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Decision

Matter of: SigNet Technologies, Inc.

File: B-417335; B-417335.2

Date: May 28, 2019

Ira E. Hoffman, Esq., Butzel Long, PC, for the protester.
David S. Black, Esq., Gregory R. Hallmark, Esq., and Amy L. Fuentes, Esq., Holland & Knight LLP, for Xator Corporation, an intervenor.
Karl W. Kuhn, Esq. and C. Clay Weisenberger, Esq., Department of the Army, for the agency.
Sarah T. Zaffina, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency conducted inadequate discussions is denied where the agency led the offeror into the general area of its proposal requiring amplification or revision as acknowledged by the offeror in its final proposal revision.
 2. Protest challenging the evaluation of the awardee's proposal is dismissed where protester contests a performance requirement that need not be met prior to contract award, which raises an issue of contract administration that our Office does not consider.
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DECISION

SigNet Technologies, Inc., of Beltsville, Maryland protests the award of a task order to Xator Corporation of Reston, Virginia, under request for proposals (RFP) No. W912DY-18-R-0052, issued by the United States Army Corps of Engineers (Corps) to plan, procure, and install a surveillance system in Kabul, Afghanistan. SigNet challenges the agency's evaluation of proposals and the resulting task order award.

We deny the protest.

BACKGROUND

The agency issued the RFP on September 6, 2018, to holders of the Corps' Electronic Security Systems VI Unrestricted Multiple-Award Task Order Contract, pursuant to

Federal Acquisition Regulation (FAR) subpart 16.5.¹ AR, Tab 4.a, RFP at 1; Contracting Officer's Statement (COS) at 1. The RFP included a detailed performance work statement (PWS) to provide the planning, procurement, and installation of upgrades and expansion to the Kabul Security and Surveillance System in multiple locations in and around Kabul, Afghanistan. AR, Tab 4.b, PWS, at 1. The solicitation contemplated the issuance of a fixed-price order for a 1-year base period and one 1-year option period, as well as a 6-month option to extend services in accordance with FAR clause 52.217-8. RFP at 1.

Award was to be made on a best-value tradeoff basis, using three evaluation factors: technical, past performance, and price. Id. at 4-5. The technical factor was more important than the past performance factor, and when combined, all non-price factors were more important than price. Id. at 5. For the technical factor, the solicitation stated that the offeror's technical approach for 10 tasks would be evaluated and assigned the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. Id. at 5-6. The solicitation stated that in order to be considered for award, an offeror must receive a rating of no less than acceptable under the technical factor. Id. at 5. Of the identified 10 tasks to be evaluated under the technical factor, only the staffing approach is relevant to this discussion.

Two offerors, SigNet and Xator, submitted proposals by the November 7, 2018, closing date. COS at 2. The agency evaluated proposals, conducted discussions with both offerors, and requested final proposal revisions (FPRs) which were evaluated as follows:

	SigNet	Xator
Technical	Marginal	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Price	\$70,516,231	\$63,541,031

AR, Tab 23.a, Source Selection Decision Doc. (SSDD), at 20.

After independently reviewing SigNet's proposal, the source selection authority (SSA), who was also the contracting officer for this procurement, concurred with the marginal rating assigned by the evaluators to SigNet's proposal under the technical evaluation factor and eliminated SigNet from the competition. Id. at 10, 20-22. The SSA concluded that Xator's higher-rated and lower-priced proposal represented the best value to the government and selected it for award. Id. at 22; see COS at 23-24.

¹ The RFP was amended five times. Agency Report (AR), Tabs 1-6. Citations to the RFP are to the conformed version of the solicitation provided in the agency report.

After a written debriefing, this protest followed.²

DISCUSSION

SigNet raises several arguments challenging its evaluation and the award to Xator. Primarily, SigNet argues that the Corps' inadequate discussions led to a flawed evaluation of its technical proposal. SigNet also challenges the Corps' evaluation of Xator's proposal under the technical factor's staffing approach task. Finally, SigNet asserts that the agency unreasonably evaluated SigNet's past performance. For the reasons discussed below, we have considered all SigNet's protest grounds and find that none furnish a basis to sustain the protest.³

Discussions with SigNet

SigNet alleges that the agency conducted inadequate discussions with regard to the firm's technical approach, which resulted in a flawed technical evaluation and marginal rating. Protest at 8-10. SigNet also contends that the agency could have easily resolved any issues identified in its FPR through clarifications rather than assigning it weaknesses. Id. In its response, the Corps states that discussions with SigNet were meaningful and that the contracting officer notified SigNet of the same evaluation results that were used in the evaluation and source selection decisions. Mem. of Law, at 10; see COS at 9-15, 26.

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task and delivery order competitions

² The award value of the task order at issue exceeds \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

³ While we do not address in detail every argument the protester raised, we have reviewed each issue and do not find any basis to sustain the protest. For example, SigNet argues that Xator's proposal contained material misrepresentations regarding the commitment of a potential subcontractor, [DELETED]. Protest at 1. SigNet contends that Xator had no right to include [DELETED] in its proposal after [DELETED] terminated its teaming agreement with Xator. Id. at 7. Our Bid Protest Regulations state that "GAO will dismiss any protest allegation or argument where the agency's report responds to the allegation or argument, but the protester's comments fail to address that response." 4 C.F.R. § 21.3(i)(3). Here, the agency substantively responded to the protester's material misrepresentation allegations in the agency report; however, the protester failed to rebut the agency's arguments in its comments. COS at 24-25; see generally Protester's Comments & Supp. Protest at 1-6. Under these circumstances, we conclude that SigNet abandoned this protest ground, and the allegation is therefore dismissed. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

conducted under FAR subpart 16.5, such as the procurement here. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 6. While section 16.505 of the FAR does not establish requirements for discussions or clarifications in a task order competition, when exchanges occur they must be fair and not misleading. Id. In analogous decisions under FAR part 15, we have determined that when an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. FAR § 15.306(d); Will Tech., Inc.; Paragon TEC, Inc., B-413139.4 et al., June 11, 2018, 2018 CPD ¶ 209.

Based on our review of the record, we find the discussions with SigNet were meaningful because the agency led SigNet into the areas of its proposal requiring amplification or revision. Here, the agency issued a detailed discussion letter to SigNet identifying 22 weaknesses and four significant weaknesses assessed in its initial proposal under the technical factor. AR, Tab 12, SigNet Discussion Letter. The agency also conducted oral discussions. COS at 2. During discussions, the agency addressed the weaknesses and significant weakness identified in the letter, and provided SigNet with a letter summarizing the call. AR, Tab 16, SigNet Discussion Recap Email.

In its FPR, SigNet made extensive revisions in an attempt resolve the weaknesses. AR, Tab 23.a, SSDD at 10. The agency found that SigNet had adequately addressed 15 of the 22 initially identified weaknesses, and all four of the significant weaknesses. Id. However, the evaluators found that SigNet had introduced six additional weaknesses and one new significant weakness with its revised approach. Id. On this record, we conclude that the agency reasonably informed SigNet about areas in its proposal requiring revision in a manner to materially enhance the offeror’s potential for receiving the award. The fact that new weaknesses were introduced in SigNet’s revised proposal does not render discussions inadequate. Tele-Consultants, Inc., B-414738.4, Jan. 29, 2019, 2019 CPD ¶ 73 at 8.

We also disagree with SigNet that the weaknesses assigned to its FPR could have been resolved with clarifications. In this regard, clarifications are limited exchanges between the government and offerors that may occur when award without discussions is contemplated. FAR § 15.306(a)(2); eMind, B-289902, May 8, 2002, 2002 CPD ¶ 82 at 5 (clarifications are not to be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal). Although agencies have broad discretion as to whether to seek clarifications from offerors, even under a FAR part 15 procurement, offerors have no automatic right to clarifications under FAR parts 15 or 16, and such communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 8-9.

Here, clarifications were not appropriate to resolve the weaknesses in SigNet’s proposal because the agency concluded that SigNet would have been required to significantly

revise its proposal to address the weaknesses. See COS at 35. Also, the agency did not consider the changes needed to SigNet's proposal as "minor or clerical errors," as defined in FAR § 15.306(a), and the agency stated that the protester's assertion to the contrary "ignores the fact that seven (7) of the weaknesses identified are the result of repeated failures despite being provided Government comments in the discussion letter (evaluation notice) as well as in verbal discussion of each of the items mentioned in the discussion letter." Id. We agree. On this record, we find nothing objectionable about the agency's conduct of discussions. Tele-Consultants, Inc., supra.

Evaluation of Xator's Technical Factor Staffing Approach

SigNet also argues that Xator's technical proposal should have been assigned an unacceptable rating because Xator failed to submit an alternate point of contact for the proposal, failed to identify all personnel hired for the contract, and failed to name an alternate program manager (PM). See RFP § L (requiring an alternate point of contact) PWS §§ 1.6.13 & 1.6.14 (listing requirements for contractor personnel and designating key personnel positions, respectively).⁴ Protester's Comments & Supp. Protest at 3-4.

In response, the agency countered SigNet's contentions by producing pages from Xator's proposal in which both a primary and secondary point of contact were named. AR, Tab 35, Xator Proposal Docs., at 2, 4.⁵ In addition, the contracting officer pointed out that PWS sections 1.6.13 and 1.6.14 were neither proposal submission requirements nor evaluation factors; they were administrative in nature. See Supp. COS at 1-2.

We find no merit to SigNet's contentions. SigNet's allegation that Xator did not follow the solicitation instructions to identify an alternate point of contact for the proposal is refuted by the record, which shows that Xator complied with this instruction. AR, Tab 35, Xator Proposal Docs., at 2, 4.

Similarly, the protester's allegation that Xator failed to identify all personnel hired and name an alternative PM is also without merit. As the agency contended, the sections in

⁴ SigNet also alleges the agency's evaluation of its own technical proposal was flawed, and as a result, SigNet should not have received a marginal rating. Protest at 10. In this regard, SigNet challenges each of the weaknesses set forth in its debriefing letter, alleging that they were the result of either the agency's failure to consider information in the proposal, or to seek clarifications from SigNet rather than assign a weakness. Id. at 8-10. Although the agency provided a detailed rebuttal to these arguments in its report, the protester failed to rebut or otherwise address the agency's arguments in its comments. COS at 25-40; see generally Protester's Comments & Supp. Protest. As a result, we conclude that SigNet abandoned these protest grounds and they will not be considered further. IntelliDyne, LLC, supra.

⁵ The agency's supplemental documentation has been added to the agency report as Tab 35, Xator Proposal Docs.

the PWS (1.6.13 and 1.6.14) cited by the protester describe the responsibilities of the contractor in connection with performance of the contract once it has been awarded. PWS at 6-7. In contrast, the RFP's instructions only require the offeror to provide a "detailed description of how it will meet the requirement to provide personnel with the required technical qualifications in accordance with the relevant PWS paragraphs." RFP at 3. Simply stated, the RFP's staffing approach task under the technical factor makes no reference to identifying the key personnel and does not require all personnel to be identified prior to award of the contract.⁶

Moreover, to the extent that the PWS requires the successful contractor to identify its personnel performing the contract, this does not provide a basis for finding Xator's technical proposal unacceptable as the protester contends. Requirements such as this, which impose obligations on the contractor, are performance requirements that do not have to be met prior to award of the contract; consequently, whether or not the awardee ultimately performs in a manner that satisfies this requirement is a matter of contract administration, which our Office will not review and this allegation is dismissed.

4 C.F.R. § 21.5(a); HS Support, B-409937, Sept. 18, 2014, 2014 CPD ¶ 276 at 4; Waterfront Techs., Inc.--Protest & Costs, B-401498.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 16; Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 3-4.

SigNet's Past Performance Evaluation

Finally, SigNet challenges the agency's assessment of a satisfactory confidence rating for the firm's past performance evaluation, arguing that its "sterling past performance" should have garnered it a higher rating. Protest at 10-11. Here, we need not decide whether the agency's assessment was reasonable, because we find that SigNet was not prejudiced by any potential error in the agency's evaluation of its past performance.

Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. Arc Aspicio, LLC, et al., B-412612 et al., Apr. 11, 2016, 2016 CPD ¶ 117 at 7.

As previously stated, the RFP notified offerors that "[t]o receive consideration for award, a rating of no less than 'Acceptable' must be achieved" under the technical evaluation factor. RFP at 5. Here, the agency evaluated SigNet's proposal as marginal (i.e., less than acceptable) under the technical evaluation factor. As discussed above, we find the agency's technical evaluation of SigNet's proposal to be unobjectionable. Therefore, SigNet was ineligible for award by the terms of the solicitation. To the extent that there

⁶ Instead, the PWS requires offerors to provide in their proposals a complete list of personnel hired to perform the contract, and to update that information at least monthly, or more often as new personnel are hired. See PWS at 6-7.

were any errors to be found in the agency's evaluation of SigNet's past performance, the protester has not demonstrated that it would have been prejudiced by those errors. Simply stated, the protester was ineligible to receive award--based on the technical evaluation of its proposal--regardless of any rating it would have received from the agency for its past performance. Accordingly, we find no basis to sustain this protest ground. See The Dalton Gang, Inc.; All Points Logistics, Inc., B-412382.5 et al., Mar 1, 2017, 2017 CPD ¶ 61 at 12 (denying protest allegation challenging past performance evaluation where the record did not support a finding that the protester was prejudiced by alleged evaluation errors).

The protest is denied.

Thomas H. Armstrong
General Counsel