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Decision

Matter of: PEAKE

File: B-417744

Date: October 11, 2019

Richard J. Conway, Esq., and Michael Slattery, Esq., Blank Rome LLP, for the protester.

Amy O'Sullivan, Esq., Gabrielle Trujillo, Esq., and Olivia Lynch, Esq., Crowell & Moring LLP, for the intervenor.

Colleen A. Eagan, Esq., Nati Silva, Esq., and Vera A. Strebel, Esq., Defense Information Systems Agency, for the agency.

Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's rejection of proposal that contained clerical errors in a spreadsheet is denied when the proposal as submitted did not clearly demonstrate compliance with the requirements of the solicitation.
 2. Protest challenging the conduct of discussions is denied because the agency repeatedly led the protester into areas of its proposal that required amplification or revision.
 3. Protest challenging agency's rejection of proposal for failing to include a map with the firm's final proposal revision is denied, notwithstanding that the protester had previously submitted a version of the map in a prior proposal submission during discussions, when the solicitation specifically required the submission of a map and the agency advised offerors that it would only consider information submitted in the final proposal revisions.
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DECISION

Incident Communication Solutions, LLC d/b/a PEAKE, a small business of Severna Park, Maryland, protests the issuance of a task order under the General Services Administration's Complex Commercial Satellite Communications (CS3) government-wide acquisition indefinite-delivery/indefinite-quantity (IDIQ) contract to DRS Global Enterprise Solutions, Inc., by the Defense Information Systems Agency (DISA) under

request for proposals (RFP) No. 340596 for commercial satellite communications support for the United States Army's Wideband Enterprise Satellite System. The protester alleges, among other things, that the agency erred in finding its proposal technically unacceptable, failed to conduct meaningful discussions, and conducted a flawed best-value tradeoff.

We deny the protest.

BACKGROUND

The agency issued the RFP on November 27, 2018, to all CS3 contract holders. Contracting Officer's Statement of Facts and Memorandum of Law (COS/MOL) at 6. The RFP contemplated award of a single fixed-price task order on the basis of a best-value tradeoff between technical approach and price, with technical approach being more important than price. Id. at 7, 11.

Among other technical requirements, the RFP required offerors to provide detailed information concerning their proposed commercial satellite solution. For example, the RFP specifically required offerors to provide clearly labelled contour maps depicting various features of the proposed satellite coverage, such as the elevation angles needed to connect to the satellite, the effective isotropic radiated power (EIRP), and the gain-to-noise-temperature ratio. Agency Report (AR), Tab 1A, Conformed RFP, at 4. Additionally, the performance work statement (PWS) required offerors to generally provide at least two satellites to cover any given territory to provide redundancy. AR, Tab 1B, PWS, at 2-4. Finally, the RFP required offerors to provide link budgets¹ based on several specific technical assumptions for the worst case scenario terminal location in the territories covered by each satellite and satellite beam. RFP at 3; PWS at 2-4.

On January 9, 2019, the agency received two offers: one from PEAKE, and one from DRS. COS/MOL at 13. On February 27, the agency opened discussions with both offerors, issuing ten evaluation notices (ENs) to PEAKE. Id. Relevant to this protest, the agency noted that PEAKE's proposal failed to provide labelled contour maps with the required information for several satellites, failed to include link budgets for some proposed satellites, and included link budgets that were inaccurate or did not conform to the technical assumptions provided by the RFP. Id. at 13-14.

Peake submitted a revised proposal on March 8, and the agency evaluated PEAKE's proposal and issued eight additional ENs. Id. at 14-17. Among other things, the agency noted that PEAKE's revised proposal included coverage maps that did not show

¹ In this case, link budgets are spreadsheets containing detailed mathematical analyses that demonstrate whether a satellite link can "close" with a terminal--that is to say, whether a viable connection can be made to the satellite at a given location. COS/MOL at 8-9; 41-42. A viable connection in this case is indicated by a link margin value above zero. Id. at 43.

coverage of all required areas, failed to provide coverage maps for several satellite beams, and again failed to provide conforming link budgets. Id. PEAKE submitted a second revised proposal, and the agency evaluated it, issuing eight more ENs. COS/MOL at 18-21. These ENs, noted, again, that some of the required link budgets were missing or failed to conform to solicitation requirements, some of the coverage maps provided for certain satellites didn't demonstrate adequate coverage, and some maps were not adequately labelled in conformance with the RFP requirements. Id. The agency also informed PEAKE that clearly labelled coverage maps were important because the agency intended to use the coverage maps to, among other things, verify the accuracy of the link budgets. Id. at 21.

On May 16, the agency requested final proposal revisions (FPRs). COS/MOL at 18. The agency's request provided that "only FPR documents shall be considered when determining your compliance with the evaluation criteria stated in the RFP [. . .]" AR, Tab 4A, PEAKE Request for FPR, at 1 (emphasis original). Both DRS and PEAKE submitted FPRs. COS/MOL at 30-31. On June 20, the contracting officer concluded that PEAKE's proposal was technically unacceptable on the basis of three deficiencies, and issued the task order to DRS in the amount of \$136,374,312.50.² Id. The same day, the agency issued PEAKE a written debriefing, and PEAKE asked follow up questions, which the agency answered on June 28. Id. This protest followed.

DISCUSSION

The protester alleges that the agency erred in evaluating its proposal in several respects. For example, the protester alleges that the agency erred because it failed to recognize an obvious clerical error in EIRP data in the link budgets for regions three and four,³ and did not adequately advise the protester of the issue during discussions. Protester's Comments at 14-23; 28-29. Similarly, the protester alleges that the agency erred in finding its FPR to be technically unacceptable for failing to include one of the required satellite maps for region two,⁴ because the protester had previously included the map in its earlier proposals. Id. at 23-25. The protester alleges that the agency erred in numerous other respects, including additional evaluation and discussion errors, as well as errors related to the agency's price reasonableness evaluation and the best-value tradeoff.⁵ See Id. at 2-14; 29-35.

² The value of this task order exceeds \$10 million, and, accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(2).

³ Region three covered nations in Europe, Northern Africa, and the Middle East, while region 4 covered most other African nations. PWS at 3-4.

⁴ Region two covered certain nations in Central and South America. PWS at 3.

⁵ The protester initially also alleged that the agency engaged in disparate treatment by evaluating its proposal harshly, while applying a more lenient standard to the awardee.

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When an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Lear Siegler Servs., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. Furthermore, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8; STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17.

Link Budget Errors in Regions Three and Four

During its evaluation of the protester's FPR, the agency found, among other things, that the protester's link budget spreadsheets for regions three and four contained EIRP values in a spreadsheet column that did not match the EIRP values from the relevant coverage maps. COS/MOL at 21-24. Specifically, the mismatch concerned EIRP values in column Q of the protester's link budget spreadsheets. The protester concedes that its FPR link budgets for regions three and four appeared to include erroneous EIRP data in portions of spreadsheet column Q because portions of that column had been transposed with EIRP values from another column (column H). Protester's Comments at 14-15. The protester contends that the error should be excused because the results of the link budget analysis--the link margin values--were nonetheless correct and demonstrated technical compliance. Id. The protester also argues that the nature of the error was readily apparent because the values in column H were the correct EIRP values for column Q, which should have signaled to the agency that an error had occurred. Id. at 14-23. Finally, the protester argues that the agency did not adequately explain this issue to the protester during discussions. Id. at 28-29.

(...continued)

Protest at 34-35. However, the protester alleged no specific evidence in support of this protest ground other than the fact that the agency found the awardee's significantly higher price to be reasonable. Id. The protester argued that because the price difference was much larger than was necessary to achieve a technically acceptable solution, the agency's conclusion that the awardee's price was reasonable reflected disparate treatment. Id. We dismissed this protest ground as legally insufficient because a claim that the agency found a price to be reasonable that was higher than the price required to offer a technically acceptable proposal in a best value procurement cannot meaningfully give rise to an inference of disparate treatment. Notice of Resolution of Request to Dismiss at 1.

The protester's arguments are unavailing. Here, the agency noted during the FPR evaluation that the EIRP values in link budget column Q did not match the EIRP values in the provided coverage maps, indicating that the data was erroneous. COS/MOL at 21-24, 43-49, 51-58. The protester's contention that the agency should have excused the error because the link margin values were still correct and reflected a technically acceptable value is a circular argument. The link margin values are calculated values, and where the protester's data presentation contained errors in inputs, the agency had no way of knowing that the protester's underlying analysis was accurate other than by attempting to reproduce the analysis.

While the agency was not required to fix the protester's faulty proposal, the evaluators attempted to correct the protester's proposal by substituting accurate numbers from the coverage maps for the protester's inaccurate values in Column Q. COS/MOL at 43-49; 51-58. This change, however, resulted in link margin values below zero, which were not technically acceptable. Id. The protester contends that the errors in column Q were an obvious clerical error that resulted from the protester transposing portions of columns Q and H. Protester's Comments at 14-23. The protester argues, therefore, that the agency's evaluation was unreasonable because the agency only corrected the values in column Q, but did not detect and correct the transposed values in column H. Id. This argument is unpersuasive.⁶ As noted above, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. See International Med. Corps, supra; STG, Inc., supra. Here, the protester's proposal did not clearly demonstrate compliance because it contained erroneous information. The agency gave the protester the benefit of the doubt by attempting to determine the significance of the errors it identified in the protester's proposal. The fact that the agency failed to discover the full extent of the protester's errors is not a fault in the agency's evaluation.

The protester's arguments concerning discussions are equally meritless. As a general matter, discussions, when conducted, must be meaningful--that is, they must identify deficiencies and significant weaknesses that exist in an offeror's proposal--but that requirement is satisfied when an agency leads an offeror into the areas of its proposal that require amplification or revision. See, e.g., Epsilon Systems Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 16. In this regard, we have repeatedly noted that an agency is not obligated to "spoon-feed" an offeror as to the particular manner in which each and every item could be revised. See, e.g., ITT Indus.

⁶ We also note that the entirety of columns H and Q do not appear to be transposed, but rather only certain cells. For example, the "[l]ocation [n]ame" labels in column Q appear correct even where the EIRP values have been transposed. See, e.g., AR, Tab 5F, Link Budget Summaries, Region 3, Column Q. This makes the error significantly less obvious.

Space Sys., LLC, B-309964, B-309964.2, Nov. 9, 2007, 2007 CPD ¶ 217 at 12; OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7.

Here the protester contends that the agency only specifically identified link budget data errors in its proposal in a single EN during the first round of discussions, but did not subsequently advise the protester that it had failed to address that EN in its revised proposals. Protester's Comments at 28-29. The protester's argument ignores the fact that the agency advised the protester of technical problems with its link budgets in each round of discussions. See AR, Tab 2C, EN 2, at 1; AR, Tab 3G, EN 16, at 1-3; and AR, Tab 4F, EN 23, at 1-2. While the subsequent discussion notices did not specifically address the same data issues addressed in the earlier EN, they provided a generalized notice that the link budgets did not conform to the solicitation requirements. See AR, Tab 3G, EN 16, at 3 ("[p]lease provide additional/updated link budgets that specify [u]plink/[d]ownlink [b]eams for each satellite and beam"); and AR, Tab 4F, EN 23, at 2 ("[p]lease provide additional/updated link budgets that specify [u]plink/[d]ownlink [b]eams for each satellite and beam"). In short, the agency provided ongoing notice to the protester that its link budgets were, in certain respects, not adequate, and requested that the protester provide updated link budgets for each satellite and beam. This, combined with the earlier more specific notice, was more than enough to lead the protester into the issues with this area of its proposal.

More significantly, it is not clear on the record before us that the agency had sufficient information to identify all the errors in the protester's link budgets before the final FPR submission, due to the protester's failure to supply conformant coverage maps during discussions. The agency repeatedly notified the protester that some required coverage maps in regions three and four were either missing or inadequate. See, e.g., AR, Tab 3E, EN 14 at 1-2 and AR, Tab 4H, EN 25 at 1-2. As discussed above, the coverage maps were the source of information the agency used to identify the errors in the protester's link budgets, and without those maps the inconsistencies between the protester's link budgets and the maps could not have been apparent to the agency. See COS/MOL at 21-24. For example, the agency requested that the protester provide updated and clearly labelled coverage maps for satellite IS-33 in all three rounds of discussions because the maps were either not furnished, did not show coverage in the regions proposed, or lacked clear labelling of the EIRP values. See, e.g., AR, Tab 2B, EN 1, at 1-2; AR, Tab 3E, EN 14 at 1-2; AR, Tab 4H, EN 25, at 1-2. Significantly, several of the transposition errors in the FPR link budgets related to EIRP values for satellite IS-33, which was information the agency was still seeking from the protester during the last round of discussions. See COS/MOL at 44-48; AR, Tab 4H, EN 25, at 1-2. For the reasons discussed above, we cannot conclude that the agency erred in the conduct of discussions in this respect, or in finding the protester's proposal to be technically unacceptable on the basis of the errors in its link budgets.

The Map in Region Two

The protester also concedes that its FPR did not include a coverage map⁷ for satellite T-14R, which was one of two satellites proposed by PEAKE for region two. Protester's Response to Request for Factual Clarification at 1. The protester argues that the agency should nonetheless excuse the absence of the map in the FPR because the protester submitted the map with an earlier proposal, the omission in the FPR was unintentional, and the map was superfluous because the link budgets provided include mathematical proof of adequate satellite coverage for satellite T-14R. Protester's Comments at 23-25.

We find the protester's arguments unpersuasive. In this case, the solicitation required the inclusion of the coverage maps and the agency expressly advised offerors that only material included in the FPRs would be considered. RFP at 4; AR, Tab 4A, PEAKE Request for FPR, at 1. While the protester contends that its proposed use of the satellite had not meaningfully changed during discussions and its FPR had no redlined changes related to the map, it was not clear at the time of FPR evaluation whether the previously proposed maps were current and reflective of the protester's proposal

⁷ In its initial protest, the protester suggested that its FPR included a truncated version of the T-14R map, which should have alerted the agency to the inadvertent nature of the omission. Protest at 22 ("the coverage map for T-14R was truncated in Peake's FPR"). The protester also alleged, in a conclusory fashion, that the agency did not conduct meaningful discussions because it did not alert the protester to the fact that the map was partially missing in its FPR. *Id.* at 31. The agency responded by noting that the protester's FPR included no portion of the T-14R map, and questioned how an error in an FPR could meaningfully give rise to allegations of inadequate discussions where the FPR was submitted after the conclusion of discussions. COS/MOL at 33-37. In its comments on the agency report the protester repeatedly reasserted its claim that it had included a partial version of the T-14R map in its FPR, but did not respond in any way to the agency's rebuttal of the region two discussions argument, effectively abandoning it. See Protester's Comments at 23-25 ("the FPR did include a truncated version of the very same T-14R coverage map"); see also *Id.* at 25-29.

In our review of the record, however, we found no partial version of the map in the protester's FPR, and we requested clarification from the protester on this point. In its response, the protester conceded that, contrary to its earlier representations, its FPR did not include a partial version of the T-14R map, but asserted, for the first time, that the T-14R map was also missing in its second revised proposal, and that the agency should have advised the protester during the final round of discussions that the map was missing. Protester's Response to Request for Factual Clarification at 1-2. Here, the protester attempts to rehabilitate a spurious argument with an untimely one: this new argument relies entirely on information that was in the protester's possession before it filed its initial protest, and should have been filed, at the latest, within ten days of the protester's debriefing. 4 C.F.R. § 21.2(a)(2).

because the map had been omitted.⁸ Protester's Comments at 23-25. As noted above, agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. Optimization Consulting, Inc., supra. Additionally, we have repeatedly concluded that when an agency has advised offerors that they will only consider information provided in FPRs, agencies need not use material from an offeror's earlier submissions to fill gaps in an FPR. Tatitlek Techs., Inc., B-416711, et al., Nov. 28, 2018, 2018 CPD ¶ 410 at 9-11 (when agency advised offerors that FPR would be evaluated as a stand-alone document, agency did not err when it disregarded earlier discussion responses not incorporated in the FPR); McCann-Erickson USA, Inc., B-414787.2, Nov. 14, 2018, 2018 CPD ¶ 390 at 5-6 (when agency advised offerors that all data should be included in the FPR and protester failed to include material vital to a meaningful review of its proposal in the FPR, the agency did not err in declining to consider information submitted during discussions that may no longer reflect the offeror's proposal).

The protester's contention that the coverage maps were superfluous because the information on them was recoverable from the link budgets is also without merit. The solicitation specifically required the inclusion of coverage maps, and, by omitting the map, the protester's FPR did not conform to material requirements of the solicitation. RFP at 4. Furthermore, the independent necessity of the maps for the agency's evaluation is especially clear in this case, as the provided maps for regions three and four revealed the protester's errors in other link budgets, as discussed above. In sum, the agency did not err in concluding that the protester's FPR was unacceptable because it did not include a required map that was vital to the evaluation of its proposal.

Because we conclude that the agency reasonably found the protester's FPR to be technically unacceptable on two distinct grounds, we have no basis to question the agency's conclusion that the protester's proposal was unawardable. Accordingly, we need not reach the protester's other arguments concerning the agency's evaluation, the conduct of discussions, the price evaluation, or the best-value tradeoff, because even if we were to agree with the protester that the agency erred in those respects, the

⁸ Collaterally, the protester argues that the maps were also "commercially available," although the protester does not specifically explain how the maps may be acquired. Protester's Response to Request for Factual Clarification at 1-2. Even if the protester is correct that the agency could have independently acquired a current version of the map, an agency is not required to supply information missing from an inadequately detailed proposal. Optimization Consulting, Inc., supra.

protester was not prejudiced thereby. See Bashen Corp., B-412032.2, Dec. 3, 2015, 2015 CPD ¶ 381 at 4 n.2 (protester cannot show prejudice where agency reasonably found protester otherwise ineligible for award).

The protest is denied.

Thomas H. Armstrong
General Counsel