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Decision

Matter of: Nolij Consulting, LLC

File: B-417328.3

Date: June 25, 2019

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Lucas T. Hanback, Esq., and Jeffery M. Chiow, Esq., Rogers Joseph O'Donnell, PC, for FEDITC, LLC, an intervenor.
John G. Terra, Esq., Defense Health Agency, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of quotations is denied where record shows the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

Nolij Consulting, LLC, a small business of Vienna, Virginia, protests the issuance of a Federal Supply Schedule (FSS) task order to FEDITC, LLC, also a small business, of Rockville, Maryland, under request for quotations (RFQ) No. HT001519Q0001, issued by the Defense Health Agency (DHA) for test and evaluation services. Nolij argues that the agency miscalculated proposals and made an unreasonable best-value tradeoff decision.

We deny the protest.

BACKGROUND

The RFQ, issued on November 7, 2018, as a small business set-aside for vendors holding contracts under the General Services Administration's FSS, Special Item Number 132-56 (Health Information Technology Services), contemplated the issuance, on a best-value tradeoff basis, of a fixed-price task order for provision of test and evaluation (T&E) services for DHA's Solution Delivery Division's operating environments. RFQ, Performance Work Statement, at 2. The T&E services, to be

performed over a five-month base period and two 1-year option periods, would include accomplishing software testing and related tasks; electronic health record core, care, and benefits integrated systems and clinical support; and government-developed and integrated commercial-off-the-shelf products. Id.

The RFQ advised that award would be made considering each firm's technical approach (evaluated on a pass/fail basis and requiring that the quotation be determined technically acceptable); and that the agency would make a best-value tradeoff decision taking into consideration past performance and price, with past performance deemed significantly more important than price.¹ RFQ at 227-232.

The agency received seven quotations in response to the RFQ by February 11, 2019. Agency Report (AR), exh. 14, Source Selection Decision at 2. The agency evaluated the quotations submitted and determined that those of both Nolij and FEDITC were technically acceptable. Id. at 12. The agency also assigned each firm a past performance rating of substantial confidence. Id. In addition, the record shows that FEDITC submitted an evaluated price of \$13,921,441, while NC submitted an evaluated price of \$14,940,052. Id.

On the basis of these evaluation results, the agency issued the subject task order to FEDITC, finding that, although the past performance of Nolij was slightly better than that of FEDITC (notwithstanding their identical adjectival ratings), the FEDITC quotation offered the best value to the government because Nolij's slightly superior past performance was not worth the price premium associated with its quotation. Id. at 13-14. After being advised of the agency's selection decision, Nolij filed the instant protest.

PROTEST

Nolij challenges the agency's evaluation of FEDITC's past performance, arguing that it was unreasonable to assign it a substantial confidence rating. We note at the outset that the evaluation of past performance, including the agency's determination of the relevance and scope of a vendor's performance history, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria. LOUI Consulting Grp., Inc., B-413703.9, Aug. 28, 2017, 2017 CPD ¶ 277 at 3-4. Evaluating the relative merits of vendors' past performance information is generally within the broad discretion of the contracting agency. Id. Our Office will review the record to ensure that the evaluation was reasonable and conducted in accordance with the solicitation terms. CSR, Inc., B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 5.

¹ The RFQ provided that each firm's past performance would be rated using adjectival ratings of substantial confidence, satisfactory confidence, neutral confidence, limited confidence or no confidence. RFQ at 232.

The record shows that FEDITC submitted three past performance examples, AR, exh. 19, FEDITC Past Performance Volume. The focus of Nolij's challenge principally is on the first of the three examples. According to the protester, this example (for which performance is ongoing) is being performed by a different legal entity, AlliantCorps, LLC, and Nolij argues that the agency failed to notice this fact, and also failed to consider whether the assets being used to perform that contract will be used to perform the solicited requirement.

We find no merit to this aspect of Nolij's protest. As the protester correctly notes, the record shows that the past performance example at issue is being performed by a joint venture called AlliantCorps, LLC. However, the record also shows FEDITC is the managing partner of the joint venture, as well as the technical lead for performance of the contract. The record further shows that FEDITC is identified as the lead on this contract in the past performance questionnaire that was submitted with FEDITC's quotation. AR, exh. 19, FEDITC Past Performance Volume, at 19, Past Performance Questionnaire. Nolij has not explained--and it is not apparent to us--why the agency could not reasonably attribute this past performance example to FEDITC under the circumstances.

In addition, Nolij has not argued or demonstrated that, for example, a parent, affiliate or corporate element other than FEDITC will be performing the solicited requirement.² It follows that there would be no basis for the agency to find that the firm submitting the quotation and the firm that is performing the contract submitted in FEDITC's past performance proposal are different legal entities. Accordingly, there was no basis for the agency to have had a concern about whether the assets of FEDITC used in connection with performance of the past performance example would be available to perform the solicited requirement. In light of the considerations outlined above, we deny this aspect of Nolij's protest.

Nolij also argues that, in assessing the relevance of FEDITC's past performance examples, the agency failed to give consideration to the firm's use of key personnel. According to the protester, the RFQ required the agency to consider whether the key personnel proposed for the solicited requirement were the same individuals performing the past performance examples. The agency, on the other hand, argues that the RFQ required it to consider only generically the firms' past performance in connection with its use of key personnel, and not whether the particular key personnel being offered were the same as those that performed the past performance example.

We find no merit to this aspect of Nolij's protest. The RFQ provided as follows with respect to determining the relevance of the firm's past performance examples:

² Compare Perini/Jones Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4 (Agencies properly may attribute the past performance of a parent or affiliated concern to the offering concern only where the record shows that the resources of the parent or affiliated concern will be used in performing the solicited requirement).

The Government will determine how relevant a recent effort accomplished by the offeror is to the present effort. Consideration will be given to: similarity of service/support, complexity, dollar value, use of key personnel, and the role of the offeror's involvement in the effort (for example, a prime contractor role vs. subcontractor role or one where the offeror performed critical tasks vs. minor or optional tasks).

RFQ at 231. According to the protester, this language required the agency to consider whether FEDITC's proposed key personnel performed its past performance examples.

We find the protester's interpretation of the RFQ unreasonable. To be reasonable, an interpretation of any solicitation must take into consideration the entire solicitation read as a whole. Magellan Fed., B-416254, B-416254.2, June 7, 2018, 2018 CPD ¶ 206 at 4.

Here, the RFQ also included past performance questionnaires that were to be provided to a firm's references to be completed by them and returned for submission with the firm's quotation. Those questionnaires bear out the agency's interpretation of the RFQ as requiring only a generic assessment of how a firm manages its key personnel. The questionnaires include a list of questions requiring responses. Among those is the following question: "Management of Key Personnel. Assess the contractor's performance in selecting, retaining, supporting, and replacing--when necessary--key personnel." RFQ at 87. It is thus clear from the RFQ read as a whole that the agency was only required to consider generically a firm's past performance in connection with its use of key personnel, and not, as suggested by the protester, whether the key personnel proposed for the solicited requirement were the same key personnel that had performed the past performance example. We therefore deny this aspect of Nolij's protest.

Finally, Nolij argues that the agency unreasonably found FEDITC's quotation technically acceptable under the key personnel element of the technical acceptability factor. According to the protester, a number of FEDITC's key personnel lack required credentials. The protester has identified three instances where it maintains FEDITC's key personnel do not have the required credentials. We have reviewed all of Nolij's allegations in this respect and find none of them has merit. We discuss one for illustrative purposes.

Nolij argues that one of FEDITC's proposed test managers does not have a required "[c]ertified ScrumMaster" credential. Nolij points out that this individual's certificate expired on April 26, 2019. AR, exh. 18, FEDITC Technical Proposal, at 39. According to the protester, this should have resulted in the FEDITC proposal being found technically unacceptable. However, the RFQ expressly provided as follows: "Submit resumes for all key personnel identified in Table A – Key Personnel below. Required certifications must be held by individual(s) before or by the date of contract performance." RFQ Amend. No. 5 at 2 (emphasis supplied). Thus, there was no requirement for a firm's proposed key personnel to have all of the required certifications

or qualifications at the time of quotation submission. Rather, all certifications were required only by the date of contract performance. As such, this requirement is a matter of contract administration, and not, as the protester maintains, a matter of technical acceptability. Our Office does not review matters of contract administration. 4 C.F.R. § 21.5(a). We therefore deny this aspect of Nolij's protest.

The protest is denied.

Thomas H. Armstrong
General Counsel