



Decision

Matter of: People, Technology and Processes, LLC

File: B-413104.19

Date: September 6, 2018

Victor Buonamia, People, Technology and Processes, LLC, for the protester.
Brian C. Caney, Esq., and Cheryl S. Mpande, Esq., Department of Health and Human Services, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest arguing that the agency utilized unstated evaluation criteria is dismissed where the solicitation contained a patent ambiguity that the protester did not challenge prior to the due date for the receipt of proposals.
 2. Protest challenging the agency's evaluation of the protester's proposal as technically unacceptable is denied where the evaluation was reasonable and consistent with the solicitation.
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DECISION

People, Technology and Processes, LLC (PTP), of Lakeland, Florida, protests the Department of Health and Human Services, National Institutes of Health (NIH)'s rejection of PTP's proposal for award of three of 10 task areas under request for proposals (RFP) No. NIHJT2016015, for information technology (IT) supplies and services.¹ The protester argues that the agency applied unstated evaluation criteria in finding its proposal unacceptable for the three task areas it was not awarded.

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

¹ The seven task areas that the protester does not protest include four task areas for which it received awards and three task areas that it did not propose to perform.

BACKGROUND

Pursuant to Section 5112(e) of the Clinger-Cohen Act of 1996, 40 U.S.C. § 11302(e), the Office of Management and Budget has designated NIH as an executive agent for government-wide IT acquisitions. RFP at B-1.² The RFP, issued on March 14, 2016, contemplated the award of up to 35 additional indefinite-delivery, indefinite-quantity (IDIQ) contracts for NIH's existing Chief Information Officer-Solutions and Partners small business (CIO-SP3 SB) government wide acquisition contract (GWAC), a 10-year IDIQ contract for IT solutions and services.³ Id. at B-1, L-6. The solicitation contemplated the issuance of fixed-price, time-and-material, or cost-reimbursement task orders during the period of performance, which corresponded with the current GWAC contracts, and will end in 2022. Id. at F-1. The maximum order amount established for the contract was \$20 billion with a minimum guarantee of \$250 per awardee. Id. at B-2.

The solicitation advised that the agency would evaluate proposals in two phases. Id. at M-1. During phase 1, the government would evaluate the proposals based on four "go/no-go" requirements. Id. at M-1, M-3. Proposals not found unacceptable under phase 1 would be evaluated during phase 2 using a best-value tradeoff methodology considering the following three factors and price: technical capability and understanding; management approach; and past performance. Id. at M-1. The technical capability and understanding factor was comprised of ten subfactors, which corresponded to ten task areas set forth in the statement of work (SOW).⁴ Id. at M-4. The solicitation advised that this factor and its subfactors would be rated using the following adjectival ratings: highly acceptable, very acceptable, acceptable, and unacceptable.⁵ Id. at M-5.

² The solicitation was amended four times. All citations to the RFP are to the conformed RFP provided by the agency.

³ The solicitation further provided that the government would establish "contractor groups" (historically underutilized business zone, service-disabled veteran-owned small business (SDVOSB), section 8(a), and small business), and projected the number of anticipated awards for each group. See RFP at M-2, M-3.

⁴ These task areas are: IT services for biomedical research and healthcare; chief information officer support; imaging; outsourcing; IT operations and maintenance; integration services; critical infrastructure protection and information assurance; digital government; enterprise resource planning; and software development. RFP at C-2-C-9, M-4.

⁵ Highly acceptable was defined as "[a] comprehensive and thorough proposal of exceptional merit that significantly exceeds the [g]overnment's requirements while exhibiting an extremely high probability of success"; acceptable was defined as "[t]he proposal meets the [g]overnment's requirements and exhibits a probability of success"; and unacceptable was defined as "[t]he proposal fails to recognize, address, or consider the [g]overnment's requirements." RFP at M-5.

Under this factor, for the SDVOSB grouping, the solicitation required offerors to demonstrate their ability to perform in a minimum of task area 1 and at least three other task areas. Id. at M-6. In this regard, the solicitation required offerors to address each applicable task area separately. Id.

The agency received 552 proposals, including a proposal from PTP. Agency Report (AR), Contracting Officer's Statement (COS) at 1. The agency evaluated the protester's proposal along with 96 others in the SDVOSB contractor grouping. Id. After the phase 1 evaluation, the phase 2 evaluation considered 47 proposals. Id.

A technical evaluation panel evaluated the proposals under the technical capability and understanding factor, identified significant strengths, strengths, significant weaknesses, risks, and deficiencies; and assigned ratings for the factor and each of the subfactors for which the offeror submitted a proposal. AR, Tab 8, Phase 2 Evaluation Report (PER) at 3. PTP's proposal was evaluated as highly acceptable for the technical capability and understanding factor; highly acceptable for subfactor 1, IT services for biomedical research and healthcare, and subfactor 10, software development; acceptable for subfactor 4, outsourcing, and subfactor, 5, IT operations and maintenance; and unacceptable for subfactor 6, integration services, subfactor 7, critical infrastructure protection and information assurance, and subfactor 8, digital government.⁶ Id. at 5.

As relevant here, the agency assessed deficiencies under subfactor 6, integration services, subfactor 7, critical infrastructure protection and information assurance, and subfactor 8, digital government, to PTP's proposal based on PTP's failure to describe a technical approach or methodology that supported each task area's requirements. Id. at 11-14. In this regard, the agency further found that for subfactor 6, integration services, the protester provided an approach at a very high level addressing requirements that supported another task area; but did not support the task area.⁷ Id. at 11-12. For subfactor 7, critical infrastructure protection and information assurance, and subfactor 8, digital government, the agency further found that while the protester described what it did for prior clients, it did not describe how it planned to accomplish requirements to satisfy the objectives of those task areas. Id. at 13-14. As a result, the agency assigned unacceptable ratings for these subfactors, finding that PTP did not exhibit a probability of success in those task areas where it failed to recognize, address, or consider the government's requirements to demonstrate the offeror's overall technical approach and the specific methodology that supports each task area, as instructed by the solicitation. Id.

⁶ PTP did not propose for task area 2, chief information officer support; task area 3, imaging; and task area 9, enterprise resource planning. See AR, Tab 8, PER at 8.

⁷ Because no protective order was issued in this matter, our discussion of some aspects of the evaluation is necessarily general to avoid reference to proprietary or source-selection information. Nonetheless, our conclusions are based on our review of the entire record.

On March 19, 2018, the agency informed PTP that it was selected for award of a contract for four task areas. AR, Tab 9, Notice of Award. In response to PTP's inquiry as to why it was not awarded a contract for the remaining three task areas for which it proposed to perform, on April 2, the agency provided PTP with the deficiencies and ratings assigned to those subfactors. AR, Tab 11, Debriefing. On April 8, PTP filed an agency-level protest, which was dismissed on June 25. AR, Tab 12, Agency-level Protest; AR, Tab 13, CO Decision. This protest followed.

DISCUSSION

The protester argues that the agency applied unstated evaluation criteria in evaluating PTP's proposal as unacceptable for three task areas for which it did not receive award.⁸ Specifically, the protester asserts that the solicitation stated that the evaluation of the technical approach and methodology would be limited to (1) determining the degree to which the offeror demonstrates relevant experience and/or qualifications for the specific task area, and (2) assessing the level of knowledge and expertise for each area proposed. Protest at 8-9. In this regard, PTP argues that the solicitation permitted demonstration of the technical approach and methodology through examples of experience or discussion of core capabilities linked to examples of relevant experience, and did not require offerors to provide a separate narrative of its technical approach or methodology for each task area proposed. See id. at 7-8; Protester's Comments at 5. The protester further argues that the agency's utilization of unstated evaluation criteria is apparent because PTP utilized the same format, style, and relevant content that described its core competencies and successful examples of performance for each subfactor, yet the agency found PTP's proposal be acceptable and highly acceptable for the four subfactors corresponding to the four task areas for which PTP received awards; and unacceptable for the three subfactors that corresponded to the three task areas for which PTP did not receive awards. See Protest at 8; Protester's Comments at 6.

In response, the agency contends that there is nothing in the language of the solicitation that suggested that offerors were permitted to demonstrate their technical approach and methodology through past technical experience examples alone. AR, Supplemental (Supp.) Memorandum of Law (MOL) at 8. The agency explains that the solicitation specifically instructed offerors to provide their overall technical approach and specific methodology that supports each applicable task area, in addition to examples of experience and/or qualifications addressing the specific task area that demonstrate the offeror's increased probability of successful contract performance. Id. at 4. The agency further argues that, contrary to PTP's assertion that it utilized essentially the same style and format of its proposal to demonstrate its technical approach and methodologies for each task area, PTP provided a technical approach and specific methodology to support each task area as well as examples of its past technical experiences only for the four

⁸ In filing and pursuing its protest, PTP has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's assertions and find no basis to sustain its protest.

subfactors corresponding to the four task areas for which PTP received awards. Id. By contrast, for the three subfactors that corresponded to the three task areas for which PTP did not receive awards, PTP only provided past technical experiences, without providing a separate technical approach and methodology specific to each task area. Id. at 4-5.

When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Level 3 Commc'ns LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error. Desbuild, Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 8; Odyssey Sys. Consulting Grp., Ltd., B-412519, B-412519.2, Mar. 11, 2016, 2016 CPD ¶ 86 at 5. In such situations, an offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous terms in the solicitation and then expect relief when the agency does not act in the manner assumed. Superior Gov't Solutions, B-409475.4, B-409475.5, Sept. 25, 2014, 2014 CPD ¶ 292 at 6. Rather, the offeror must challenge the alleged ambiguity prior to the time set for receipt of proposals. Id. (citing 4 C.F.R. § 21.2(a)(1)).

Here, the solicitation instructed the offerors to provide the following:

- a. The proposal shall demonstrate the [o]fferor's overall [t]echnical [a]pproach and specific [m]ethodology that supports each applicable [t]ask [a]rea.
- b. Proposals providing examples of experience and/or qualifications addressing the specific [t]ask [a]reas that demonstrate the [o]fferor's increased competence, increased merit and/or increased probability of successful contract performance, may be evaluated more favorably

RFP at L-18. The solicitation advised that under the technical capability and understanding factor:

The [g]overnment will evaluate, specific to each of the ten (10) [t]ask [a]reas identified below, the [o]fferors' proposed technical approach and methodology in order to assess the level of knowledge and expertise for each [t]ask [a]rea proposed. More favorable ratings may be assessed for [o]fferors providing additional examples of their experience and/or qualifications beyond those minimally required to address a specific [t]ask [a]rea

Id. at M-6.

PTP maintains that nothing in the solicitation required offerors to submit a narrative description of how the offeror planned to perform. Protester's Comments at 5. PTP further contends it reasonably understood the solicitation to permit use of examples of experience to demonstrate its technical approach and methodology because of the solicitation's use of the word "additional" to modify "examples of their experience" and "beyond those minimally required" which indicated that the minimum requirements could also be demonstrated by "examples of their experience." Protester's Comments at 5. By contrast, the agency contends that the requirement for offerors to provide their overall technical approach and specific methodology that supports each applicable task area, in addition to, examples of experience and/or qualifications addressing the specific task area that demonstrate the offeror's increased probability of successful contract performance, was clear from the instructions that set forth these requirements separately (corresponding to L.3.2.a and L.3.2.b). AR, Supp. MOL at 4.

Notwithstanding PTP's characterization of its protest as one challenging the agency's use of unstated evaluation criteria, we find that PTP essentially challenges an alleged defect in the solicitation that was apparent prior to the time for the submission of proposals. Our review of the record shows that both the instructions and the evaluation language in the solicitation were silent as to what the agency would utilize to evaluate the offeror's demonstration of its proposed technical approach and methodology. The solicitation does not indicate whether the agency would evaluate proposals through separate narratives or examples of experience and/or qualifications.

This lack of clarity, however, was evident from the face of the solicitation. Therefore, we find that the solicitation presented a patent ambiguity with regard to how proposals were to demonstrate the offeror's technical approach and specific methodology to support each applicable task area. Accordingly, this is a matter that could only be timely protested prior to the closing time for receipt of proposals. See Glock, Inc., B-414401, June 5, 2017, 2017 CPD ¶ 180 at 14. Where a patent ambiguity is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the term. 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. Because PTP did not challenge the ambiguity prior to the solicitation's closing date, its complaint about what the agency would utilize to evaluate the offeror's demonstration of the technical approach and methodology is untimely, and therefore dismissed.

Further, the record shows that, contrary to PTP's assertion, the protester did not actually utilize the same format, style, and relevant content to describe its core competencies and successful examples of performance for each subfactor. Rather, the record shows that for the four subfactors corresponding to the four task areas for which PTP received awards, in addition to providing examples of its experience, PTP specifically identified technical approaches or methodologies applicable for each task area. See, e.g., AR, Tab 6, PTP Technical Proposal, Subfactor 1, IT Services for Biomedical Research and Healthcare, at 1 ("An aspect of our technical approach includes . . . "); id., Subfactor 4, Outsourcing, at 1 ("With our federal customers in mind, Team PTP . . . were developed following Team PTP has developed"); id.,

Subfactor 5, IT Operations and Maintenance, at 1 (“Team PTP’s technical approach employs”); id., Subfactor 10, Software Development, at 1 (“Team PTP employs a tailored approach”).

By contrast, for the three subfactors that corresponded to the three task areas for which PTP did not receive awards, PTP did not provide a separate technical approach narrative or describe specific methodologies it intended to use to satisfy the requirements of each task area, but rather, stated what its capabilities were generally or indicated that it had expertise in certain areas. See, e.g., id., Subfactor 6, Integration Services, at 1 (“One of Team PTP core business areas are in”); id., Subfactor 7, Critical Infrastructure Protection and Information Assurance, at 1 (“Team PTP has extensive core capabilities and experience in providing”); id., Subfactor 8, Digital Government, at 1 (“Team PTP has extensive experience providing”). Further, there is nothing in the examples of experiences provided by PTP for these subfactors that would indicate that the same technical approaches or methodologies would be utilized to satisfy the requirements of the task areas.

We have long recognized that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency’s evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7.

On this record, we find no basis to question the agency’s evaluation judgments. Here, the solicitation stated that the agency would evaluate an offeror’s proposed technical approach and methodology in order to assess the level of knowledge and expertise for each task area proposed. While PTP provided technical approaches and specific methods for the four subfactors corresponding to the four task areas for which PTP received awards, PTP did not do so for the remaining subfactors, instead, providing an explanation of its experience and expertise. While the protester may disagree with the agency, its arguments provide no basis to sustain the protest.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel