



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: IPKeys Technologies, LLC

File: B-416873.2; B-416873.3

Date: April 5, 2019

Paul F. Khoury, Esq., Brian G. Walsh, Esq., Sarah B. Hansen, Esq., Wiley Rein LLP, for the protester.

Damien C. Specht, Esq., R. Locke Bell, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP, for By Light Professional IT Services LLC, the intervenor.

Vera A. Strebels, Esq., and Anthony J. Balestreri, Esq., Defense Information Systems Agency, for the agency.

Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the solicitation evaluation criteria.
 2. Protest against an agency's cost-realism analysis of the awardee's proposal is denied where the record shows that the agency reasonably evaluated the awardee's proposed costs, taking into account the awardee's technical approach and individual cost elements.
-

DECISION

IPKeys Technology, LLC (IPKeys), of Stafford, Virginia , protests the issuance of a task order to By Light Professional IT Services, LLC (By Light), of Arlington, Virginia, by the Department of Defense (DOD), Defense Information Systems Agency (DISA), under request for proposals (RFP) No. GSMETI00032, for secure systems engineering and evolution support for the Defense Information System Network (DISN). IPKeys challenges the agency's evaluation of proposals and its award decision.

We deny the protest.

BACKGROUND

On July 28, 2017, the agency issued the task order solicitation as a small business set-aside under Federal Acquisition Regulation (FAR) subpart 16.5 to the seven holders of DISA's indefinite-delivery, indefinite-quantity (IDIQ) contract known as Grid Services Management, Engineering Transition and Implementation (GSM-ETI). Agency Report (AR) Tab 1, RFP at 1.¹ The performance work statement (PWS) stated that the contractor would provide systems engineering, and technical and applications engineering support of DISN architecture. RFP, PWS, at 2. The RFP sought to award a cost-plus-fixed-fee and fixed-price task order for a base year with a 1-year option period. RFP at 2. The solicitation advised that award would be based on a best-value tradeoff determination considering the technical/management approach factor and cost/price. Id. at 4. The technical/management approach factor was considered more important than cost/price. Id.

The technical/management approach factor consisted of four equally important subfactors, identified by number, to be evaluated generally by how well the proposal demonstrated the following: (1) comprehensive knowledge and applicable experience in the fields of transport network engineering and analysis as the field relates to DISN and existing systems within DISN; (2) the ability to support the engineering evolution of the DISN; (3) technical knowledge and experience in DISN cryptographic technology, algorithms, and secure protocols; and (4) a management plan that describes a comprehensive approach to performing the PWS requirements. Id. at 4-5. The technical subfactors would be evaluated individually, i.e., not rolled up, and the agency would assign a combined technical/risk rating. Id. at 4. Proposals would be rated, from highest to lowest, as blue/outstanding, purple/good, green/acceptable, yellow/marginal, and red/unacceptable. AR, Tab 1F, Evaluation Tables, at 1.

Subfactor 1 required offerors to demonstrate DISN transport network experience or large enterprise network experience due to the highly technical and specialized aspects of the work and to ensure uninterrupted critical warfighter support.² RFP at 4. As relevant here, the RFP required that proposals demonstrate the ability to support the development of an engineering design plan of the global and regional Internet Protocol (IP)/transport network architectures, to recommend future network technologies and equipment for DISN architecture, and to aid in aligning future architecture requirements. Id. at 4-5. As stated above, subfactor 1 would be evaluated based on how well an offeror demonstrated comprehensive knowledge and applicable experience in transport network engineering and analysis for DISN and its existing systems. Id. at 4.

¹ All references herein are to the conformed version of the RFP.

² The PWS explains that DISA serves as DOD's combat support agency responsible for delivering, operating, and assuring a critical array of technical capabilities and enterprise systems and services to the warfighter, which include command and control, information sharing, and global net-centric enterprise information infrastructure. RFP, PWS, at 1.

As relevant here, subfactor 4 required offerors to submit a management plan that included at least 49 full-time equivalents (FTEs) to support the requirements of the PWS.³ Id. at 5; RFP, PWS at 3. The RFP provided historical estimates for reference in a table that identified the number of FTEs associated with each contract line item number (CLIN), PWS task and subtask, and specific labor category.⁴ RFP, PWS, at 4-6. The PWS also identified five tasks. Id. at 6-27. For one task, the PWS stated that “[t]he key personnel for this subtask shall be described in the proposal for this work.” Id. at 25-27. As relevant here, the PWS also required the contractor to designate a program manager, but did not describe this as a key position. Id. at 6. The RFP allowed offerors to submit generic resumes, and did not require or state that key personnel and/or their resumes would be evaluated. RFP at 3, 5. The RFP stated that the management plan would be evaluated based on “how well it describe[d] a comprehensive approach for performing specific PWS tasks, including providing the appropriate mix of labor categories, labor hours, and other direct costs to meet the requirement of each PWS task.” Id. at 5.

The cost/price factor would be evaluated to determine if cost/price proposals were reasonable and complete. Id. Additionally, the agency would evaluate the cost-reimbursable CLINs for realism, pursuant to FAR § 15.404-1(d). Id. Offerors were required to submit a cost proposal that provided detailed information regarding the resources required to accomplish a task, such as labor categories, labor hours, the number of employees for each labor category, labor rates, travel, and incidental equipment. Id. at 6. The RFP also advised that labor and overhead rates should address certain areas, such as direct labor rates, overhead, fringe benefits, and fees. Id. at 7. Offerors were advised to ensure that the labor mix proposed as part of the management plan matched the labor mix in the cost proposal. Id. The RFP stated that if a subcontractor relationship existed, subcontractor costs had to be delineated in a similar fashion. Id.

By the February 28, 2018 closing date, three offerors had submitted proposals, including IPKeys and By Light. On September 19, the agency made award to By Light. On September 26, IPKeys timely protested to our Office challenging the award. On October 4, the agency stated that it intended to take corrective action by reevaluating proposals in accordance with the solicitation. As a result, we dismissed that protest as academic. IPKeys Techs., LLC, B-416873, Oct. 12, 2018 (unpublished decision).

The agency implemented its corrective action, and after completion, the final results were as follows:

³ The solicitation defined an FTE as 1,880 hours. Id. at 3.

⁴ An offeror was permitted to deviate from historical estimates provided that it demonstrated that its labor mix was sufficient to meet the requirements of the PWS. RFP at 5.

	IPKeys	By Light
Technical/Management Approach		
Subfactor 1	Green ⁵	Green
Subfactor 2	Green	Green
Subfactor 3	Green	Purple ⁶
Subfactor 4	Green	Green
Cost/Price	\$49,028,615	\$31,877,027

AR, Tab 7, Source Selection Decision Document (SSDD), at 1.

The source selection authority (SSA) conducted a “careful evaluation” of each offeror’s technical solution and concluded that By Light’s proposal offered the best value to the agency. Id. at 32. The SSDD outlined the merits of each offeror’s technical solution and noted that the offerors were equally rated in all subfactors, except subfactor 3 dealing with technical knowledge and experience in DISN cryptographic technology, algorithms, and secure protocols. Id. at 32-35. In this regard, the agency explained that By Light’s solution under subfactor 3 of the technical/management approach factor exceeded the RFP requirements and specifically noted the basis for this conclusion. Id. at 35. In selecting By Light’s proposal as the best value, the agency stated that its proposal provided a solution that was technically superior at the lowest evaluated cost/price. Id. at 36.

On December 20, the agency again made award to By Light. After requesting and receiving a debriefing, IPKeys timely protested to our Office.⁷

DISCUSSION

IPKeys challenges numerous aspects of the agency’s evaluation of proposals, primarily arguing that the agency failed to assign its proposal various strengths. Protest at 19. Additionally, the protester challenges the agency’s technical/risk assessment and cost realism evaluation of By Light’s proposal. Id. at 10-19; Comments and Supp. Protest

⁵ A rating of green/acceptable was assigned to a proposal that met requirements and indicated an adequate approach and understanding of the requirements with a risk of unsuccessful performance that was no worse than moderate. AR, Tab 1F, Evaluation Tables, at 1.

⁶ As relevant here, a rating of purple/good was assigned to a proposal that indicated a thorough approach and understanding of the requirements with at least one strength, and a low to moderate risk of unsuccessful performance. Id.

⁷ This procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts, since the awarded value of the task order at issue exceeds \$25 million. 10 U.S.C. § 2304c(e)(1)(B).

at 5-8. The protester also raises various challenges to the agency's award decision. Protest at 28-31. We have reviewed these challenges and conclude that none provides a basis to sustain the protest.⁸

Technical Evaluation Challenges

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. URS Fed. Servs., Inc., B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. In reviewing protests of an agency's evaluation and source selection decision, even in a task or delivery order competition as here, we do not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. Sapient Gov't Servs., Inc., B-412163.2, Jan. 4, 2016, 2016 CPD ¶ 11 at 4. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

IPKeys contends that the agency failed to assign three strengths to its proposal under the four subfactors of the technical/management approach factor.⁹ Protest at 19-28. We find no merit to this challenge. We discuss a representative example below.

⁸ For example, the protester challenged the agency's evaluation of By Light's proposal under subfactor 1 of the technical/management approach factor by asserting that By Light could not have demonstrated the required experience based on By Light's alleged labor rates. Protest at 18. The agency requested dismissal of this ground asserting that it was based on an erroneous interpretation of how this subfactor was to be evaluated. Request for Dismissal at 5. Instead of evaluating whether an offeror had proposed a labor mix to meet the requirement of this subfactor--which the agency asserts was to be evaluated under subfactor 4--the agency argues that for subfactor 1, evaluators were to assess how well an offeror's solution demonstrated comprehensive knowledge and applicable experience in the fields of transport network engineering and analysis for DISN. Id. We considered this issue to the extent it challenges the evaluation of subfactor 4. To the extent this issue challenges the evaluation of subfactor 1, we agree with the agency and dismiss this challenge for failure to state a valid basis of protest under our Bid Protest Regulations. See 4 C.F.R. § 21.5(f). The protester also withdrew a supplemental challenge alleging disparate treatment in the evaluation of technical proposals. Supp. Comments at 16.

⁹ For example, the protester initially asserted that the agency failed to assign its proposal 19 separate strengths. Protest at 19-28. The agency substantively responded to these challenges. Memorandum of Law (MOL) at 46-84. In its comments on the agency report, the protester rebutted the agency's arguments with regard to only three of the alleged strengths. Comments and Supp. Protest at 18-21. Accordingly, we consider IPKeys to have abandoned its challenges to the remaining 16 alleged

(continued...)

The protester contends that the agency failed to assign a strength to its proposal under subfactor 1 of the technical/management approach factor, which required that proposals demonstrate the ability to support the development of an engineering design plan of the global and regional IP/transport network architectures, to recommend future network technologies and equipment for DISN architecture, and to aid in aligning future architecture requirements. RFP at 4-5; Protest at 21. Specifically, IPKeys contends that its specific examples of successful performance, its systematic and thorough process to develop the engineering design plan, and its demonstration of “an extraordinary understanding” of future technology upgrades, warranted assessing a strength. Protest at 21.

In response, the agency asserts that the technical evaluation team (TET) thoroughly evaluated the protester’s response and determined that it did not warrant a strength because the described process only met the solicitation requirements, but did not exceed them. MOL at 56. In this regard, the agency explains that because the requirements of the solicitation were highly technical, the protester’s presentation of a detailed process for its ability to support the development of an engineering plan, or its identification of future network technologies and equipment, was needed to simply meet the solicitation’s requirements. Id. In response, IPKeys argues that the agency improperly assessed a strength only when an aspect of the proposal exceeded requirements, although, in the protester’s view, a proposal “needed only to provide merit in a matter advantageous to the Government” to warrant a strength. Comments and Supp. Protest at 18-19.

We disagree. We also disagree with the protester’s general assertion that the record contains “numerous admissions” from the agency that its approach had merit and was advantageous to the agency. See Comments and Supp. Protest at 19. Rather, the contemporaneous record shows that the agency described various aspects of IPKeys’s technical solution in the SSDD and did not find the protester’s proposal to demonstrate merit or to exceed the solicitation’s requirements. See, e.g., AR, Tab 7, SSDD, at 15-22; Supp. MOL at 21. Although the protester disagrees with the agency’s conclusions, without more, we cannot conclude that the agency’s evaluation was unreasonable. Based on our review of the record, we find no basis to question the agency’s analysis.

IPKeys also asserts that By Light’s proposal should be found ineligible for award under subfactor 4 of the technical/management approach factor, based on the unavailability of an individual proposed as a key person. Comments and Supp. Protest at 5. In this regard, the protester contends that the pre-award departure of By Light’s program manager, a position which By Light designated as key, constituted a material change in By Light’s proposal that required notice to the agency prior to award. Id. at 5-6. IPKeys

(...continued)

strengths and do not address these allegations further. Jacobs Tech., Inc., B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 5.

relies on our earlier decision in General Revenue Corp., et al., B-414220.2 et al., March 27, 2017, 2017 CPD ¶ 106, for the proposition that an offeror's designation of a position as key triggers the notice requirements. Id. at 6. In response, the agency and intervenor contend that the protester's argument must fail because the program manager's departure did not constitute a material change. Supp. MOL at 3-6; Intervenor Supp. Comments at 2-3. As explained below, we agree with the agency.

Our Office has explained that offerors are obligated to advise agencies of material changes in proposed key staffing, even after submission of proposals. General Revenue Corp., et al., B-414220.2 et al., March 27, 2017, 2017 CPD ¶ 106 at 22; Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 10; Dual, Inc., B-280719, Nov. 12, 1998, 98-2 CPD ¶ 133 at 3-6. A material solicitation requirement exists where the solicitation requires offerors to identify a specific individual for a key personnel position by submitting a resume with its proposal. YWCA of Greater Los Angeles, B-414596 et al., July 24, 2017, 2017 CPD ¶ 245 at 4. It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. Paradigm Techs., Inc., B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257 at 6. An agency must evaluate proposals based on the solicitation's enumerated evaluation factors. URS Fed. Servs., Inc. supra, at 7.

IPKeys has not shown that By Light's designation of its program manager position as key created a material requirement under this solicitation. The protester is correct in understanding that where an offeror has a duty to notify the agency of a material change in a proposal, the distinction between whether an individual was proposed as an offeror-identified or solicitation-identified key person is immaterial. See General Revenue Corp., supra citing Patricio Enters. Inc., B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 13-14. However, in instances where we have found that the departure of key personnel constituted a material requirement, the solicitation specifically required that offerors identify and offer the resume for key personnel positions and indicated that this information would be considered in the evaluation. See e.g., General Revenue Corp., supra; Chenega Healthcare Servs., LLC, B-416158, June 4, 2018, 2018 CPD ¶ 200 at 4 n.2; Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 8; ManTech Field Eng'g Corp., B-245886.4, Mar. 27, 1992, 92-1 CPD ¶ 309 at 5.

That is not the case here. The solicitation here neither required the identification of specific key personnel and their resumes, nor indicated that such information would be evaluated. Rather, the solicitation stated that offerors should propose a management plan that would be evaluated based on how well it described a comprehensive approach for performing specific PWS tasks, including the appropriate mix of labor categories, labor hours, and other direct costs. RFP at 5. In this regard, we do not view the language of the solicitation as creating a material requirement with regard to key personnel, whether identified by the offeror or the solicitation. Moreover, in our view, the language of the solicitation stating that key personnel must be described for certain tasks and subtasks, and allowing, rather than requiring, offerors to submit generic

resumes, see Id. at 3; RFP, PWS at 28, does not create a material solicitation requirement. In this regard, we will not insert a requirement into the solicitation that the agency could have chosen to impose, but did not. See Access Interpreting, Inc.-- Recon., B-413990.2, June 12, 2018, 2018 CPD ¶ 224 at 5.

Cost Realism Challenge

IPKeys next contends that the agency failed to properly analyze the individual elements of By Light's cost proposal and failed to compare costs to the independent government cost estimate (IGCE). Protest at 10-16; Comments and Supp. Protest at 8-17. Based on our review of the record, we find the agency's evaluation of the awardee's costs unobjectionable.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Alion Sci. & Tech. Corp., B-410666, Jan. 22, 2015, 2015 CPD ¶ 91 at 7. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13 n.13; see FAR §§ 15.305(a)(1), 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See FAR § 15.404-1(d)(1); AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 7, 2012, 2012 CPD ¶ 25 at 13. Agencies are given broad discretion to make cost realism evaluations. Burns & Roe Indus. Servs. Co., B-233561, Mar. 7, 1989, 89-1 CPD ¶ 250 at 2. Accordingly, our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary, and adequately documented. See Alion Sci. & Tech. Corp., supra.

The record demonstrates that the agency thoroughly reviewed By Light's technical approach, and the individual cost elements in By Light's cost proposal pertaining to direct labor, subcontractor costs, indirect labor (fringe rates, overhead rates, general and administrative rates), the proposed fee, and the six-month option to extend services, to determine whether the proposed costs were realistic. AR, Tab 6, Cost/Price Evaluation Report, at 11-14. The agency explains that the technical team reviewed the labor mix, labor hours, and proposed labor categories, and concluded that the costs were realistic for the work to be performed, reflected a clear understanding of the requirements, and were consistent with the unique methods of performance described in the offeror's technical proposal. Id. at 14.

The record also shows that By Light proposed direct labor rates utilizing salary survey data from the Economic Research Institute's (ERI) salary assessor at the 10th percentile for the geographic location of the work for all labor categories except "Labor

Category [DELETED]. Id. at 13. For this category, By Light relied on historical data. Id. The agency issued multiple cost evaluation notices to By Light, including evaluation notices requesting supporting salary information for its direct labor rates and an explanation for why the company used salary survey data rather than actual employees' salaries, considering the procurement is a follow-on task order.¹⁰ Id. at 14.

By Light responded by providing supporting documentation from ERI to verify its proposed rates. Id. Additionally, By Light explained that “the PWS requirements are focused on secure turnkey systems engineering . . . [and] [t]hese new requirements necessitate a differing skillset and consequently [labor categories] to execute our systems engineering and testing approaches than the previous task orders.” Id. The agency concluded that By Light’s responses resolved its concerns. Id. Additionally, with respect to By Light’s proposed subcontractors, the agency noted that By Light’s narrative listed subcontractors, but did not identify any labor to be performed. Id. The agency issued an evaluation notice regarding this issue. Id. By Light explained in its cost proposal that the subcontractors are unpriced at this point, and are not yet assigned any portion of the work.¹¹ Id. Again, the agency considered and accepted By Light’s explanation. Id. Accordingly, with respect to IPKeys’s general allegation that the agency failed to properly analyze the individual elements of By Light’s costs, we find the agency’s analysis reasonable.

IPKeys also asserts that the agency’s cost realism evaluation is flawed because the agency failed to use its own IGCE--which IKPKeys notes was more than \$38 million (or 55%) higher than the total evaluated cost of By Light’s proposal. Comments and Supp. Protest at 12. The agency responds that it was not required to rely on the IGCE for its cost realism analysis, and, instead, based its analysis on the information in each offerors’ proposals. Supp. MOL at 17. We see nothing improper about this approach, and note that procuring agencies are not required to rely on IGCEs when performing cost realism evaluations. See, e.g., TWD & Associates, Inc., B-416834 et al., Dec. 26, 2018, 2018 CPD ¶ 13 at 11 n.16.

Award Challenge

Finally, IPKeys also challenges the award to By Light on the basis that the agency allegedly made the award on a lowest-priced, technically acceptable basis instead of a

¹⁰ The RFP identified three incumbent task orders: one held by IPKeys (No. HC1028-13-D-0012-0002, identified as Task Order 19) and two held by By Light (No. HC1028-13-D-0011-0002, identified as Task Order 13, and No. HC1028-13-D-0011-0003, identified as Task Order 15). RFP at 2.

¹¹ By Light’s cost narrative additionally states that on an as-needed basis and as contract requirements dictate, its subcontractors would support the contract on a time and material basis within the overall budget constraints of the base contract award. AR, Tab 5B3, By Light Cost Proposal, at 5.

best-value tradeoff basis, as required by the solicitation. Protest at 28. In this regard, IPKeys argues the agency improperly made the award based on “By Light’s lower price rather than the similar ratings of the offerors under the most important technical/management approach factor.” Id. at 29.

We see no merit in this claim. By Light’s proposal offered a lower cost/price than IPKeys’s, and the proposals received equal ratings under subfactors 1, 2, and 4 of the technical/management approach factor. AR, Tab 7, SSDD, at 35-36. Moreover, By Light’s proposal was evaluated as good under subfactor 3, whereas IPKeys’s proposal was evaluated only as acceptable. Id. at 1. The SSA also found that By Light’s proposal offered a solution that exceeded the requirements in a way that would be beneficial to the government and was superior to IPKeys’s proposal under this subfactor. Id. at 36. Thus, contrary to IPKeys’s claim, the agency did not select a lowest-price, technically acceptable quotation for award, but instead selected a quotation deemed to offer the best value because it was superior under the non-price factors, as well as lower in cost/price.

The protest is denied.

Thomas H. Armstrong
General Counsel