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Washington, DC 20548

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Decision

Matter of: SRA International, Inc.

File: B-411773; B-411773.2

Date: October 20, 2015

Scott E. Pickens, Esq., Barnes & Thornburg LLP, for the protester.
Marie Cochran, Esq., Federal Acquisition Service, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated proposal as unacceptable is denied where protester did not provide an unequivocal letter of commitment for all proposed key personnel as required by the solicitation.

DECISION

SRA International, Inc. (SRA), of Fairfax, Virginia, protests the rejection of its proposal submitted in response to request for task order proposals (RFP) No. GSC-QF0B-15-32921, issued by the General Services Administration (GSA) for information technology support services. SRA asserts that GSA unreasonably evaluated its proposal.

We deny the protest.

The solicitation was issued under GSA's Alliant Government Wide Acquisition Contract¹ to obtain information technology support services for the Chief

¹ The solicitation anticipated issuance of a task order to a contractor under the General Services Administration's Alliant multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contract program. Since the task order here is valued at over \$10 million, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. See 41 U.S.C. § 4106(f).

Information Officer of the Department of Agriculture's Risk Management Agency. Proposals were evaluated against five technical factors on a pass/fail basis.² As relevant to this protest, offerors were required to submit a list of key personnel, and:

Letters of Commitment signed by each proposed Key Person, including a statement that the proposed Key Person named is employed and available to begin work on the Project Start Date.

RFP at L-4, L-7, L-8. The solicitation notified offerors that any proposal that does not include a letter of commitment signed by each key person at the time of proposal submission shall be eliminated from further consideration for award. Id. at L-23.

SRA's proposal included a letter of commitment for its proposed infrastructure lead, a key person, as follows:

Barring any unforeseen circumstances or conflicts, I anticipated being available to support the USDA . . . project upon award. These conflicts may include, but are not limited to, termination of employment, promotion, movement to a different position and internal business group within Microsoft, illness, death, medical or personal leave, any leave of absence as provided for by Microsoft.

AR, Tab 6, Infrastructure Lead Letter of Commitment, at 1. SRA's proposal was eliminated from the competition because the agency did not consider the letter of commitment sufficient to establish that the infrastructure lead would be available to begin work on the project start date, as required by the solicitation. Contracting Officer's (CO) Statement at 3. Rather, the agency viewed the letter of commitment as indicating that the availability of the infrastructure lead was uncertain and subject to circumstances within his control, such as taking a leave of absence. Id. After learning of its elimination from the competition, SRA protested to our Office.

DISCUSSION

SRA protests that the decision to reject its offer was unreasonable. According to SRA, the letter of commitment submitted for the infrastructure lead meets the requirements of the solicitation because: (1) it is a signed letter of commitment, and (2) it states that the employee is available to begin work on the project start date. In SRA's view, the agency unreasonably rejected the letter of commitment because the proposed individual might not be available if he died or became ill.

² Offerors that were rated acceptable under all five pass/fail factors participated in oral presentations and were evaluated against additional technical factors and for price. RFP at L-5, L-23 through L-25.

In reviewing a protest against an agency's evaluation, we will not reevaluate quotations but we will examine the record to ensure that an agency's evaluation was reasonable and consistent with the evaluation criteria in the solicitation, as well as procurement statutes and regulations. See RightStar Sys., B-407597, Jan. 16, 2013, 2013 CPD ¶ 35 at 5. An agency's evaluation of technical quotations is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. See Affolter Contracting Co., Inc., B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 4.

The agency explains that it was necessary that proposed key personnel commit to be available on the day performance under the contract began since months of time could pass between the date for proposal submission and the date when performance would begin. Therefore, the agency wanted assurance that the signatory was not contemplating life or career changing decisions that could deprive the team of his or her services between proposal submission and the project start date. CO Statement at 3. The agency also explains that it did not reject SRA's proposal because the proposed key person might die or get sick, but because his proposed availability was contingent upon actions under his control, such as taking a leave of absence. Id. Since the proposed infrastructure lead stated that he could be unavailable based on events within the control of his employer (such as being moved to a different internal business group) or himself, the agency reasonably concluded that he was not unequivocally committed to being available when performance began. Therefore, we find the agency's conclusion that SRA's proposal was unacceptable to be reasonable.

Disparate Treatment

SRA also complains that the agency subjected it to disparate treatment in its evaluation of letters of commitment with respect to two offerors--SAIC and American Systems. Comments at 14-17. SAIC submitted letters of commitment for its key employees which read as follows:

Based on a direct match of your experience with the requirements as well as your deep domain knowledge . . . we are pleased to notify you of our intent to propose you for the Key Personnel position . . . For all Key Personnel, we are required to submit a signed letter of Commitment to the Government. Signing this letter of Commitment indicates your commitment the following:

You are committed to continuing to work on this contract in the event SAIC is awarded this task order.

* * * * *

By signing below you authorize SAIC to use your resume

I [employee] accept the terms as outlined above. I understand that although I am a current SAIC employee, this does not constitute a guarantee of employment.

See, e.g., AR, Tab 34, SAIC Letter of Commitment, at 1.

SRA asserts that SAIC's offer should have been rejected as unacceptable because SAIC's letters of commitment do not state that its employees will be available on the date performance begins. SRA also argues that SAIC's letters of commitment are unacceptable because the proposed key person is not guaranteed employment. Therefore, SRA argues that it is foreseeable that the key person will be unavailable to perform. Comments at 14-15.

These arguments are without merit. As an initial matter, we find that the agency reasonably concluded that if the individual is committed to continuing to work on the contract, he or she will be available when performance starts. Further, we find no merit in SRA's argument that the letters of commitment are unacceptable because they fail to guarantee employment. The solicitation here did not require binding bilateral employment agreements, but rather, only letters that clearly showed the intent on the part of the signatory to work for the offeror. The letters submitted by SAIC met this requirement. See USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 9 (letters of commitment that demonstrate employee's intent to work for offeror are sufficient even though they did not amount to binding employment contracts where solicitation did not require binding bilateral employment agreements); Laser Power Technologies, Inc., B-233369, B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267 at 14.

With regard to American Systems, its proposal contained letters of commitment for its proposed key personnel that stated as follows:

If AMERICAN SYSTEMS is awarded a contract from the aforementioned solicitation, I hereby commit to be employed and available to begin work on the project start date.

See, e.g., AR, Tab 11, American Systems Letter of Commitment, at 1. SRA complains that American Systems' proposal should have been rejected because the letters of commitment it provided for its proposed key personnel did not show that there were current employees or contingent employees. SRA asserts that the letters of commitment are further defective because they state the authors commit to being available on the contract start date, not that they are available on the contract start date. Comments at 17.

As indicated above, the solicitation required the letters of commitment to include a statement that the proposed key person is employed. In the course of the procurement, a potential offeror asked about proposing contingent hires as key personnel. In response, the agency stated that contingent hires were acceptable, and that this information should be included in the letter of commitment. AR, Tab 44, Question and Answer 66.

The agency reasonably accepted the letters of commitment submitted by American Systems as adequate. Based on the wording of the letters, specifically that the employee committed “to be employed” by American Systems, the letters of commitment indicated that the signatories were contingent employees who will become employees if the task order is issued to American Systems. Further, we find no merit in SRA’s argument that American Systems’ letters are insufficient because they state that the employee “commits” to be available on the start date, rather than stating that the employee “will” be available on the start date. In our view, stating that the author of the letter commits to being available to start work on the contract start date is a commitment that the author will be available on that date.³ Since the solicitation required letters of “commitment,” we find that the agency reasonably concluded that this language satisfied the solicitation’s requirements.

The protest is denied.

Susan A. Poling
General Counsel

³ SRA also complains that the explanations in the contracting officer’s statement are not in the contemporaneous evaluation record. However, our Office has repeatedly stated that post-protest explanations that fill in previously unrecorded details will generally be considered in our review of the rationality of selection decisions so long as those explanations do not contradict the contemporaneous record. See, e.g., Computer Sciences Corp.; HP Enterprise Services, LLC; Harris IT Services Corp; Booz Allen Hamilton, Inc., B-408694, et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 17, Raytheon Co.-Missile Sys. Division, B-408906.4 et al., Mar. 17, 2015, 2015 CPD ¶ 120 at 11.