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Decision

Matter of: Network Innovations, Inc.

File: B-408382; B-408382.2

Date: September 4, 2013

Richard J. Conway, Esq., and Matthew W. Turetzky, Esq., Dickstein Shapiro LLP, for the protester.

Maj. Joseph K. Venghaus, Department of the Army, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that an awardee proposed personnel it did not expect to furnish during contract performance is denied where the awardee's proposal indicated its intent to recruit incumbent personnel, proposal included signed commitments for all named key personnel, and the protester cites no convincing evidence of misrepresentation.
 2. In a negotiated procurement for the award of a fixed-price contract, protest that an awardee's proposed price was unrealistically low is denied where the solicitation did not provide for a price realism analysis.
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DECISION

Network Innovations, Inc. (NI), of Calgary, Canada, protests the United States Central Command's award of a contract to Global Technology (GT) of Kabul, Afghanistan, under request for proposals (RFP) No. W56KJD-13-R-0019, for a six-month bridge contract for information technology (IT) network operations and maintenance (O&M) services for the Afghan Ministry of Defense (MoD). NI asserts that the awardee proposed staff that it did not currently employ and did not intend to use in contract performance and that the awardee's low price was unrealistic.

We deny the protest.

BACKGROUND

The RFP, issued on April 29, 2013, provided for award of a six-month contract for O&M support of the Afghan MoD network, including sites in Kabul and at six regional Corps Headquarters. Award was to be made to the lowest-priced, technically acceptable offeror, considering three evaluation factors: (1) technical capability, including subfactors for server disaster recovery, installation, operations and maintenance, management performance plan, and quality control plan; (2) past performance; and (3) price. In order for a technical proposal to be rated acceptable, it was required to be acceptable for all factors and subfactors.

Proposals were received from NI (the incumbent contractor) and GT. Both proposals were included in the competitive range and, after discussions, both technical proposals were determined to be acceptable. GT's price (\$1,167,819) was significantly lower than NI's price (\$1,741,377), and consistent with the solicitation evaluation procedures, GT's past performance was then evaluated and found acceptable. RFP at 100; Source Selection Decision Document (SSDD) at 9-10. Upon determining that GT's past performance was acceptable, the agency on or about May 17, 2013, made award to GT as the lowest-priced, technically acceptable offeror. This protest followed.

DISCUSSION

GT Proposed Staff

NI complains that GT failed to comply with the staffing requirements of the RFP and misled the agency by proposing personnel that it did not expect to use for contract performance. In this regard, the RFP identified 98 technical support positions, setting forth required technical qualifications certifications and minimum years of experience for each. RFP at 10. Under the management performance plan subfactor, offerors were required to provide an organizational chart, with personnel and lines of reporting within the organization, and, for 29 of the positions, resumes and technical qualifications certifications as follows: 1 project manager (resume and certifications), 5 site supervisors (resumes and certifications), 1 network management information assurance coordinator (resume and certifications), 1 network chief engineer (resume and certifications), 1 system engineer (resume and certifications), 5 system administrators (resumes), and 15 IT support personnel (resumes). RFP at 97-98. The RFP, however, did not require that offerors provide commitment letters from proposed personnel. Id.

The agency maintains, and NI does not dispute, that GT's proposal included the required staffing information, including identifying the personnel and furnishing the resumes and certifications for the 29 positions specified in the solicitation. GT Technical Proposal at 30, 45-128; AR, at 3. NI alleges, however, that on May 30, after the award to GT, NI's regional manager attended a "project kick off/transition

meeting” at which GT’s project manager stated that GT was not compliant with the RFP’s staffing requirements, and that GT planned to hire NI’s employees to fulfill the RFP’s requirements. Protest at 3. According to the protester, the contracting officer’s representative “asked if NI would be willing to stay on board for the next few weeks while GT acquired the RFP-compliant personnel so that a proper transition could commence.” Id. at 4. NI contends that this demonstrates that GT did not propose currently employed staff and therefore its proposal was not technically acceptable. Id. at 5.

The record does not support GT’s argument that NI’s proposal was technically unacceptable. As pointed out by the agency, nothing in the RFP required that offerors propose only personnel currently employed by the offeror. Supplemental Agency Report at 5. Here, NI’s technical proposal indicated as follows:

All twenty-nine resumes provided with this proposal are available and committed to begin work on the contract at award. We also plan to seek to retain incumbent contractor employees to supplement our team if that opportunity is available.

GT Technical Proposal at 31. While NI asserts that language in GT’s proposal such as “[a]ll twenty-nine resumes provided with this proposal are available and committed to begin work on the contract at award,” suggested the personnel were currently employed by GT, we find its interpretation unpersuasive. Not only did nearly all the resumes of the personnel indicate otherwise by indicating that their current employment was with another company, e.g., the reference to employment with another company “August 2010 to Present” for the proposed network management information assurance coordinator, the attached “Commitment Letter” for the employees provided that “I have accepted an offer to work for Global Technology contingent upon award of the MoD O&M contract.” See, e.g., GT Technical Proposal at 69-70.

NI also complains that GT misled the agency by proposing personnel it did not expect to use for contract performance, that is, engaged in a “bait and switch.” In this regard, NI focuses upon the publication of employment advertisements by the Wise Global Group (WGG), the parent company of GT, on social media or jobs websites. While the advertisements do not refer to GT or this acquisition by name, they include position descriptions that are identical or virtually identical to certain position descriptions in the RFP. These advertisements range in date from April 30, before proposals were due, to June 3, after award. Supplemental Protest, attach. A-F. NI asserts that this recruiting effort demonstrates that GT proposed personnel it did not intend on hiring for this project.

An offeror may not propose to use specific personnel that it does not expect to use during contract performance, as doing so would have an adverse effect on the integrity of the competitive procurement system and generally provides a basis for

proposal rejection. AdapTech Gen. Scientific, LLC, B-293867, June 4, 2004, 2004 CPD ¶ 126 at 5. To establish an improper bait and switch scheme, however, a protester must show a firm either knowingly or negligently represented that it would rely on specific personnel that it did not reasonably expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and the misrepresentation had a material effect on the evaluation results. Data Mgmt. Servs. JV, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10.

Here, we find that NI's protest furnishes no basis for concluding that GT either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance. AdapTech Gen. Scientific, LLC, supra. NI points to nothing in the record that indicates that any of the named key personnel were unavailable, unwilling, or unlikely to perform under the contract as GT employees. As noted by the agency, GT's proposal included signed commitments for all of the key personnel named in the proposal. See GT Proposal at 45-130. Also, in response to the protest, the awardee has repeatedly affirmed that it intends "to provide all individuals listed" in its proposal. AR Tab 9, GT Letter to the Agency, June 27, 2013; AR, Tab 11, GT Letter to the Agency, August 15, 2013.

Further, we do not find WGG's online recruiting efforts by themselves to be persuasive evidence of misrepresentation. Although the advertisements cited by NI use position descriptions identical or virtually identical to that used in the RFP, they provide no guarantee that any prospective employee would be considered for any particular position or even employment on any particular contract. Indeed, none purports to be a GT advertisement for a particular key personnel position under this RFP and none appears to limit hiring to this acquisition. We further note that, in response to the agency's request, the awardee has advised that these advertisements were part of "ongoing efforts" to recruit employees "on all contracts for the US Government." GT Letter to the Agency, August 15, 2013. According to GT, "the postings are a tool to keep a constant flow of candidates available and evaluate available talent." Id. We agree with the agency that these WGG recruiting efforts do not demonstrate that GT either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance. See Veda Inc., B-278516.2, Mar. 19, 1998, 98-1 CPD ¶ 112 at 16-17.

Price Realism

NI also complains that GT's proposed price was "unrealistically low," and should have put the agency on notice that GT "had a limited understanding of the contract requirements," subjecting the agency "to the unnecessarily high risk that GT would be unable to perform." Protest at 6-7.

Under a solicitation for a fixed-priced contract, such as here, there is no prohibition against the procuring agency's acceptance of a low or below-cost offer. Wright Tool Co., B-276416, June 10, 1997, 97-1 CPD ¶ 210 at 3; SAIC Computer Sys., B-258431.2, Mar. 13, 1995, 95-1 CPD ¶ 156 at 2, 11-13 (where solicitation contemplates award of fixed-price contract without evaluation of price realism or offeror's understanding of requirements, protester's claim that another offeror submitted unreasonably low price is not valid basis for protest). The mere fact that a company offers a low price does not establish that the company's proposal fails to meet the solicitation specifications or is otherwise unacceptable, and allegations to this affect fail to state a valid basis of protest. See Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Here, the RFP did not inform offerors that the agency would perform a price realism analysis. We do not agree with NI that the statement in the RFP that the agency "will be evaluating proposals to determine if the contractor provides sufficient details to clearly demonstrate they are knowledgeable and capable of performing the processes and techniques associated with this requirement," RFP at 101, provided offerors with adequate notice that a price realism analysis would be conducted, especially since the provision appears in the RFP's technical evaluation section, offerors were not required to submit cost or pricing information that could be used in a price realism analysis, and the RFP's price evaluation provision indicated only that the "completeness and reasonableness" of proposed prices would be evaluated. RFP at 99, 101, 103; see Milani Construction, LLC, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 5.

The protest is denied.

Susan A. Poling
General Counsel