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Decision

Matter of: Leidos, Inc.

File: B-418978; B-418978.2

Date: October 29, 2020

Shelly L. Ewald, Esq., and Emily C. Brown, Esq., Watt, Tieder, Hoffar & Fitzgerald, LLP, for the protester.

Captain Philip L. Aubart, Department of the Army, for the agency.

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DIGEST

Protest that the agency unreasonably rejected the protester’s proposal as noncompliant is denied where the record shows that the agency’s determination was made in accordance with the terms of the solicitation.

DECISION

Leidos, Inc., of Reston, Virginia, protests its elimination from the competitive range under request for task order proposals (RTOP) No. W50NH9-20-R-CHMT, issued by the Department of the Army for intelligence support services. Leidos alleges that the agency unreasonably determined that its proposal did not comply with the solicitation’s requirements.

We deny the protest.

BACKGROUND

On May 7, 2020, the agency issued the RTOP against the Solutions for Intelligence Analysis 3 (SIA-3) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR), Tab 6, RTOP, amend. 3, at 3. The agency sought to procure counterintelligence and human intelligence support services. AR, Tab 3a, RTOP, Performance Work Statement (PWS) at 1. The RTOP contemplated the award of a cost-plus-fixed-fee contract with cost-reimbursable and fixed-price components to be performed over a 1-year base period, and four 1-year option periods. *Id.* at 2-3; RTOP, amend. 3 at 3. Award would be made on a best-value tradeoff basis considering the

following factors, listed in descending order of importance: staffing plan, counterintelligence and human intelligence, and cost/price. RTOP, amend. 3 at 49-51.

Importantly, the RTOP also advised, as part of the evaluation criteria, that “[a]fter receipt of proposals, but prior to the evaluation process, the Government will perform a compliance review of the Offeror’s proposal to determine the extent of compliance with the solicitation’s instructions and whether the proposal meets any of the conditions listed in M.4 (‘Rejection of Offerors’).” RTOP, amend. 3 at 49. One of the conditions included an offeror failing to respond meaningfully to the proposal preparation instructions by omitting significant material data and information. *Id.* at 50.

The RTOP instructed offerors to submit a cost volume as part of their proposals. RTOP, amend. 3 at 38. Offerors were required to identify the components of their labor rates, and were specifically cautioned that “[t]he Prime is responsible for ensuring that the subcontractor provide a full and complete labor rate build that provides complete transparency for the direct labor rate component and each indirect rate applied to it along with profit or fee regardless of contract type.”¹ *Id.* at 39.

Leidos and [DELETED] other offerors submitted proposals prior to the June 24 closing date. Contracting Officer’s Statement (COS) at 3-4. The agency rejected Leidos’s proposal as noncompliant because one its subcontractors did not provide the components of its labor rates. *Id.* After the agency informed Leidos that its proposal was rejected, the firm filed this protest.² See AR, Tab 8, Rejection Letter from the Army to Leidos, July 23, 2020, at 1-2.

¹ The RTOP repeated the requirement that offerors identify the components of their labor rates throughout the instructions. *E.g.*, RTOP, amend. 3 at 39 (“Prime Offerors and any cost reimbursable subcontractors shall show complete development of the elements of its labor rates”), 42 (“The Prime is responsible for ensuring that the subcontractor provide a full and complete labor rate build that provides complete transparency for the direct labor rate component and each indirect rate applied to it[.]”), 43 (“All proposed subcontractor [fully burdened labor rates] (whether ‘Fixed Rates’ or not) shall be justified by a full labor buildup, detailing all elements of cost that comprise the proposed [fully burdened labor rates] in accordance with all instructions[.]”), 45 (“All subcontractors to the prime offeror, regardless of its subcontract type with the prime offeror, shall submit a time-phase labor buildup in its own format, showing how the proposed fully burdened labor rates were developed. The labor buildup should show the elements of cost (labor fringe, overhead, [general and administrative]) used to develop the proposed fully burdened labor rates.”).

² The Defense Intelligence Agency awarded the SIA-3 IDIQ. The task order has an expected value exceeding \$25 million, and is therefore within our jurisdiction to review protests related to the issuance of orders under multiple-award IDIQ contracts issued under the authority of Title 10 of the United States Code. 10 U.S.C. § 2304c(e)(1)(B); see *also* Protest at 8 n.3.

DISCUSSION

Leidos raises multiple allegations challenging the agency's decision to reject its proposal as noncompliant. First, Leidos alleges that the agency's decision to reject its proposal was inadequately documented because the agency did not memorialize its rationale in a separate document, and appeared to reject the firm's proposal after agency officials' conducted internal oral conversations. Comments and Supp. Protest at 16. Second, Leidos alleges that the agency unreasonably rejected its proposal because the firm submitted its subcontractor's fully burdened labor rates and any omission of specific components was inconsequential since the firm intended to compensate its employees at the requisite minimum direct labor rate. Protest at 17-19. Finally, Leidos alleges that the RTOP permitted the firm to submit its full and complete labor rates as a "proposal modification." Protest at 19-20. We discuss each allegation in turn.³

First, we address the protester's contention that the agency did not document its decision to reject the firm's proposal as noncompliant. When reviewing whether agency decisions and evaluations are adequately documented, our decisions explain that the record must show the rationale for the agency's decision and evaluation determinations. See *Computer World Servs.*, B-417356, May 16, 2019, 2019 CPD ¶ 185 at 3.

By way of background, the agency reviewed proposals for compliance against the RTOP's instructions following the close of the solicitation period. COS at 3. Agency officials reviewed each proposal against a checklist to determine whether it provided the required information set forth in the RTOP's instructions, and then noted whether each proposal was "essentially complete," "partially complete," or "substantially incomplete" with respect to each of the instructions. AR, Tab 9, Compliance Matrix at 1-5. After reviewing the proposals, agency officials identified Leidos's proposal as non-compliant because the firm did not identify the specific labor rate components for one of its subcontractors. *Id.*; COS at 4. Agency officials then communicated this fact to the source selection authority (SSA) in an oral meeting, and recommended that the agency reject Leidos's proposal. COS at 4. The SSA reviewed the information, and agreed that Leidos's proposal was incomplete. *Id.* at 4-5. The SSA also determined that the RTOP's instructions were clear because all of the other offerors submitted compliant proposals, and concluded that the acquisition would still have adequate competition without including the proposal from Leidos. *Id.* at 5. The agency then provided Leidos with a letter of noncompliance explaining why its proposal was rejected as noncompliant. *Id.* at 5; AR, Tab 8, Letter from Agency to Leidos Explaining Rejection, July 23, 2020, at 1-2.

Although the agency did not memorialize its rationale for rejecting Leidos's proposal in a separate document and discussed the firm's rejection in an oral meeting, we do not find

³ We have reviewed all of the allegations raised and find that none provide us with a basis to sustain the protest.

that this provides us with a basis to sustain the protest because the record contains adequate documentation showing the basis for the firm's rejection. Indeed, the record shows that the agency identified the subcontractor's rates as incomplete. AR, Tab 9, Compliance Matrix at 4-5. When reviewing Leidos's proposal against the checklist, the agency identified the proposal as "partially complete" with regard to the requirement to identify the specific components of all subcontractor's labor rates. *Id.* Further, the agency included six notations explaining that the subcontractor "did not propose a buildup, so [direct labor] floors are not known to be met or not." *Id.* at 5-6.

Additionally, the record contains several emails between agency officials showing their deliberation in determining that Leidos's proposal was noncompliant. *See, e.g.*, AR, Tab 9f, Compliance Email 3 at 1 (explaining that the RTOP required offerors to detail the components of their subcontractor's rates and that Leidos did not provide that information). Moreover, the agency effectively memorialized its rationale for rejecting the firm's proposal in the notice that it sent to Leidos, wherein it explained that the firm's proposal did not comply with the instructions because it did not identify the components of the labor rates for one of its subcontractors. AR, Tab 8, Letter from Agency to Leidos Explaining Rejection, July 23, 2020, at 1-2. Accordingly, we deny this allegation because the record contains sufficient detail to allow our Office to review the agency's determination.⁴

Turning to the remaining allegations, when reviewing an agency's rejection of a proposal as noncompliant, our Office will examine the record to determine whether the agency's decision was reasonable and in accordance with the solicitation criteria and applicable statutes and regulations. *See, e.g.*, *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. Where a proposal omits required information, the offeror runs the risk that its proposal will be rejected. *Id.*

As noted above, the RTOP advised as part of its evaluation criteria, that the agency would conduct a compliance check to determine whether proposals contained all of the requisite information as outlined in the solicitation's instructions. RTOP, amend. 3, at 49-50. Further, the RTOP instructed offerors to identify the components for each of

⁴ In support of this allegation, Leidos also argues that the agency rejected the protester's proposal because one email shows that an agency official had "unstated opinions" about the firm's subcontractor. Supp. Comments at 13. We do not find this allegation persuasive. As noted above, the agency produced several emails wherein agency officials discussed whether Leidos's proposal was noncompliant. In one of the emails, an agency official explains that he has "opinions" regarding whether Leidos's proposal was noncompliant and then explains that Leidos's proposal failed to detail the components for one of its subcontractor's labor rates. AR, Tab 9e, Compliance Email 2 at 1. Thus, we do not find any merit to Leidos's allegation because, contrary to the firm's position, the record does not show that the agency official harbored some unstated ill will toward Leidos's subcontractor, but rather had formed an opinion that Leidos's cost proposal was noncompliant with the solicitation's instructions.

their labor rates, and for the labor rates of any subcontractors. *Id.* at 39. Thus, the RTOP plainly required offerors to provide this information or risk their proposals being excluded from further consideration. See Memorandum of Law (MOL) at 12-13; see also *Optimal Sols. & Techs.*, B-310123.2, Sept. 21, 2007, 2007 CPD ¶ 172 at 3 (solicitation permitted agency to reject proposals for failure to conform to the proposal preparation instructions when the evaluation criteria advised that failure to do so could be grounds for exclusion of the proposal from further consideration).

Given that requirement, we conclude that the agency reasonably rejected the firm's proposal because our review confirms that Leidos did not identify the labor rate components for one of its subcontractors. See MOL at 13. The proposal identified only the subcontractor's fully burdened rate. As examples, the subcontractor listed commercial labor rates for its source analysts, counterintelligence specialists, and intelligence technicians. AR, Tab 7h, Subcontractor's Cost Narrative at 7. Further, the subcontractor specifically explained that the indirect labor rate, fringe benefits rate, overhead rate, general and administrative rate, and fee rate were inapplicable because the subcontractor was proposing commercial labor rates. *Id.* at 8-9; see also AR, Tab 7i, Subcontractor's Cost Worksheets. Additionally, we note that the firm effectively concedes that its proposal did not identify the labor rate components. Comments and Supp. Protest at 9 (stating that the subcontractor included a redacted version of its pricing worksheet in the proposal, and that the worksheet included the fully burdened labor rates but did not reveal the full build-up of the subcontractor's labor rates).

While Leidos may argue that the agency did not require the labor rate components because the firm agreed to be bound by the agency's minimum direct labor rates, we do not find this argument persuasive since the firm was required to identify the labor rate components so that the agency could independently verify that aspect of the firm's proposal. See Comments and Supp. Protest at 8-9. Similarly, the firm's argument that the full and complete labor rate is immaterial as it committed to paying the minimum direct labor rate is unpersuasive, because the agency explains that it requires the specific direct labor rate and indirect rates (which were not provided) in order to conduct the cost realism analysis as contemplated by the solicitation.⁵ MOL at 17-19.

Additionally, Leidos's assertion that its proposal was "essentially complete" since five of its six subcontractors identified their labor rate components, see Supp. Comments at 8-9, 11, is unavailing because the RTOP required detailed labor rate components for all subcontractors. Accordingly, we deny the protest allegations because the agency reasonably rejected the firm's proposal in accordance with the solicitation's evaluation criteria.

⁵ The protester also asserts that it did not need to disclose cost elements because this procurement was for a commercial item. Protest at 17-18 (citing Federal Acquisition Regulation 15.403-1(c)(3)). We disagree. The agency explains that the cited provision is inapplicable as the analytical services sought are non-commercial. MOL at 9, see also AR, Tab 10, Commerciality Determination at 1-2.

Finally, Leidos argues, in the alternative, that it should have been able to submit the omitted labor rates as a “proposal modification.” See Protest at 19-20. The agency responds that there was no such requirement in the solicitation. MOL at 20-22 We agree.

The RTOP defined a “proposal modification” as “a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.” RTOP, amend. 3 at 37. Additionally, the RTOP provided that offerors may submit modifications “to correct a mistake at any time before award.” *Id.*

Here, we see no basis to conclude that Leidos’s submission of the omitted labor rates would constitute a “proposal modification.” As stated above, the solicitation’s proposal modification procedure contemplates allowing an offeror to correct a mistake (*i.e.*, minor inaccuracy). *Id.* In submitting its proposal, the firm did not mistakenly omit the full and complete labor rates for its subcontractor, instead, the proposal noted the requirement for the rates, but stated that the indirect rates were inapplicable. AR, Tab 7h, Cost Narrative at 8; *see also* MOL at 21 (arguing that Leidos made a “deliberate decision to substitute commercial item data in lieu of the required data”). Thus, Leidos did not erroneously omit minor information such that we would say the firm should have been permitted to avail itself of the “proposal modification” feature outlined in the solicitation.

Moreover, Leidos’s interpretation of the solicitation’s “proposal modification” procedure renders nugatory the solicitation’s compliance check, and hence is unreasonable. See MOL at 22; *see also Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD1 ¶ 121 at 3 (a solicitation interpretation is unreasonable when it is inconsistent with the solicitation when read as a whole and fails to give effect to each of the solicitation’s provisions). Indeed, Leidos’s interpretation eliminates the compliance check as a method to screen poorly written proposals because the firm’s interpretation would allow any offeror to supplement or revise its proposal in the event it fails the compliance check. MOL at 22. Accordingly, we deny this protest allegation.

The protest is denied.

Thomas H. Armstrong
General Counsel