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Decision

Matter of: Leader Communications, Inc.

File: B-417152.2; B-417152.3

Date: June 26, 2019

Maria Panichelli, Esq., and Michael Richard, Esq., Obermayer Rebmann Maxwell & Hippel LLP, for the protester.
Isabelle P. Cutting, Esq., and Colonel C. Taylor Smith, Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where protester fails to address agency's comments, GAO considers protest issue abandoned.
 2. Where protester first raises new arguments in comments on the agency report that could have been raised in initial protest, the later raised issues are untimely.
 3. Procuring agency is not required to reopen discussions to advise protester of risks that are first introduced when it revises its proposal.
 4. Protest that agency failed to hold meaningful discussions because it did not advise protester of risks that were present in its initial proposal is denied where record demonstrates that protester was not prejudiced by the failure to hold discussions with respect to these risks because even if the risks were eliminated from the proposal protester would not receive the task order.
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DECISION

Leader Communications, Inc., of Oklahoma City, Oklahoma, protests the issuance of a task order to Sumaria Systems, Inc., of Danvers, Massachusetts, under fair opportunity proposal request (FOPR) No. FA8222-18-R-5006, issued by the Department of the Air Force for support for the Air Force Sustainment Center. Leader asserts that the agency unreasonably evaluated its proposal and failed to engage in meaningful discussions.

We dismiss in part and deny in part the protest.

BACKGROUND

The solicitation was issued in accordance with Federal Acquisition Regulation (FAR) § 16.505, to contractors in the General Services Administration One Acquisition Solution for Integrated Services small business pool 3. Agency Report (AR), Tab 6, FOPR Letter, at 1. The solicitation sought a contractor to provide sustainment enabling functions supporting the Air Force Sustainment Center/Logistics in four capability areas: strategic planning; resource management; process management and guidance; and sustainment performance management through a variety of tasks including program management, information technology, and supply chain planning. Id., AR, Tab 3, Performance Work Statement (PWS), at 5.

The solicitation advised offerors that the task order would be issued on a best-value basis considering technical and price factors, and utilizing a process known as M3, which quantifies the qualitative evaluation for purposes of identifying the proposal that represents the best value. AR, Tab 6, FOPR Letter, at 1; Tab 5, Evaluation Criteria, at 1; Tab 4, Instruction to Offerors, at 2. The technical factor was comprised of six equally weighted criteria. Technical criterion 1 required offerors to describe their overall approach to satisfy the solicitation requirements. AR, Tab 5, Evaluation Criteria. Technical criteria 2 through 6 each required the offerors to demonstrate their experience, qualifications and capability to satisfy a specified section of the PWS. Id.

Pursuant to the M3 evaluation process, the total possible evaluated score for the technical and price factors was 1,000 points; technical was worth 60 percent of the total score (600 points) and price was worth 40 percent of the score (400 points). AR, Tab 5, Evaluation Criteria, at 1. In addition, each technical criterion was evaluated for acceptability and risk, and was assigned a raw score of 0 through 5.¹ AR, Tab 4, Instructions to Offerors, at 2, 4-5. The raw scores for the technical factor and evaluated

¹ The possible raw scores were as follows:

- 0=Unacceptable
- 1.0=Acceptable with High Performance risk
- 1.5=Acceptable with Moderate Performance Risk
- 2.0=Acceptable with Low Performance Risk
- 2.5=Some requirements Exceeded with High performance Risk
- 3.0=Some requirements Exceeded with Moderate performance Risk
- 3.5=Some requirements Exceeded with Low performance Risk
- 4.0=Exceptional with High Performance Risk
- 4.5=Exceptional with Moderate Performance Risk
- 5.0=Exceptional with Low Performance Risk

AR, Tab 4, Instruction to Offerors, at 2.

prices were converted to scores based on the total possible points available.² AR, Tab 5, Evaluation Criteria, at 1; COS at 5. The task order was to be issued to the offeror with the highest total point score.

The agency initially issued the task order to Sumaria without holding discussions. After Leader protested the award to our Office, the agency took corrective action which included holding discussions, and receiving and evaluating revised proposals. As a result, we dismissed Leader's protest. Leader Communications, Inc., B-417152, Dec. 17, 2018 (unpublished decision).

The agency issued interchange notices and requested best and final proposals. Following these interchanges and the receipt and evaluation of best and final offers, the scores of Sumaria and Leader were as follows:

Offeror	Technical (60%)	Price (40%)	Overall Points (1,000)	Price
Sumaria	300	337.58	637.58	\$13,419,445
Leader	200	400	600	\$11,180,572

AR, Tab 17, Fair Opportunity Decision Document (FODD), at 6, 11; COS at 9.³ The agency issued the task order to Sumaria, as the offeror with the highest total number of points and this protest followed.⁴

DISCUSSION

Leader has raised numerous challenges to the evaluation process, the evaluation of its proposal, and to the agency's conduct of discussions. We have reviewed all of the

² The total of the scores assigned to the six technical criteria was calculated as set forth below. Contracting Officer's Statement (COS) at 5; see also AR, Tab 5, Evaluation Criteria, at 1. The total sum for the raw scores for the six technical criteria was: (1) multiplied by ten; (2) divided by 300 (the maximum total raw score); (3) multiplied by 60 percent (the overall technical factor weight), and; (4) multiplied by the maximum total score (1,000 points). COS at 5-6. With respect to price, the lowest price received the maximum raw score of 5, and the maximum total score of 400 points. AR, Tab 4, Instructions to Offerors, at 3. Each higher priced proposal received a percentage of the maximum score (400 points) based on its relationship to the lowest priced offer. Id.; COS at 6.

³ The agency states that it incorrectly calculated Sumaria's price score in the FODD as 316. COS at 9. The agency explains that Sumaria's price score should have been calculated as 337.58. Id.

⁴ This procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple award indefinite-delivery, indefinite-quantity contracts, since the awarded value of the task order at issue exceeds \$10 million. 41 U.S.C. § 4106(f).

arguments and find that none provide a basis to sustain the protest. We discuss several arguments below.

Technical Evaluation

As noted, the technical factor was comprised of six equally weighted criteria. The agency evaluated Leader's revised proposal with respect to these criteria as follows:

Technical Criteria	Raw Score	Rating
Criterion 1 PWS Sections 1.1, 1.2 and 3.0; Purpose and Scope of the Requirement	2.0	Acceptable/Low Performance Risk
Criterion 2 PWS Section 3.7.3	1.5	Acceptable/Moderate Performance Risk
Criterion 3 PWS Section 3.7.4	2.0	Acceptable/Low Performance Risk
Criterion 4 PWS Section 3.7.5	2.0	Acceptable/Low Performance Risk
Criterion 5 PWS Section 3.7.6	1.5	Acceptable/Moderate Performance Risk
Criterion 6 PWS Section 3.7.7	1.0	Acceptable/High Performance Risk

AR, Tab 14, Technical Evaluation, at 1-9. The agency assigned Leader's proposal four risks under criterion 2, three risks under criterion 5, and nine risks under criterion 6. AR, Tab 19, Debriefing, at 9-11, 14-17; Tab 15, Detailed Evaluation, at 5-7, 10, 32-33, 35-39, 41-42.

In its protest, Leader challenges most, but not all, of the assigned risks.⁵ Leader argues that the risks were unreasonably assigned because the agency overlooked information

⁵ In its initial protest, Leader did not challenge assigned risk 3 (related to the supply discrepancy report) under technical criterion 5 (maintenance and supply requirements-functional manager), or assigned risks 2, 3, 5 or 9 (related to the consolidated sustainment and activity group (CSAG) and automated budget compilation system) under technical criterion 6 (maintenance and supply requirements-CSAG). See Protest at 17-20 (challenging risks 1, 4, 6-8 as identified in the debriefing). Leader does challenge the assignment of these risks in the comments it submitted in response to the agency report. Comments and Supp. Protest at 27-31. Leader, however, was aware of these assigned risks from the debriefing, which Leader received on March 12. AR, Tab 19, Debriefing, at 15-17. We find these allegations are untimely since Leader did not file them until on April 26, more than 10 days after the debriefing. See 4 C.F.R. § 21.2(a)(2). In addition, Leader protested that the evaluation scheme was improper (continued...)

that was included in its proposal. For the reasons discussed below, we conclude that for the most part, the protester abandoned the challenges to the technical evaluation that were raised in its initial protest, and that several other challenges subsequently raised are untimely.

For example, technical criterion 2 (material management support) required offerors to demonstrate their experience, qualifications, and capability to satisfy PWS section 3.7.3. AR, Tab 5, Evaluation Criteria, at 1. Section 3.7.3 of the PWS included 14 paragraphs against which proposals were evaluated. AR, Tab 3, PWS, at 9-13. Paragraph 5 of PWS section 3.7.3 sets forth the following requirement:

The Contractor shall provide System support to the Government in the architecture design, data management, and implementation of Contractor Supported Weapon System Data Exchange (CSWS DE) program . . . [and] . . . shall apply capabilities and understanding of the CSWS program, CSWS DE program, data exchange development contracts, Windows Project Management, Microsoft Exchange, Oracle GOLD [Websphere], JAVA, and GUI in support of this program.

Id. at 10-11. The agency assigned a risk to Leader's proposal under criteria 2 because the proposal failed to demonstrate experience with two of the CSWS design/implementation/management tools, GOLD and Websphere. AR, Tab 15, Detailed Evaluation, at 5; Tab 19, Debriefing, at 10.

In its protest, Leader argued that the assignment of the risk was unreasonable because "on page 17 of [Leader's] proposal, it specifically mentions" Gold and Websphere, and "on page 11, [Leader] specifically demonstrates experience with Oracle and Java." Protest at 17. In its report, the agency explained that it considered the information that Leader referenced when it evaluated Leader's proposal. COS at 17. The agency found, however, that Leader did not describe or demonstrate any experience or knowledge of these tools, but simply agreed that it would work with them if it received the task order. Id. The agency further explained that experience with, and knowledge of, Oracle and Java is not experience with, or knowledge of, GOLD and Websphere. Id.

In the comments Leader submitted in response to the agency report, Leader did not dispute the agency's explanation that the information it cited from its proposal did not demonstrate experience with, or knowledge of, GOLD and Websphere. Where, as here, an agency provides a detailed response to a protester's assertion and the

(...continued)

because it does not "properly distinguish between ratings" as it relates to the definitions of the point scores. Comments and Supp. Protest at 9 n.3. This issue is untimely since it concerns a defect apparent from the face of the solicitation, see AR, Tab 4, Instruction to Offerors, at 2, but was not filed until after the closing date for the receipt of proposals. See 4 C.F.R. § 21.2(a)(1).

protester fails to rebut the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable, and as a result, the protester abandons that assertion. Safeguard Base Operations, LLC, B-415588.6, B- 415588.7, Dec. 14, 2018, 2018 CPD ¶ 426 at 4. Since Leader did not address the agency's response to its initial arguments, we find that these arguments are abandoned, and do not address them further.

In its comments, Leader raises new arguments as to why the agency unreasonably evaluated its proposal. Specifically, Leader now points to different information in its proposal which it believes demonstrates its experience with, and knowledge of, GOLD and Websphere. Among other things, Leader states that its proposal noted that it has **[DELETED]**, which demonstrates its full familiarity with Microsoft products. Comments and Supp. Protest at 20. In addition, Leader argues that GOLD and Websphere are not design/implementation/management tools. Id.

These arguments are untimely. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples, or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. CAPRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490, et al., May 11, 2010, 2010 CPD ¶ 124 at 24. Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. Alfa Consult S.A., B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3. Here, since Leader could have, but did not raise these arguments in its initial protest, they are untimely.

Similarly, technical criterion 5 (maintenance and supply requirements-functional manager) required offerors to demonstrate their experience, qualifications, and capability to satisfy PWS section 3.7.6. AR, Tab 5, Evaluation Criteria, at 1. Section 3.7.6 of the PWS included three paragraphs against which proposals were evaluated. AR, Tab 3, PWS, at 18-19. The second paragraph requires the contractor to have experience working in Air Force supply chain processes, preferably with experience in both retail and wholesale supply. Id. at 19. The agency assigned a risk to Leader's proposal because Leader demonstrated substantial knowledge of the stock control system and transactions, but did not demonstrate knowledge of the supply chain processes. AR, Tab 15, Detailed Evaluation, at 32; Tab 19, Debriefing, at 14.

In its protest, Leader argued that the assignment of this risk was unreasonable because an exhibit in its proposal specifically demonstrated a clear understanding of the Execution and Prioritization of Repair Support System (EXPRESS), which is an automated tool to support the depot repair enhancement program (DREP). Protest at 18. According to Leader, EXPRESS and DREP prioritize repairs based on criteria which are then entered into the stock control system for transfer to the shop to support, among other things, normal stock levels. Id.

In its report, the agency explained that an understanding of EXPRESS is repair and maintenance centric, not supply centric. COS at 23. In its comments, the protester does not address the agency's response, but instead points to new and different parts of its proposal to demonstrate its supply experience. Comments and Supp. Protest at 25-26. As with the prior example, Leader abandoned its initial argument, and raised new, untimely arguments in its comments.⁶

For technical criterion 6 (maintenance and supply requirements-CSAG) offerors were required to demonstrate their experience, qualifications, and capability to satisfy PWS section 3.7.7. Section 3.7.7 of the PWS includes seven paragraphs against which proposals were evaluated. AR, Tab 3, PWS, at 19-21. The third of these paragraphs requires the contractor to develop, implement, and maintain improvements to the CSAG-S requirements and budget forecasting process and support tools. Id. at 19-20. The agency assigned a risk to Leader's proposal because the examples provided by Leader did not actually address improving the CSAG-S budget as it relates to certain processes. AR, Tab 15, Detailed Evaluation, at 37; Tab 19, Debriefing, at 16.

In its protest, Leader asserted that its **[DELETED]** and explains how this can ultimately result in improving the budget. Protest at 19-20. According to the protester, some of the corrections for the anomalies, listed in section J on page 29 of its proposal, include **[DELETED]**. Id. In its comments, Leader further explained that section J gave examples of improving the budget, including **[DELETED]**. Supp. Protest and Comments at 29.

In response, the agency explained that the information Leader provided was related to its experience with **[DELETED]**, neither of which are required by the PWS. Agency Response, May 22, 2019, at 20. The agency explains that it did credit Leader for this experience, but still found that the lack of experience that was directly related to the PWS created a risk. Id. In its comments responding to the supplemental report, Leader did not address the agency's response, again abandoning its argument.

Evaluation Criteria

Leader protests that in evaluating proposals, the agency failed to follow the stated evaluation criteria. Protest at 15-16; Comments and Supp. Protest at 8-11. In this regard, Leader explains that the solicitation provided that proposals would be evaluated

⁶ In addition, in its initial protest, Leader argued that it was provided an inadequate debriefing, and that the agency performed an inadequate price analysis. We consider these issues abandoned since the agency responded to them in its report, and Leader did not refute the agency's response in its comments. Further, our Office does not consider protests challenging an agency debriefing. Healthcare Tech. Solutions Int'l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5 (GAO will not consider protest challenging agency debriefing because adequacy and conduct of debriefing is a procedural matter that does not involve the validity of contract award).

for performance risk, and to determine whether, for each criterion, the proposal met or exceeded the performance work statement requirements. According to Leader, the agency only evaluated risk. Comments and Supp. Protest at 10. Leader asserts that its proposal exceeded some of the minimum performance requirements, and that if it had been properly evaluated, it would have received a higher score.

We find no merit to this basis of protest. First, the record shows that in addition to assessing risk, the agency also assessed Leader's proposal to determine if it met the PWS requirements. AR, Tab 14, Technical Evaluation; Tab 15, Detailed Evaluation. In any case, while the protester generally asserts that it exceeded some of the minimum performance requirements, Leader has not explained why it should have been rated higher than meets requirements for any specific criterion. Accordingly, there is no basis to find that the evaluation was unreasonable.⁷

Discussions

Leader argues that the agency failed to engage in meaningful discussions regarding the risks identified in its revised proposal under technical criteria 2, 5, and 6. Protest at 20; Comments and Supp. Protest at 14-16.

As noted above, the agency conducted the procurement under FAR part 16. The regulations concerning discussions under FAR part 15 do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16. Hurricane Consulting, Inc., B-404619 et al., Mar. 17, 2011, 2011 CPD ¶ 70 at 6. In this regard, FAR § 16.505 does not establish specific requirements for discussions in a task order

⁷ Leader also protests that the agency used unstated evaluation criteria because five of the technical criteria against which proposals were evaluated concerned how offerors addressed a specific PWS section. Leader complains that each PWS section was comprised of multiple paragraphs and the agency improperly evaluated proposals against each paragraph, instead of evaluating the proposals holistically against the PWS section. Comments and Supp. Protest at 11-14. Leader complains that it was prejudiced by this process because in some cases it was assigned multiple, similar risks for the same PWS section on the basis of different paragraphs. This basis of protest is untimely. Leader knew from the debriefing that its proposal was evaluated under each paragraph for each PWS section. See AR, Tab 19, Debriefing. Leader also knew what risks it was assigned and that in some cases there were multiple, similar risks. Id. Since Leader did not raise this basis of protest until April 26, when it submitted its comments on the agency report, instead of within 10 days of its debriefing, these arguments are untimely. 4 C.F.R. § 21.2(a)(2). In any case, the protester was aware of the PWS sections with which it was required to comply, and was aware of the information offerors were expected to provide for each PWS section. There was nothing improper in the agency assigning multiple risks to the proposal where Leader failed to provide the information required.

competition; exchanges in that context, like other aspects of such a procurement, must be fair. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9.

The agency initially issued the task order to Sumaria without holding discussions. After Leader protested the award to our Office, the agency took corrective action which included holding discussions. As relevant here, the agency sent “[i]nterchanges” to Leader with respect to the risks identified in its initial proposal under technical criteria 2 and 6. AR, Tab 9, Interchange Notice. The agency then received and evaluated Leader’s revised proposal, and during the debriefing advised Leader of risks in its revised proposal under technical criteria 2 (material management support), 5 (maintenance and supply requirements-functional manager), and 6 (maintenance and supply requirements-CSAG). AR, Tab 19, Debriefing, at 10-17. Leader asserts that the agency failed to hold meaningful discussions because it never identified certain risks that it was advised of during the debriefing.

With respect to technical criterion 6 (maintenance and supply requirements-CSAG), during the initial evaluation, Leader’s proposal was assigned a risk because the protester failed to demonstrate technical knowledge of the logistics systems for the CSAG-S budget forecast submission, spares requirements review board, and automated budget compilation system pursuant to PWS § 3.7.7. AR, Tab 9, Interchange Notice, at 4-5. The agency issued 4 interchanges to Leader regarding technical criterion 6 (maintenance and supply requirements-CSAG), and this risk. Id.

In its final proposal revision, Leader included a new exhibit addressing technical criterion 6 (maintenance and supply requirements-CSAG). AR, Tab 12, Leader Final Proposal, at 5-6 (“Exhibit J: Additional information added to provide additional detail . . .”). Following the submission of revised proposals, the agency identified nine risks in Leader’s revised proposal concerning technical criterion 6 (maintenance and supply requirements-CSAG)--the first two risks had been identified previously in the interchange notice, and seven remaining risks were new risks that were introduced into Leader’s revised proposal. Agency Response, May 22, 2019, at 23-24; see also AR, Tab 19, Debriefing, at 16-17 (discussing this new exhibit and several risks). According to Leader, discussions were not meaningful because the agency did not advise Leader of the risks that were assigned to its revised proposal, which was the basis for the second source selection decision.

Agencies are not required to reopen discussions to address a protester’s failure to resolve an issue that was raised during discussions, or to address deficiencies first introduced by the offeror after discussions have closed. See Phillips and Jordan, Inc., B-411551, Aug. 25, 2015, 2015 CPD ¶ 273 at 5. Accordingly, the agency was not required to reopen discussions to inform Leader of the risks it assigned to its revised proposal.

With respect to technical criterion 2 (material management support), during the initial evaluation the agency identified four risks in Leader’s proposal, and provided the protester with three interchange notices. AR, Tab 9, Interchange Notice, at 1-2. When

the agency evaluated Leader's revised proposal, it identified three risks that were present in Leader's initial proposal, but not the subject of interchanges. Agency Response, May 29, 2019, at 4. Leader was advised of these risks during the debriefing. AR, Tab 19, Debriefing, at 10. With respect to technical criterion 5 (maintenance and supply requirements-functional manager), during the evaluation of Leader's revised proposal, the agency identified three risks that were present in Leader's initial proposal, but not identified during the initial evaluation and therefore not in the interchange notice. Supp. COS/Memorandum of Law at 18. Leader was also advised of these risks during the debriefing. AR, Tab 19, Debriefing, at 14. Leader argues that discussions were not meaningful because it was not advised of these risks. Comments and Supp. Protest at 16.

Our Office has found that where, after discussions have concluded, an agency identifies concerns relating to a proposal that should have been apparent to the agency prior to discussions, the agency should reopen discussions in order to raise its concerns. YMCA of Greater Los Angeles, B-414596.7, B-414596.8, Mar. 11, 2019, 2019 CPD ¶ 104 at 10. However, our decisions also provide that, where an agency erred in its discussions, we will not sustain a protest if the errors did not result in competitive prejudice to the protester. Dynamic Security Concepts, Inc., B-416013, B-416013.2, May 15, 2018, 2018 CPD ¶ 186 at 9.

Here, the agency asserts, and the protester does not disagree, that if the identified risks did not exist in Leader's proposal for technical criteria 2 and 5 (maintenance and supply requirements-functional manager), Leader would have been rated acceptable, low risk, instead of acceptable, moderate risk, for each of these criterion, and would have received a total score of 620 points. Agency Response, May 22, 2019, at 24-25; Agency Response, May 31, 2019, at 1. Since the award was made on the basis of the highest number of points, Sumaria, with 637.58 points, would still receive the task order. Under these circumstances Leader was not prejudiced by the agency's failure to point out the risks in technical criteria 2 and 5 that were present in Leader's initial proposal.⁸

The protest is denied.

Thomas H. Armstrong
General Counsel

⁸ The agency argues that discussions were not required because these risks did not make Leader's proposal unacceptable. We do not reach that issue as we find no prejudice.