U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General
of the United States

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Decision

Matter of: Olgoonik Logistics, LLC

File: B-415569

Date: January 23, 2018

William K. Walker, Esq., Walker Reausaw, for the protester.
Benjamin N. Thompson, Esq., Jennifer M. Miller, Esq., and Dana L. Messinger, Esq., Wyrick Robbins Yates & Ponton LLP, for LB&B Associates, Inc., the intervenor.
Don F. Pollack, Esq., Defense Logistics Agency, for the agency.
Kenneth Kilgour, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's conduct of discussions is denied where the record provides no basis on which to conclude that discussions were not meaningful or were otherwise improper.

2. Protest challenging the agency's evaluation of the protester's technical proposal is denied where the evaluation was reasonable and consistent with the solicitation.

DECISION

Olgoonik Logistics, LLC (OL), of Anchorage, Alaska, protests the award of a contract to LB&B Associates, Inc., of Columbia, Maryland, under request for proposals (RFP) No. SPE600-17-R-0522, issued by the Defense Logistics Agency (DLA) for fuel management services for Naval Base Coronado, California. OL challenges the agency's conduct of discussions and the reasonableness of the evaluation of OL's technical proposal.

We deny the protest.

BACKGROUND

The RFP, issued pursuant to Federal Acquisition Regulation (FAR) part 12 (Commercial Item Acquisition) procedures and employing the best-value source selection process of FAR part 15, sought proposals for the award of a fixed-price contract, with a term of 4 years with one 5-year option period, to the firm whose proposal represented the best

value to the government, considering four evaluation factors: technical/management, past performance, socioeconomic/subcontracting, and price. Agency Report (AR), Tab 2, RFP at 4, 18, 128. The technical/management factor was more important than the past performance and socioeconomic/subcontracting factors, which were equally important. Id. at 129. When combined, the non-price factors were significantly more important than price. Id.

The technical/management factor contained four equally important subfactors: operations, personnel/training, maintenance, and safety/environment. Id. at 129-30. Each subfactor would be evaluated as outstanding, good, acceptable, marginal, or unacceptable; the subfactor ratings would be combined for an overall technical/management rating. Id. at 129. Any proposal that received a final evaluation rating of marginal or unacceptable in any factor or subfactor would be ineligible for award. Id. at 131. A proposal was considered unacceptable and thus unawardable if the proposal did not meet the requirements of the solicitation, that is, it contained one or more deficiencies, and/or the risk of unsuccessful contract performance was unacceptable. Id. at 129; see also AR, Tab 1, Source Selection Plan, at 7; RFP at 120 (noting that a proposal would be considered unacceptable for award if it contained deficiencies that preclude award of the contract on the present terms of the proposal).

For the personnel/training subfactor, the offeror was to identify personnel to perform the operations, maintenance, fuel quality surveillance, inventory, accounting, and other listed functions in the performance work statement (PWS). RFP at 130. For example, Appendix A to the PWS specified operating hours for the requirement's two locations, Coronado and San Clemente Island. See AR, Tab 14, Amend. 0007, PWS Append. A. The naval base at Coronado included the Naval Air Station North Island, the Naval Amphibious Base, and the Naval Outlying Landing Field, Imperial Beach. Id. With respect to the Naval Air Station North Island, the Naval Amphibious Base, and the Naval Outlying Landing Field, Imperial Beach, the contractor is required to staff two hot pit refueling operations.[1] Id. at Table 1.

In addition, the RFP required the contractor to employ an experienced terminal manager with a minimum of five years' experience in petroleum storage and distribution operations, airfield fuel services, and fuel systems maintenance. PWS ¶ C-1.7.2. With respect to collateral duties for the terminal manager, the PWS provided that, "[o]ther than those administrative duties commonly associated with an individual in a management position, the terminal manager must not have collateral duties nor must the position be a collateral duty." Id. at ¶ C-1.7.2.3. The PWS specified that the terminal manager at San Clemente Island "may have collateral duties such as [ ] Fuel

[1] Hot pit refueling permits aircraft to be refueled without being shut down, reducing the amount of aircraft down time. See http://www.acc.af.mil/News/Article-Display/Article/1396728/hot-pit-refueling-enables-high-ops-training/ (last visited January 16, 2018).

Distribution System Operator or [Truck] Driver/System Operator to supplement the day-to-day workforce." Id.

The PWS also required the contractor to employ a fuel accountant fully knowledgeable of manual and automated fuel management and accounting systems. Id. at C-1.8.2. The fuel accountant's skills must include the use of real time information systems, the manipulation of data within the Fuel Manager system and the related fuel management modules and systems. Id. The fuel accountant must be fully knowledgeable of all DLA Business System Modernization Interim Policy and Procedural Guidance for the receipt, handling, issue, inventory, and accounting of petroleum products. Id.

The PWS further required the contractor to employ a fuel distribution system operator and truck driver/system operator. The fuel distribution system operator was to have practical experience in the operation of bulk fuel distribution systems and fuel barge operations. Id. at C-1.8.5. The truck driver/system operator was required to be qualified to perform fuel servicing operations by mobile fuel servicing equipment, portable pantograph, hose sets, and fixed direct fuel servicing systems. Id. at C-1.8.3.

For the maintenance subfactor, the offeror was to provide a detailed approach to all maintenance performance requirements for fuel distribution systems and equipment. RFP at 130. As relevant here, with respect to equipment, the PWS required contractors to "provide an approach to vehicle maintenance that clearly demonstrates a level and frequency of scheduled/unscheduled maintenance that mitigates breakdowns, or other maintenance concerns along with a plan of action should breakdowns or other maintenance challenges occur." PWS ¶ C-3.1.1.

Eight offerors submitted timely proposals, including the protester and the awardee. See AR, Tab 10, Initial Technical Evaluation at 1. The agency evaluated OL's proposal as unacceptable under the operations, maintenance, and personnel/training subfactors, and as good under the safety/environmental subfactor. Id. In discussions, the agency advised the protester of numerous deficiencies and weaknesses in its proposal, including the following deficiencies that are relevant to this protest. Under the operations subfactor, the agency assessed the protester's proposal a deficiency because, for the hot pit refueling requirement, OL had staffed hot pit #2 with two personnel per shift; the agency informed OL that hot refueling "is a three person operation." AR, Tab 11, Evaluation Notice, at 4. That same staffing error resulted in a deficiency under the personnel/training subfactor. See id. at 5 ("hot refueling operations is a three person operation"). Also under the personnel/staffing subfactor, the agency assessed a deficiency because OL's proposal did not staff the accounting function at San Clemente Island. Id. Further, OL's proposal was assessed a deficiency under the maintenance subfactor for failure to provide a vehicle maintenance history or other information sufficient for the government to ascertain whether OL was offering a fleet that was new, used, or refurbished. Id.

The agency concluded that OL's revised proposal successfully addressed most, but not all, of the assessed deficiencies and weaknesses. In its final proposal, OL corrected

two places in its proposal where the agency had assessed deficiencies for failing to provide three personnel to staff hot pit #2. See AR, Tab 17, Technical Proposal at Fig. II.3-1 (staffing hot pit #2 with three personnel for certain shifts) and ¶ 1.1.2 (revising narrative of original proposal to specify three personnel at hot pit #2). OL provided for accounting at San Clemente Island by assigning that terminal manager collateral duties in accounting. See id. at Fig. II.3-1. OL's final proposal did not include maintenance records for its proposed equipment, but it did advise the agency that OL was offering refurbished equipment, except for one new refueling truck. Id. at Fig. II.5-1 caption.

The agency's final proposal evaluation found the following deficiencies and weakness in OL's final proposal. The agency assessed OL's proposal a deficiency under the personnel/training subfactor because, although the proposal corrected the hot pit #2 staffing in other locations, in Figure II.1-1, hours of operation, OL's proposal staffed hot pit #2 with two, rather than three, personnel. See AR, Tab 20, Final Technical Evaluation at 001038.[2] Also under the personnel/staffing subfactor, the agency noted that the assignment of collateral duties to the terminal manager violates PWS ¶ C-1.7.2.3, which "prohibits" the terminal manager at San Clemente Island from having accounting as a collateral duty. Id. The agency assessed the protester's proposal a weakness under the maintenance subfactor because, although the proposal stated that OL was offering refurbished vehicles and one new refueling truck, the proposal lacked a maintenance history which would provide details on the maintenance, repairs, and upgrades to vehicle components and equipment. Id. at 001037.

As a result of the deficiencies and weakness, OL's proposal was evaluated as unacceptable under the personnel/training subfactor and marginal under the maintenance subfactor, with an overall technical rating of unacceptable. Id. at 001036-38. OL's proposal was therefore deemed unawardable. The agency made award to LB&B Associates, as the firm whose proposal represented the best value to the government, and this protest followed.

DISCUSSION

OL asserts that the agency's discussions were not meaningful where DLA only identified the hot pit #2 staffing deficiency in the organizational chart and neglected to identify the same deficiency in Figure II.1-1, hours of operation. The protester also asserts that the agency's assessment of the deficiencies and the weakness are unreasonable. The agency argues that discussions were meaningful and that the assessment of the deficiencies and the weakness are reasonable. As discussed below, we find the protester's allegation that discussions were not meaningful to be without merit and, thus, the assessment of a deficiency related to the hot pit #2 staffing to be reasonable. We also find the assessment of a deficiency in the protester's proposal

[2] The final technical evaluation lacks page numbers, so we adopt the Bates numbering used throughout the agency report.

under the personnel/staffing subfactor--for the assignment of collateral accounting duties to the San Clemente Island terminal manager--to be reasonable.[3]

OL argues that, because DLA provided an "apparently exhaustive" list of issues in its evaluation notice to the protester, the failure of the agency to identify the hot pit #2 staffing deficiency in Figure II.1-1, hours of operation, rendered discussions not meaningful. Comments at 2-3. The FAR requires agencies conducting discussions to inform offerors of deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not had the opportunity to respond. FAR § 15.306(d)(3). Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 11. Agencies are not required to "spoon-feed" an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification or revision. Id. This is true of competitions conducted under FAR Part 12. See id. Where an agency points out a deficiency in one area of an offeror's proposal, it need not identify that same error in other portions of an offeror's proposal in order for discussions to be meaningful. See AdvanceMed Corp., B-415360 et al., Dec. 19, 2017, 2017 CPD ¶ ___ at 10.

During discussions, the agency informed OL that hot refueling operations is a three person operation. AR, Tab 11, Evaluation Notice, at 4 & 5. In its final proposal, OL corrected some, but not all, instances in its proposal where the protester failed to provide three personnel to staff hot pit #2. The agency's final evaluation identified a deficiency in the protester's proposal, which did not comply with the PWS requirement that hot pit #2 be staffed with three personnel. We conclude that the staffing requirement, and the proposal's failure to satisfy it, was identified in the agency's evaluation notice. See AR, Tab 11, Evaluation Notice, at 4 & 5. The protester's claim that the agency's final "evaluation found a deficiency in a previously unidentified deficiency" is inaccurate. Comments at 3. As noted above, an agency need not identify every repetition of a deficiency in an offeror's proposal. We thus find no merit to the protester's claim that discussions were not meaningful. Moreover, the protester does not assert that Figure II.1-1, hours of operation, conforms to the PWS requirements, and we have no basis to question the assessment of a deficiency under the personnel/training subfactor for failure to adequately staff hot pit #2.

OL also argues that its assignment of collateral duties to the terminal manager in San Clemente Island was not explicitly prohibited by the terms of PWS ¶ C-1.7.3.1, collateral duties, and, moreover, the protester asserts that the assignment of the deficiency is

[3] Because any one deficiency would render the protester's proposal unacceptable and thus unawardable, we do not reach the issue of the reasonableness of the agency's assessment of a weakness in the protester's proposal for failure to provide vehicle maintenance logs.

inconsistent with DLA Energy P-10, Segregation of Duties.[4] Comments at 5-6. The agency asserts that its evaluation was reasonable and consistent with the plain language of the PWS, and that the protester's reliance on DLA Energy P-10 is, in any event, misplaced. Memorandum of Law at 15-17.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. We will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Avon Prot. Sys., Inc., B-411569.2, Nov. 13, 2015, 2016 CPD ¶ 33 at 5.

As noted, the RFP required that the terminal manager have experience in petroleum storage and distribution operations, airfield fuel services, and fuel systems maintenance. PWS ¶ C-1.7.2. With respect to collateral duties for the terminal manager, the PWS provided that, "[o]ther than those administrative duties commonly associated with an individual in a management position, the terminal manager must not have collateral duties nor must the position be a collateral duty." Id. at ¶ C-1.7.2.3. The PWS specified that the terminal manager at San Clemente Island "may have collateral duties such as [ ] Fuel Distribution System Operator or [Truck] Driver/System Operator to supplement the day-to-day workforce." Id.

The PWS also required the contractor to employ a fuel accountant fully knowledgeable of manual and automated fuel management and accounting systems. Id. at ¶ C-1.8.2. With respect to the fuel accountant, the PWS included the following reference to DLA Energy P-10: "Additionally, the [terminal manager] must ensure that a fully trained alternate/back-up accountant will process transactions when the primary accountant is not available for duty to ensure compliance with DLA Energy P-10, Segregation of Duties." PWS ¶ C-1.8.2. The protester argues that DLA Energy P-10 permits OL to assign collateral accounting duties to the San Clemente Island terminal manager.[5] OL relies on the provision in DLA Energy P-10 that exempts defense fuel support points DFSP) from requesting a waiver of DLA segregation of duties policies if the DFSP has fewer than five full-time personnel assigned to it. Comments at 6, citing AR, Tab 27,

[4] DLA Energy P-10, Segregation of Duties, requires the division among different persons of the key duties of inventory handling, transaction processing/recording, and transaction reviewer/approver, in order to reduce the risk of error and/or fraud. See AR, Tab 27, DLA Energy P-10, Segregation of Duties ¶¶ 2.2 & 2.2.1.

[5] The protester also argues that, given the low staffing levels at San Clemente Island, it was reasonable to assume that location would not mandate a separate fuel accountant and that nowhere in the RFP or PWS does it state that accounting processing is performed at San Clemente Island. Comments at 6-7. These assertions are, in essence, a challenge to the terms of the solicitation, and they are untimely. 4 C.F.R. § 21.2(a)(1).

DLA Energy P-10 ¶ 2.3. OL argues that because it will have fewer than five full-time personnel at San Clemente Island, the terminal manager may perform accounting duties, and, in accordance with DLA Energy P-10, no waiver for segregation of duties is required. The agency argues that the protester's reliance on DLA Energy P-10 is misplaced, and we agree. That DLA guidance is meant to divide responsibility for inventory management and accounting among various personnel to help prevent error and fraud and does not address whether a terminal manager should perform accounting functions.

The plain language of the RFP advised offerors that the terminal manager may only be assigned collateral duties "such as" fuel distribution system operator or truck driver/system operator. OL does not argue that the accounting function is similar to the work performed under those two labor categories. On this record, we see no basis on which to question the reasonableness of the agency's assessment of a deficiency in OL's proposal under the personnel/staffing subfactor for the assignment of collateral accounting duties to the terminal manager.

The protest is denied.

Thomas H. Armstrong
General Counsel