



Decision

Matter of: The Redwitch Company

File: B-404166

Date: January 12, 2011

Harry Toland for the protester.

Jonathan A. Baker, Esq., Department of Health and Human Services, for the agency. Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined protester's proposal to be less than acceptable under the various evaluation factors stated in the solicitation.

DECISION

The Redwitch Company, of Fernandina Beach, Florida, protests the award of a contract to LegitScript LLC, of Portland, Oregon, under request for proposals (RFP) No. FDA-SOL-10-1068201-02, issued by the Department of Health and Human Services, Food and Drug Administration (FDA), for internet monitoring and analysis support services. Redwitch challenges the evaluation of its proposal.

We deny the protest.

The Office of Criminal Investigations of the FDA monitors the internet for illicit trafficking and/or marketing of FDA regulated products, including prescription drugs, dietary supplements, tobacco, medical devices, blood and biologics, vaccines, cosmetics, radiation-emitting products, animal and veterinary medicines, and foods.

On May 26, 2010, in accordance with the Federal Acquisition Regulation (FAR) subpart 12.6 streamlined procedures for commercial items, the FDA posted this combined synopsis/solicitation on the Federal Business Opportunities (FedBizOpps) website. The RFP, set aside for small businesses, sought a contractor to conduct continuous internet monitoring and analysis support services to identify rogue websites and affiliated networks engaged in the illegal marketing and/or sale of FDA-regulated products over the internet. The solicitation contemplated the award of a time-and-materials/labor-hour contract for a base period with 2 option years.

The RFP listed four evaluation factors: (1) technical understanding, (2) relevant experience, (3) past performance, and (4) price. Under the technical understanding factor, the RFP advised that “the proposed content will be evaluated on the ability to demonstrate that the offeror understands the technical requirements and has a coherent, feasible and efficient approach to providing the services required.” RFP at 3. Under this factor, the proposal was to (1) demonstrate the ability to meet the statement of work requirements, (2) specify the contractor’s current infrastructure for internet monitoring and analysis support services, (3) present an approach to monitoring FDA regulated products and tracking affiliated networks, (4) present an approach to reporting and notifying the FDA, and (5) delineate a detailed and well organized project plan and staffing plan that demonstrates all aspects of the services to be performed. Id. The relevant experience factor required the proposal to include a written narrative describing two to four projects similar in scope, complexity, importance, and size, and which involve internet monitoring. The past performance factor considered the risk associated with an offeror’s likelihood of success based on its performance record. Price was considered to be less important than the non-price factors and was evaluated for price reasonableness.

Seventeen offerors responded to the RFP by the closing date on July 8, 2010. A project advisory group (PAG) rated the strengths and weaknesses of the proposals against the non-price factors using an adjectival rating scale.¹ The PAG found four proposals, including LegitScript’s, to be acceptable,² and the remaining proposals, including Redwitch’s, to be minimally acceptable.³ Redwitch’s experience was rated

¹ The possible adjectival ratings were exceptional, acceptable and minimally acceptable.

² An acceptable rating was defined as follows:

Proposal shows a reasonably sound response and meets requirements. There may be strengths or weaknesses, or both. Strengths and weaknesses offset one another. Weaknesses do not significantly detract from the offeror’s response. Any significant weaknesses appear to be correctable and will have little or no impact on contract performance. Proposal represents the norm from a qualified contractor. Exceeds “Minimally Acceptable” rating.

AR, Tab 5, PAG Evaluation Report, at 165.

³ A minimally acceptable rating was defined as follows:

Proposal contains one or more significant weaknesses, weaknesses, and/or deficiencies that could have some impact if accepted. Significant weaknesses outweigh any strengths that exist. Proposal is below the standard expected from a qualified contractor.

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minimally acceptable and LegitScript's experience was rated exceptional. Redwitch's past performance was considered to be high risk and LegitScript's past performance was considered to be medium risk. Redwitch submitted the lowest price of \$1,135,484. LegitScript's proposal had a price of \$2,571,765. LegitScript's price was considered to be fair and reasonable, but the agency was unable to analyze Redwitch's price because Redwitch had not provided the required supporting information. LegitScript's proposal was determined to represent the best value because it was the highest rated of the acceptable proposals and was the only proposal that did not require further discussions or clarifications before award could be made. Award was made to LegitScript on September 28. After a debriefing, this protest followed.

Redwitch challenges the evaluation of its proposal. The evaluation of proposals is a matter within the discretion of the procuring agency, since the agency is responsible for defining its needs and deciding on the best methods of accommodating them. We will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. Since an agency's evaluation is dependent on the information furnished in a proposal, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate. Id. An offeror that fails to do so runs the risk that its proposal will be evaluated unfavorably. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. Here, we find that the record supports the reasonableness of the agency's evaluation of the protester's proposal.

As indicated, Redwitch's proposal was rated minimally acceptable under the technical understanding factor. The agency found that the proposal did not demonstrate an overall ability to meet the statement of work requirements; that the offeror did not have a physical location to perform the work and its proposal indicated a significant lack of infrastructure; that the proposal failed to provide a detailed and well organized plan for monitoring and tracking activities; that the offeror failed to indicate its ability to notify the agency within 24 hours of changes in the internet landscape; and that the proposal did not include a project staffing plan that demonstrates all aspects of the services to be performed under the contract.

Redwitch's proposal was also rated minimally acceptable under the experience factor. In this regard, the proposal only referenced the experience of the president of the company instead of the two to four relevant projects requested by the RFP.

Based on the information in the proposal, we find the agency's minimally acceptable ratings under the technical understanding and experience factors to be reasonable.

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AR, Tab 5, PAG Evaluation Report, at 165.

As noted by the PAG, Redwitch's proposal does not reflect that it has current infrastructure in place for internet monitoring and analysis support, such as a physical site to perform the work. Moreover, its technical approach lacks detail with regard to the specific tasks required to be performed under the contract. The record also evidences that its proposal does not adequately address the reporting requirements and its staffing plan is missing information requested by the solicitation. In addition, contrary to the proposal instructions that requested the offeror to describe two to four projects similar in scope, complexity, importance, and size, and which involve internet monitoring, the Redwitch proposal only addressed relevant experience and past performance by referencing the experience of the president of the company. The president's resume does not reflect any specific internet monitoring and support experience.⁴ While Redwitch argues that it did provide sufficient information in its proposal, its disagreement with the evaluation provides no basis to question the ratings of its proposal as minimally acceptable under the technical understanding and experience factors.

Under the circumstances, Redwitch's proposal was reasonably considered to be minimally acceptable. Such a rating reflects that Redwitch's proposal was considered "below the standard expected from a qualified contractor" and was thus not acceptable.⁵ AR, Tab 4, PAG Evaluation Report, at 165. Under the circumstances, the agency reasonably found that that award could not be made to that firm unless the proposal were revised and the agency was not required to consider it for award notwithstanding Redwitch's offered (albeit unsupported) low cost.⁶

The protest is denied.

Lynn H. Gibson
General Counsel

⁴ With regard to relevant experience, the proposal only states that Mr. Toland has between 10 and 30 years experience with various hardware and software programs.

⁵ The evaluation scheme did not include an unacceptable rating; minimally acceptable was the lowest rating.

⁶ In its comments on the agency report, Redwitch raises a number of arguments that will not be considered as they are untimely filed under our Bid Protest Regulations because they either involve apparent solicitation improprieties or involve matters that could have been raised (but were not) in Redwitch's initial protest. 4 C.F.R. § 21.2 (2010).