal is seen as "materially deficient." We do not know who the offeror is proposing, Ms. [DELETED] or Mr. [DELETED], therefore the proposal is unacceptable.

³ The letter of intent does not refer to position #131 or any other labor category. Protest, Exh. 3, Wyle Price/Cost Proposal, at E-11.

AR, Exh. 8, Final Technical Report, at 2-3. The TET concluded that “[t]he offeror’s failure to provide the necessary information for evaluation makes this a material failure of the proposal” and the proposal “is un-awardable.” Id. at 2, 3, 14. The Source Selection Evaluation Board (SSEB) and the source selection authority (SSA) both concurred with the findings of the TET in this respect.⁴ AR, Exh. 9, SSEB Report, at 8; Exh. 10, SSA Decision, at 2-3.

The final evaluation results for Wyle and BAH are summarized as follows:

EVALUATION CRITERIA	BAH	WYLE
I. Technical	Good	Unacceptable
A. Workforce	Good	Unacceptable
B. Understanding the Work	Good	Good
C. Management Plan	Good	Acceptable
II. Past Performance	Satisfactory Confidence	Satisfactory Confidence
III. Price		
Evaluated Cost (Most Probable Cost Exclusive of Option to Extend Services)	\$141,185,415	\$166,717,603
Evaluated Cost (Most Probable Cost Inclusive of Option to Extend Services)	\$155,864,762	\$184,054,721
Proposed Cost	\$141,084,130	\$166,578,562

AR, Exh. 9, SSEB Report, at 3-4. On April 4, 2016, the agency issued the task order to BAH. CO Statement at 5.

Wyle requested a debriefing, which occurred on April 8. Id. With respect to the deficiency pertaining to position #131, the agency provided the following explanation:

The offeror’s proposed candidate for the Reference #131 (Key Position) does NOT meet the RFP Requirement. Specifically, the information that the offeror submitted for the proposed candidate is inconsistent between the different documents – Attachment P1, P5 and the Resume do not match (2 different names mentioned; the security clearance dates for both happen[] to be the same date)[.]

⁴ The SSEB, in its trade-off analysis, also noted that in Wyle’s price/cost proposal, Wyle identified a different individual, Mr. [DELETED], for position #131. AR, Exh. 9, SSEB Report, at 8.

[T]herefore the evaluation team was unable to know who the offeror was proposing for the KEY position. The offeror's failure to provide the necessary information for evaluation makes this a material failure of the proposal.

Protest, Exh. 1, Debriefing Slide 14. Wyle filed a protest with our Office on April 13.

DECISION

Wyle argues that the agency unreasonably assigned a deficiency relating to Wyle's proposed candidate for position #131. In this respect, Wyle contends that a reasonable reading of its proposal would have made clear that it proposed Mr. [DELETED] for position #131. Wyle contends that, to the extent the agency had any doubt regarding the identity of the proposed candidate, the agency should have asked Wyle for clarification. Finally, Wyle argues that its proposal contained "all the information" the agency needed to evaluate its proposed candidate. Protest at 20. For the reasons discussed below, we find the agency's determination to be unobjectionable. Although we do not specifically address all of Wyle's arguments with respect to the agency's assessment of the deficiency pertaining to position #131, we have fully considered them and find that they afford no basis upon which to sustain the protest.⁵

In reviewing protests challenging an agency's evaluation of proposals, even in a task order competition as here, we do not reevaluate proposals, but rather we examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Paradigm Technologies, Inc., B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257 at 6. It is a fundamental principle in a negotiated

⁵ Wyle also challenged numerous other aspects of the agency's technical, past performance, and price evaluations, including the agency's: (1) assessment of two additional deficiencies under the workforce technical subfactor; (2) failure to credit strengths in Wyle's proposal under the workforce technical subfactor; (3) unequal treatment of offerors under the workforce technical subfactor; (4) failure to rate Wyle's proposal as "Outstanding" under the understanding the work technical subfactor; (5) failure to evaluate past performance in accordance with the terms of the solicitation; (6) failure to conduct a reasonable cost evaluation; and (7) unequal and misleading discussions with respect to price/cost. Wyle argues that these alleged errors rendered the agency's best-value decision unreasonable. Because we find that the agency reasonably determined Wyle to be ineligible for award on the basis of the deficiency relating to position #131, Wyle is not an interested party with respect to its remaining protest grounds. Rotech Healthcare, Inc., B-409020, B-409020.2, Jan. 10, 2014, 2014 CPD ¶ 28 at 5. Thus, we dismiss these grounds.

procurement that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. Id.

Wyle concedes that it “made a mistake in compiling its proposal.” Protest at 24. Wyle represents that it “should not have included Ms. [DELETED]’s resume” because it intended to propose Mr. [DELETED] for position #131.⁶ Id. at 20, 21, 24. Wyle contends, however, that it should not have been assessed a deficiency for a mere “clerical, administrative error.” Id. at 20. Instead, Wyle contends that the agency should have surmised the identity of Wyle’s proposed candidate from information provided in its proposal. Id. at 21-24. In particular, Wyle explains that it identified Mr. [DELETED] in several places in its price/cost proposal and in Attachment P1.⁷ Id. at 22-25; Wyle Opp’n to Req. for Dismissal, Apr. 28, 2016, at 3.

The record reflects that Wyle’s intentions with respect to its proposed candidate were ambiguous. Although Wyle contends that the “repeated references to Mr. [DELETED] throughout Wyle’s proposal should have left no doubt that he was the intended candidate,” Wyle Opp’n to Req. for Dismissal at 5 n.2, the fact remains that in its technical proposal, Wyle provided a resume for Ms. [DELETED] for position #131. To the extent Wyle attempts to shift the burden to the agency to decipher the conflicting information in its proposal, it is well-established that offerors are responsible for submitting a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. DKW Communications, Inc., B-411853.2 et al., Jan. 8, 2016, 2016 CPD ¶ 17 at 5.

⁶ Wyle appears to have made a similar error in its initial proposal. Protest at 25 n.6 (“In Wyle’s original Proposal, it identified both Mr. [DELETED] and Ms. [DELETED] in its Cost/Price Volume.”). Wyle also states that it included Mr. [DELETED]’s resume in its initial proposal. Wyle Comments, May 13, 2016, at 3. In discussions, the agency asked Wyle to clarify its proposed candidate, which Wyle clarified to be Mr. [DELETED]. Id. Despite this clarification, Mr. [DELETED]’s resume was not included in the FRP. To the extent Wyle argues that the agency should have known which candidate Wyle proposed from these prior discussions, Protest at 25, the solicitation expressly provided that the agency would not evaluate prior versions of proposals and changed pages submitted in response to evaluation notices. RFTOP Amend. 7 at 2 (“[A]ny and all information previously submitted to the Government in response to [evaluation notices] but not incorporated into the [final proposal revisions (FPR)] will be considered as an omission to the FPR and will not be considered in FPR review.”).

⁷ Although Wyle may have included information regarding Mr. [DELETED]’s qualifications, degrees, employment status, etc., in Attachment P1, Mr. [DELETED] is not identified by name in Attachment P1. AR, Exh. 5, Wyle Technical Proposal (excerpt), Attach. P1.

Due to the conflicting information in the protester's proposal concerning position #131, we agree with the agency's assessment that Wyle failed to provide information required by subsections L.2.1.3, and L.2.1.1 of the solicitation, namely it failed to unambiguously identify a single, proposed candidate for a key position. The solicitation cautioned offerors that "[f]ailure to address each of the areas identified in Section L will impact the resulting evaluation ratings and a deficiency or lack of responses to factors and/or sub factors may be used as a basis for eliminating a proposal from further consideration." RFTOP § M.1.1. See also RFTOP § M.5.4.1 (defining "[d]eficiency" as "a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level."). Accordingly, we find the agency reasonably assessed Wyle's proposal a deficiency under the workforce subfactor, and thus, properly determined Wyle's proposal to be ineligible for award.

Furthermore, even assuming for the sake of argument that the agency had been able to discern from Wyle's proposal that Mr. [DELETED] was the intended candidate for position #131, Wyle failed to comply with a material requirement of the solicitation by not including Mr. [DELETED]'s resume. See Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 8 ("When a solicitation requires resumes for key personnel, these form a material requirement of the solicitation."). It is undisputed that Mr. [DELETED]'s resume was not included in Wyle's FRP. Thus, the agency properly determined Wyle to be ineligible for award. RFTOP § M.1.1 (failure to address each area in section L could result in a deficiency); § L.1.10.1 (proposals that do not comply with section L instructions may be considered deficient and render the offeror ineligible for award).⁸

Because the requirement for key personnel resumes was a material solicitation term, Wyle's second argument, that the agency could have asked Wyle for clarification regarding its proposed candidate for position #131, is not persuasive. Protest at 21; Wyle Opp'n to Req. for Dismissal at 4. When a solicitation requires resumes for key personnel, "[s]ubmission of key personnel resumes after receipt of

⁸ Wyle contends that its failure to provide a resume for Mr. [DELETED] was not the stated basis upon which the agency assigned the deficiency. Wyle Opp'n to Req. for Dismissal at 6; Wyle Comments, May 13, 2016, at 2, 3; Wyle Supp. Comments, May 16, 2016, at 2. We disagree. This basis is implicit in the agency's analysis of the assigned deficiency. The TET found that Wyle proposed two candidates and provided only one resume. AR, Exh. 8, Final Technical Report, at 2-3. Moreover, the TET explained that "[a]s this is a Key Position requiring a valid resume . . . the proposal is seen as 'materially deficient.'" Id. at 2-3, 14 ("The offeror's failure to provide the necessary information for evaluation makes this a material failure of the proposal."). The agency was not required to speculate as to which candidate Wyle proposed and then to further spell out the consequences for that selection.

final proposals constitutes discussions, not clarifications, because without these resumes, the proposal would omit material information required by the RFP.”⁹ Pioneering Evolution, LLC, supra, at 8-9.

In this respect, Wyle’s reliance on Sevatec, Inc., B-410665, B-410665.3, Jan. 21, 2015, 2015 CPD ¶ 332, is misplaced. Protest at 21-22. In that case, the awardee was not permitted to materially revise its proposal, but asked to confirm a conclusion reached by the agency. Sevatec, Inc., supra, at 7. Here, despite its contentions otherwise, Wyle could not simply have confirmed its proposed candidate in order to comply with the solicitation—it would have needed to submit Mr. [DELETED]’s resume. Thus, the facts here are more akin to our decision in DataSource, Inc., B-412468, Feb. 16, 2016, 2016 CPD ¶ 59, in which we held that clarifications could not be used to permit an offeror to supplement its proposal with a letter of intent, which was a material requirement of the solicitation in that case.

Finally, Wyle argues that its proposal contained “all the information” the agency needed to evaluate its proposed candidate, Mr. [DELETED]. Protest at 20, 21, 22, 25; Wyle Comments, May 13, 2016, at 2. In this respect, Wyle refers to Attachment P1. Protest at 22-23, 25; Wyle Comments at 4; AR, Exh. 5, Wyle Technical Proposal (excerpt), Attach. P1. Wyle’s argument fails for three reasons. First, Wyle’s position writes a material requirement out of the solicitation, *i.e.*, the requirement to provide resumes for key personnel. Second, even if Attachment P1 could stand on its own, Wyle failed to identify the proposed candidate by name in Attachment P1. Third, the record does not support Wyle’s claim that the information provided in Attachment P1 was “virtually identical to the information contained in the Key Resumes.”¹⁰ Wyle Comments at 4.

⁹ We note that this procurement was conducted as a competition between IDIQ contract holders and, as such, was subject to the provisions of FAR § 16.505, which do not establish specific requirements for conducting clarifications or discussions. See DLT Solutions, Inc., B-412237 et al., Jan. 11, 2016, 2016 CPD ¶ 19 at 9 n.12. However, where, as here, an agency conducts a task order competition as a negotiated procurement, our analysis regarding such exchanges will, in large part, reflect the standards applicable to negotiated procurements. *Id.*

¹⁰ This is true both in terms of what the solicitation required and in terms of what Wyle actually submitted. By way of example, offerors were required to include in the resumes “[y]ears of employment experience including narrative description of duties and responsibilities[;]” “[c]urrent position, title and employer[;]” and “[i]nstitution name, degree or certification earned, and year for all degrees or certifications earned[.]” RFTOP § L.2.1.3.1. Offerors were not required to provide this same information in Attachment P1. RFTOP, Attach. P1. Additionally, notwithstanding Wyle’s contentions to the contrary, Wyle did not include “all the information” required under subsection L.2.1.3.1, pertaining to resumes, in its Attachment P1. For instance, it did not list the unnamed candidate’s institution

(continued...)

Because we find that the agency reasonably determined Wyle to be ineligible for award on the basis of the deficiency relating to position #131, we do not address Wyle's other grounds of protest.

The protest is denied in part and dismissed in part.

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General Counsel

(...continued)

name and year for all degrees or certifications earned. AR, Exh. 5, Wyle Technical Proposal (excerpt), Attach. P1. This is significant because the solicitation stated that the agency "may check educational background to verify degrees or certifications received." RFTOP § L.2.1.3.2. Moreover, the degree of detail is markedly different between the two documents submitted by Wyle.

Ms. [DELETED]'s resume is more than two single-spaced pages containing extensive discussion of her qualifications, whereas Attachment P1 contains a four-sentence summary of the candidate's qualifications as they related to one functional area in the statement of work. Id.; AR, Exh. 7, Wyle Technical Proposal (excerpt), [DELETED] Resume.