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Decision

Matter of: NCLN20, Inc.

File: B-287692

Date: July 25, 2001

Nancy M. Camardo, Esq., Law Office of Joseph A. Camardo, Jr., for the protester.
Robert J. McCall, Esq., General Services Administration, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably downgraded protester's proposal for failing to address organizational structure and transition plan since, although not identified in solicitation as discrete evaluation factors, they were logically encompassed by the staffing plan.

2. Agency reasonably downgraded protester's proposal under key personnel factor where, although protester offered to staff contract with incumbent employees, it neither provided evidence that the incumbent's employees would work for the protester, nor offered alternative employees to cover the eventuality that they would not.

DECISION

NCLN20, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. GS-03P-01-CDC-0051, issued by the General Services Administration (GSA) for central alarm monitoring and radio dispatching services at the GSA MegaCenter in Philadelphia, Pennsylvania.

We deny the protest.

The solicitation provided for a "best value" evaluation based on four technical factors--key personnel, staffing plan, corporate experience and employee incentive plan--and price, with the technical factors considered more important than price. A source selection evaluation board (SSEB) evaluated the technical proposals and determined that NCLN20's proposal was only marginally acceptable, and should be excluded from the competitive range. NCLN20 challenges several aspects of the

evaluation of its proposal, and concludes that it improperly was eliminated from the competitive range.

The competitive range generally consists of the most highly rated proposals, based on evaluation of the information submitted in each proposal against the stated evaluation criteria. United Housing Servs., Inc., B-281352.14, May 7, 1999, 99-1 CPD ¶ 80 at 3. In reviewing protests of competitive range determinations, we will not reevaluate proposals; rather, we will review the record to ensure that the evaluation and competitive range determination were reasonable and consistent with the terms of the solicitation. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 4. The evaluation here, and the agency's decision to exclude NCLN20's proposal from the competitive range, were reasonable.

UNSTATED EVALUATION FACTORS

NCLN20 asserts that organizational structure and transition/start-up plan were not stated elements of the evaluation, and that the agency therefore improperly downgraded its proposal under the staffing plan factor based on the firm's failure to address these items. The protester maintains that, if GSA wanted offerors to specifically address these items, it should have specified them in the RFP.

This argument is without merit. While procuring agencies are required to identify the significant evaluation factors and subfactors in a solicitation, they are not required to identify the various aspects of each factor which might be taken into account, provided that such aspects are reasonably related to or encompassed by the RFP's stated evaluation criteria. Farnham Security, Inc., B-280959.5, Feb. 9, 1999, 99-1 CPD ¶ 100 at 3. GSA asserts that organizational structure and transition/start-up plan are logically related to the staffing plan factor, and therefore were properly considered under that factor. Agency Report (AR) at 4. Specifically, GSA explains, an offeror's organizational structure relates to staffing because it demonstrates the levels of control and the role of the project manager; the transition/start-up plan is related because it demonstrates how the offeror will ensure adequate staffing immediately following contract award. Id. NCLN20 does not dispute that these items are logically related to the staffing plan factor, and we think the agency reasonably could expect offerors to recognize the need to address these areas, even without an express RFP requirement for the information. We therefore find no basis for questioning the agency's position.[1]

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[1] NCLN20 also argues that, since the solicitation contained a detailed list of the position requirements and job descriptions for key personnel, an organizational structure was unnecessary. In response, GSA explains that the purpose of describing organizational structure is not simply to list the position descriptions, but also to describe such things as hiring and firing authority and to demonstrate how the offeror would support the solicitation requirements for adequate staffing,

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NCLN20 maintains that the agency also improperly downgraded its proposal under the employee incentive plan factor based on its failure to discuss premium pay, since the RFP did not require offerors to address this area and, in any case, described premium pay as a program administered by GSA that is separate from the employee incentive program. GSA maintains that premium pay was logically related to the employee incentive plan factor.

We agree with GSA. The solicitation required offerors to propose an employee incentive program, RFP § M.4; amend. 1, Technical Qualifications, and also authorized offerors to request premium pay for employees who worked a specified minimum number of hours in a highly satisfactory manner. RFP § C, part 11. While the solicitation gave GSA ultimate authority to approve a contractor's request for premium pay for a particular employee, it will be the contractor's responsibility to decide under what circumstances it will request premium pay and, more generally, how it will use the program as an incentive. Premium pay therefore clearly constituted an employee incentive, and was properly considered under the employee incentive plan factor. This being the case, we think the agency reasonably could expect offerors to address the details surrounding how they planned to use the program. Since NCLN20's proposal did not do so, GSA reasonably downgraded it.

KEY PERSONNEL

The solicitation required offerors to designate a project manager with at least 5 years of experience in dispatch and/or alarm monitoring work. RFP § M.1. GSA downgraded NCLN20's proposal because it showed that its offered project manager had only 4-1/2 years experience. NCLN20 argues that the agency should have measured its project manager's experience from the time of NCLN20's debriefing instead of the time of proposal submission--which would increase his experience to 4 years and 11 months--and then should have found that NCLN20 was in substantial compliance with the 5-year requirement. The protester also questions whether GSA considered the significant and long-term communications experience the project manager gained during his military service.[2]

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management and supervision. Supplemental AR at 1. We agree with the agency that these considerations are not addressed by the RFP's position requirements and job descriptions.

[2] The protester also maintains that the agency's questioning whether its price proposal {DELETED] indicated a misunderstanding of the statement of work was unwarranted. Even if the protester's position is correct, however, the record shows that NCLN20's proposal was excluded from the competitive range based primarily on the weaknesses in its technical proposal, not because of questions about its proposed price. Accordingly, NCLN20 was not prejudiced by the price evaluation.
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NCLN20's allegation derives from an ambiguity in the solicitation; that is, since the solicitation did not establish the date by which the required experience must be accrued, it was ambiguous as to which date the agency would use in the evaluation. Such an allegation involves a solicitation defect apparent on the face of the solicitation which, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2001), must be raised prior to the time set for the receipt of initial proposals. Thus, if NCLN20 believed the agency should measure experience from a particular time, it was required to so argue prior to the closing time. Since it did not raise the issue until after the award was made, it is untimely and will not be considered. See, e.g., Federal Computer Int'l, Corp., July 29, 1997, 97-2 CPD ¶ 35 at 3; Continental Technical Servs. of Georgia, Inc., B-259681, B-259681.2, Apr. 19, 1995, 95-1 CPD ¶ 204 at 7.

With respect to the project manager's military experience, the solicitation specifically required a project manager "who possesses at least five years of experience in dispatch and or alarm monitoring work . . . ." The agency found, and the protester does not dispute, that while the project manager's military experience involved communications, it did not involve dispatch or alarm monitoring. Accordingly, the agency properly disregarded this military experience in determining whether the project manager met the experience requirement.

The agency also downgraded NCLN20's proposal under key personnel because NCLN20 did not provide resumes for remote access programmers or alternate dispatchers. NCLN20 maintains that this was unreasonable because its proposal stated that it intended to use acceptable incumbent employees for these positions, and the solicitation did not require resumes for incumbent employees.

This argument is without merit. NCLN20 is correct that the solicitation permitted offerors to propose incumbent employees under the key personnel factor, and that no resumes were required for such proposed employees. RFP, amend. 2 at 1; amend. 3 at 1. However, offerors were permitted to propose, and were required to include resumes for, additional employees they intended to hire. RFP amend. 2 at 1. GSA downgraded the protester for its lead dispatchers because, while it proposed incumbents, it did not propose (and provide resumes for) alternate dispatchers, who would be necessary in the event that the incumbents did not accept employment with the protester. The evaluation in this regard was reasonable. While NCLN20 planned to use incumbent staff, there was nothing in the proposal to demonstrate that the incumbent staff would accept employment with the protester. For example, the protester did not submit letters of interest or intent from the employees, or even

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See Dube Travel Agency & Tours, Inc.; Garber Travel, B-270438, B-270438.2, Mar. 6, 1996, 96-1 CPD ¶ 141 at 9.

indicate that it had contacted them. Since there was no guarantee that the incumbent lead dispatchers would work for the protester, it was not unreasonable for the agency to consider the fact that NCLN20 had not made alternative arrangements to perform the contract in the event that they did not. See Comprehensive Health Servs., Inc., B-285048.3 et al., Jan. 22, 2001, 2001 CPD ¶ 9 at 3.

With respect to the remote access programmers, the agency reports that this position did not exist under the current contract; since there thus were no incumbent employees, by offering incumbents NCLN20 essentially failed to offer employees for these positions. It thus was reasonable for the agency to downgrade its proposal.

While NCLN20 claims that it was not aware that the remote access programmer position did not exist under the current contract, this did not shift the risk of its staffing approach to the agency.[3]

The protest is denied.[4]

Anthony H. Gamboa
General Counsel

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[3] NCLN20 also protests that the awardee did not meet the past performance requirements of the solicitation. Since we have concluded that NCLN20 was properly excluded from the competitive range, however, and there are other offerors in the competitive range, NCLN20 is not an interested party to raise this issue. 4 C.F.R. § 21.0(a); A Travel Passport, Inc.; Global Express Travel Servs., Inc., B-255383.2 et al., 94-1 CPD ¶ 171 at 7.

[4] NCLN20 argues that there was unequal treatment of offerors because one or more of the proposals included in the competitive range had a deficiency similar to those in its proposal. For example, the protester asserts that the awardee proposed a project manager who did not meet the experience requirement. Since inclusion in or exclusion from the competitive range is based an evaluation of the overall proposal and not on a single deficiency, the fact that other offerors' proposals had deficiencies similar to the protester's, but were not excluded from the competitive range, does not demonstrate unequal treatment. See Information Spectrum, Inc., B-256609.3, B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251 at 15-17.