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Decision

Matter of: URS Federal Services, Inc.

File: B-412580; B-412580.2

Date: March 31, 2016

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Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation's projected level of labor hours does not accurately reflect the agency's needs, based on information conveyed to the protester as the incumbent contractor, is dismissed as untimely when filed more than 10 days after the agency's notification to the protester.
2. Protest that agency failed to perform a price realism analysis of awardee's proposal is denied where terms of solicitation did not require, or permit, the agency to reject an offeror's proposal on the basis of its low price.
3. Protest challenging the size status of various subcontractors proposed by awardee is not for consideration under GAO's bid protest jurisdiction.
4. Protest allegations challenging the agency's evaluation of awardee's proposal as acceptable with regard to the solicitation's corporate experience and labor category requirements are denied where record indicates that agency's evaluations were reasonable.

DECISION

URS Federal Services, Inc., of Germantown, Maryland, protests the Department of the Army's award of a task order to VSE Corporation, of Alexandria, Virginia, pursuant to task order request (TOR) No. W56HZV-15-X-JM01 to perform

maintenance, repair, overhaul, modification and upgrade of military vehicles and other equipment at the Red River Army Depot near Texarkana, Texas.¹ URS, the incumbent contractor, protests that the terms of the solicitation failed to reflect the agency's requirements; that VSE's proposal should have been rejected as unrealistically low-priced; that VSE's proposal failed to comply with the solicitation's small business participation requirements; that VSE's proposal failed to meet the solicitation's corporate experience requirements; and that VSE's proposal failed to meet the solicitation's qualification requirements for the program manager labor category.

We dismiss the protest in part and deny it in part.

BACKGROUND

On October 1, 2015, the Army issued the TOR to firms holding Strategic Services Solutions indefinite-delivery, indefinite-quantity (IDIQ) contracts.² The TOR contemplated award of a task order to perform depot-level maintenance for a 30-day phase-in period, one 12-month base period with a surge option, two 12-month option periods, and one 6-month option period. AR, Tab E-3, TOR, at 3-4, 6. The solicitation identified various labor categories, along with quantities of labor for each category by performance period,³ and instructed offerors to submit fully-loaded fixed labor rates for each labor category and performance period.⁴ Section M of the TOR provided that award would be made on a lowest-priced

¹ The solicitation's performance work statement (PWS) elaborates that the contractor will provide services related to the "Bradley Fighting Vehicle System (Bradley)/Multiple Launch Rocket System (MLRS) vehicles, Rubber Products (track and road-wheels), Tactical Wheeled Vehicles (trucks, tractors, and trailers), Bridge Boats, Secondary Components, Mine Resistant MRAP [mine resistant ambush protected], Armored Security Vehicle, Small Unit Support Vehicles (SUSV), All Terrain Material Handling Equipment and initial environmental spill containment response and MRAP-University (MRAP-U) support." Agency Report (AR), Tab E-10, PWS, at 1.

² The Strategic Services Solutions IDIQ contracts were awarded by the Army's Tank-Automotive and Armaments Command (TACOM) and are frequently referred to as "TS3" contracts. The services sought were determined to be commercial services, and the procurement was conducted under the procedures contemplated by Federal Acquisition Regulation (FAR) subpart 16.5.

³ The solicitation reflected a projected total of 7,714,551 labor hours over all performance periods. AR, Tab D-1, Solicitation Review Board Abstract, at 1.

⁴ The solicitation provided minimum wage determination rates for the various categories, with which offerors were required to comply. TOR at 16.

technically-acceptable basis, identifying the following technical factors under which proposals would be evaluated as acceptable or unacceptable: small business participation,⁵ corporate experience,⁶ quality/safety,⁷ and recruitment plan.⁸ Id. at 2, 18-21.

The solicitation provided that, in selecting an awardee, the agency would first calculate the total evaluated price (TEP) for each proposal⁹ and, then, evaluate the lowest-priced proposal for acceptability under each of the technical evaluation factors. If the proposal with the lowest TEP was evaluated as acceptable under each factor, award would be made based on that proposal, and no further evaluations would be performed. If the proposal with the lowest TEP was evaluated as unacceptable under any of the technical evaluation factors, the agency would move to the next-lowest-priced proposal and repeat the process. Id. at 20-21.

On November 9, 2015, six proposals were submitted, including those of URS and VSE. The agency calculated the TEP for all offerors, determining that VSE offered the lowest TEP (\$243,826,267); that URS offered the third-lowest TEP (\$255,893,078); and that there was a 4.95 percent difference between these two proposed prices. AR, Tab L, Award Decision Document, at 6. Thereafter, the

⁵ With regard to small business participation, the solicitation stated: “The SB [small business] Participation requirement for this task order is 25% of proposed Labor, for the base period (including base surge) and each option period.” TOR at 17. The solicitation provided that proposals would be evaluated as acceptable/unacceptable based on whether the proposal “clearly meets the 25% proposed labor value.” Id. at 18.

⁶ With regard to corporate experience, the solicitation required that offerors must demonstrate at least 12 consecutive months of recent corporate experience performing certain specified activities. Id. at 18.

⁷ With regard to quality/safety, the solicitation required that each offeror demonstrate at least 12 months of recent experience integrating its labor force into an organization with a defined ISO9001 registered Quality Management System, and with an Occupational Safety and Health Administration (OSHA) safety program system. Id. at 19.

⁸ With regard to the recruitment plan, the solicitation required each offeror to provide a written plan outlining its ability to recruit, hire, and retain the personnel necessary to perform the required services throughout the task order performance periods. Id. at 19.

⁹ The solicitation provided that TEP would be calculated by multiplying each offeror’s fully-burdened labor rates by the estimated quantities provided for each labor category, and adding the extended prices for all performance periods. Id. at 20.

agency evaluated VSE's proposal and determined that it was acceptable under each of the technical evaluation factors. Based on having submitted the lowest-priced technically-acceptable proposal, VSE was selected for award. On December 14, URS was notified of VSE's selection. On December 22, URS filed this protest.¹⁰

DISCUSSION

In its initial protest, URS asserted that the agency was required to amend the solicitation; that VSE's proposal should have been rejected as unrealistically low-priced;¹¹ and that VSE's proposal failed to comply with the solicitation's small business participation requirements. Following receipt and review of the agency report, URS filed a supplemental protest asserting that VSE's proposal failed to meet the solicitation's corporate experience requirements, and should have been rejected for failing to meet the solicitation's qualification requirements for the program manager labor category. As discussed below, URS's various complaints provide no basis to sustain its protest.

Failure to Amend Solicitation

URS first protests that the terms of the solicitation failed to reflect the agency's actual requirements. Specifically, URS complains that, after proposals were submitted but prior to award, URS received notification of a reduction in the estimated quantity of labor that may be required during the base performance period. Accordingly, URS asserts that the agency was obligated to reopen the procurement, amend the solicitation, and request submission of revised proposals. Protest at 21-26. In this context, URS refers to a letter it received from the agency on December 8, 2015, in connection with its ongoing performance of the incumbent contract, in which the contracting officer stated:

¹⁰ The estimated value of the task order at issue is greater than \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

¹¹ The record establishes that there was an intervening offeror, with a TEP lower than URS's but higher than VSE's, but does not disclose the value of that offeror's TEP. AR, Tab L, Award Decision Document, at 6. Neither the agency nor the awardee have challenged URS's status as an interested party and, since the agency did not make any determination regarding the technical acceptability of the intervening offeror's proposal, our Office cannot conclude that URS lacks standing as an interested party to pursue this protest. See 4 C.F.R. § 21.0(a)(1).

RRAD [Red River Army Depot] has advised me that their workload is being reduced from prior projections up to 500,000 labor hours through the end of Fiscal Year 2016. The labor categories most affected are anticipated to be:

Mechanic/Motor Vehicle Mechanic Positions
Welder/Welder, Combination, Maintenance Positions
Metal Body Repairman/Motor Equipment Metal mechanic Positions
Automotive Painter Positions

The subject referenced contract [URS's incumbent contract] neither guarantees a level of work nor directs a staffing level by URS. It is both the responsibility and at the discretion of URS to provide staffing to meet the requirements of the contract. As such, the change in anticipated workload does not represent a contract change. I'm providing this communication solely to enable URS the most time possible to determine what, if any, actions it will take regarding its RRAD workforce as a result of the change in anticipated workload.^[12]

Protest, Exh. M, Letter from Army Contracting Officer to URS, Dec. 8, 2015.

Following the agency's notification letter of December 8, URS chose not to file any protest prior to the agency's notification of award on December 14. Following notification of its non-selection, URS filed this protest on December 22.

The agency maintains that URS's complaint regarding the alleged failure to amend the solicitation is untimely because it was not filed within 10 days after URS's receipt of the December 8 notification letter. Contracting Officer's Statement/Legal Memorandum (COS/LM), Jan. 20, 2016, at 4. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of providing parties a fair opportunity to present their cases, and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Peacock, Myers & Adams, B-279327, Mar. 24, 1998, 98-1 CPD ¶ 94 at 3-4; Professional Rehab. Consultants, Inc., B-275871, Feb. 28, 1997, 97-1 CPD ¶ 94 at 2. Under these rules, a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1). Where alleged improprieties do not exist in the initial solicitation, but subsequently occur, they generally must be protested no later than the next closing time for

¹² The agency states that this notification was given to URS, the incumbent contractor, in order to comply with the requirements of the Worker Adjustment and Retraining Notification Act (WARN Act). Contracting Officer's Statement/Legal Memorandum, Jan. 20, 2016, at 5.

receipt of proposals. Armorworks Enters., LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 6.

Where, as here, the agency does not provide an opportunity to submit revised proposals after the alleged solicitation defect becomes known, we have held that an offeror is obligated to protest the issue, which concerns the fundamental ground rules of the procurement, within 10 days after knowing of the basis for protest. Id. at 7-9; Del-Jen Educ. & Training Group/Fluor Federal Solutions LLC, B-406897, May 28, 2014, 2014 CPD ¶ 166 at 6-7. Our timeliness rules regarding solicitation improprieties are based on the principle that challenges going to the heart of the underlying ground rules on which a competition is conducted should be resolved as early as practicable during the solicitation process. Armorworks Enters., LLC, supra, at 7. Our rules in this regard promote fundamental fairness in the competitive process by preventing an offeror from taking advantage of the government as well as other offerors by, for example, waiting silently to see if it wins a contract award, only to subsequently spring forward after notification of its non-selection with an alleged defect in an effort to restart the procurement process--potentially armed with increased knowledge of its competitor's position or information. See Blue & Gold, Fleet, L.P. v. United States, 492 F.3d 1308, 1313-14 (Fed. Cir. 2007).

Here, URS took no immediate action to challenge the validity of the solicitation requirements following receipt of the agency's December 8, 2015 notification letter. Instead, URS waited until it learned that it had not been selected for award. Following notification of its non-selection, URS further delayed filing its protest until December 22--more than 10 days after its receipt of the December 8 notification letter on which URS bases its challenge to the terms of the solicitation. On this record, URS's protest challenging the terms of the solicitation is not timely filed and will not be considered.

VSE's Proposed Price

Next, URS complains that VSE's price was unrealistically low, asserting that "VSE's low price should have caused the Army to reject its proposal."¹³ Protest at 27. In this context, URS asserts that the terms of the solicitation should be construed as requiring the agency to perform, and document, a price realism evaluation under which VSE's proposal should have been rejected as unacceptably low-priced. Id. at 27-31.

The agency responds that the terms of this solicitation neither contemplated nor permitted the agency to reject an offeror's proposal on the basis of its low price.

¹³ As noted above, URS proposed a TEP of \$255,893,078, while VSE proposed a TEP of \$243,826,267--a difference of 4.95 percent.

More specifically, the agency notes that the solicitation does not contain any reference to a price realism evaluation, and that section M of the solicitation provided that proposals would be evaluated under the cost/price evaluation factor based on consideration of “affordability, reasonableness, and completeness.” See TOR at 20. In short, the agency maintains that, pursuant to the terms of the solicitation, an offeror’s low price could not form a basis for the agency’s rejection of its proposal. We agree.

As a general rule in awarding fixed-price contracts, agencies are only required to determine that prices are not unreasonably high. See FAR § 15.402(a). While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror’s low price reflects a lack of technical understanding or risk, see FAR § 15.404-1(d)(3), offerors must be advised that the agency will conduct such an analysis.¹⁴ Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. That is, the solicitation must contain either an express price realism provision or a statement warning offerors that a business decision to submit low pricing may form the basis for rejecting the low-priced offeror’s proposal. DynCorp Int’l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision so advising offerors, agencies are neither required, nor permitted, to conduct a price realism analysis in awarding a fixed-price contract. Emergint Techs., Inc., supra.

Here, the solicitation contained neither an express price realism provision nor a statement warning offerors that a proposal could be rejected on the basis of its low price. Rather, under the heading “Cost/Price Factor,” section M of the solicitation explained how TEP would be calculated, and then stated:

The assessment of Total Evaluated Price will include consideration of affordability, reasonableness, and completeness of the prices, as follows:

- i. Affordability: Task order price can also play a role in the Government’s evaluation of the affordability of an offeror’s proposal. An offeror may not receive an award if its proposal is unaffordable.
- ii. Price Reasonableness: The Government will evaluate the cost of reasonableness of the offeror’s proposed price using any of the

¹⁴ As discussed above, this procurement was conducted as a competition between contractors holding TS3 IDIQ contracts and, as such, was subject to the provisions of FAR part 16, not FAR part 15. Nonetheless, in reviewing protests challenging FAR part 16 procurements, our Office will review the agency’s interpretation of the solicitation provisions, and its evaluation of proposals, to determine whether the agency’s evaluation was reasonable. See STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 12-13.

techniques in FAR 15.404-1(b)(2). A price is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

iii. Completeness: Since exchanges are not intended or desired, the Government requires complete proposals with respect to price. A complete proposal will include all information required by the TOR. The Price Matrix – Attachment 0003 must include pricing for the base period, each option period, surge, and travel, and must be consistent with the instructions contained in the TOR.

TOR at 20.

We do not view any of the above provisions as warning offerors that proposals may be rejected on the basis of low price. Further, although URS refers to another section of the solicitation headed “Reasons for Rejection,” see TOR at 21-22, none of the provisions in that section warn offerors that a business decision to submit low pricing may form the basis for rejecting the low-priced offeror’s proposal. Accordingly, URS’s protest that VSE’s proposal should have been rejected based on its allegedly unrealistically low price is denied. On the record here, we also reject URS’s various additional arguments that are based on, or essentially reflect, the assertion that VSE’s lower TEP should have resulted in the rejection of VSE’s proposal.¹⁵

Small Business Participation

In its initial protest, URS complained that the agency should have found VSE’s proposal unacceptable for failing to comply with the solicitation requirement that 25 percent of the labor value for each performance period be proposed for performance by small business concerns. See TOR at 17. URS argued that two of VSE’s proposed small business subcontractors were affiliated with each other; that, together, the firms did not meet the applicable size standard; and, therefore, that the labor hours for those firms should not have been considered for purposes of meeting the solicitation’s small business participation requirement. Protest at 36-41. Following receipt of the agency report, URS submitted a supplemental protest with a variation of this argument, again attempting to raise its untimely challenge to the solicitation’s stated requirements. Specifically, URS argued that

¹⁵ Among other things, URS asserts that VSE’s allegedly unrealistically low price should have led to an assessment of performance risk; reflected VSE’s intent not to comply with requirements that URS asserts are mandated by a recently-executed collective bargaining agreement (CBA); reflected VSE’s intent not to comply with the provisions of the Nondisplacement of Qualified Workers clause (see FAR clause 52.222-17); and should have resulted in a nonresponsibility determination.

VSE's proposal relied on small businesses to perform in labor categories that, URS asserts, are unlikely to be required by the agency, based on the specific workload reductions anticipated in the notice URS received. Supp. Protest, Feb. 1, 2016, at 13-16. Finally, URS asserts that, following award, VSE contacted another small business to assist in contract performance, maintaining on this basis that VSE does not intend to rely on the small businesses it identified in its proposal. Id. at 43-45.

The Small Business Act, 15 U.S.C. § 637(b)(6), gives the Small Business Administration (SBA), not our Office, conclusive authority to determine matters of small business size status for federal procurements. Consistent with this statutory limitation, our Bid Protest Regulations provide that “[c]hallenges of . . . the size status of particular firms . . . may be reviewed solely by the Small Business Administration.” 4 C.F.R. § 21.5(b)(1); see also Mark Dunning Indus., Inc., B-405417.2, Nov. 19, 2013, 2013 CPD ¶ 267 at 5.

We will not consider any allegation that is based on URS's assertions regarding the size status of particular firms, since such matters are solely for the SBA's consideration. Further, the record here shows that the agency relied on VSE's representations regarding performance by qualified small businesses, and nothing in URS's various protest submissions provides a basis for our Office to conclude that the agency's reliance on such representations was unreasonable. Accordingly, URS's various arguments that VSE's proposal should have been evaluated as unacceptable for allegedly failing to comply with the solicitation's small business participation requirements provide no basis for sustaining its protest.

Corporate Experience

Next, URS protests that VSE's proposal should have been evaluated as unacceptable under the corporate experience evaluation factor. URS notes that the solicitation required offerors to demonstrate 12 months of recent experience “Performing Depot level maintenance of military equipment following Depot Maintenance Work Requirements [DMWR].” Supp. Protest, Feb. 1, 2016, at 39-42; see TOR at 18. URS acknowledges that VSE's proposal included various contracts/task orders demonstrating its experience performing depot-level maintenance, but complains that because VSE's proposal does not expressly state that such maintenance was performed “following DMWR,” it should have been evaluated as unacceptable. Supp. Protest, Feb. 1, 2016, at 41.

The agency responds that, “[i]n order for a contractor to perform depot-level maintenance of military equipment, the Government must provide the contractor with Depot Maintenance Work Requirements outlining the Government's maintenance requirements.” Supp. AR, Feb. 10, 2016, at 7. More specifically, the agency identifies various specific contracts within VSE's proposal, including prior contracts involving performance of depot maintenance at the Red River Army

Depot, and states that, based on its understanding of those contracts, VSE's proposal met the solicitation's corporate experience requirements.

In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, *supra*, at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror's disagreement with an agency's judgment is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, despite the agency's identification, by contract number, of specific contracts included in VSE's proposal that it believes met the solicitation's corporate experience requirements--including work performed at the Red River Army Depot--URS offers nothing to rebut the agency's statements that VSE complied with the solicitation requirements, other than repeating its initial argument that VSE's proposal did not include an affirmative statement repeating the solicitation's requirements regarding DMWR. On this record, URS's protest provides an inadequate basis for our Office to question the reasonableness of the agency's evaluation, and URS's protest challenging the agency's evaluation of VSE's corporate experience is denied.

Qualifications for the Program Manager Labor Category

Finally, in its supplemental protest following receipt of the agency report, URS complains that VSE's proposal should have been rejected on the basis of its response to the solicitation requirements regarding the labor category of program manager.¹⁶ Specifically, URS asserts that VSE's proposal "fell short of the TOR's minimum qualifications for this position" and argues that VSE's proposal was inadequately supported. Supp. Protest, Feb. 1, 2016, at 32.

As noted above, our Office will not reevaluate proposals nor substitute our judgment for that of the agency. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC,

¹⁶ As discussed above, the solicitation identified various labor categories, along with minimum qualifications and associated labor hours for each category. Of relevance to this protest allegation, the TOR listed program manager as a labor category, provided minimum educational and experience requirements, and indicated that 1880 hours per year would be required. AR, Tab E-4, TOR Attach. 0003, Manpower Matrix.

supra. Our review is limited to determining whether the agency's evaluation was reasonable and consistent with the solicitation and applicable statutory and regulatory requirements. Shumaker Trucking & Excavating Contractors, Inc., supra.

Here, offerors were required to submit fixed labor rates for the various labor categories identified in the TOR. The TOR established qualifications for each category, and advised offerors that “[b]y entering your certification, you are certifying your company will provide personnel that meet or exceed the minimum qualifications in accordance with the TOR.” AR, Tab E-4, TOR Attach. 0003, Manpower Matrix. Nonetheless, offerors were also directed to identify the labor category in their underlying TS3 IDIQ contracts that corresponds to the labor rate proposed for each TOR labor category. In this regard, the TOR recognized that there might not be an exact match between the qualifications associated with an offeror's TS3 labor category and the corresponding qualification requirements stated in the TOR. Accordingly, the TOR provided that if “the qualifications or range of qualifications [associated with a TS3 labor category] appear to be below the Government minimum qualifications [listed in the TOR], you SHALL provide substantiation for the rationale [for] using this labor category with your quotation.” Id. (Underlining added.)

With regard to the program manager labor category, the TOR contained the following requirements:

Bachelor's degree and at least 6 years of experience in the field or in a related area. Depot Maintenance, Repair experience may be substituted for education on a year for year basis, where 4 additional years of Depot Maintenance and Repair Management experience may be substituted for a formal college degree.

Id.

The program manager labor categories established in URS's and VSE's TS3 contracts include four levels (I, II, III, and III maximum), each of which include combinations of qualifying education and experience. In responding to the TOR's program manager labor category, VSE's proposal referenced the level II program manager category in its TS3 contract. The qualifications associated with that TS3 labor category included: “a bachelor's degree in any field with a minimum of 5 years of specialized experience.” AR, Tab U, TS3 Labor Categories/Qualifications, at 1. In contrast, in responding to the TOR's program manager requirement, URS's proposal referenced the TS3 level III program manager category. The qualifications associated with a TS3 level III program manager included: “a master's degree in a specialized field plus a minimum of 1 year of applicable experience; or, a bachelor's degree in the specialized field plus 7 years of applicable experience; or, a bachelor's degree in any field with a minimum of 9 years of specialized experience.” Id.

URS protests that, because the TS3 qualifications for the level II program manager refer to “a minimum of 5 years of specialized experience”--rather than the TOR’s program manager requirement of “at least 6 years of experience in the field or a related area,” VSE’s proposal should have been rejected as unacceptable.

VSE and the agency respond that since the qualifications associated with the TS3 level II program manager included “a bachelor’s degree . . . with a minimum of 5 years specialized experience” (underlining added), and VSE certified that the program manager it provides will, in fact, have “at least 6 years experience in the field or a related area,” VSE’s proposal was consistent with the solicitation requirements. In this regard, VSE and the agency argue that a program manager with 6 years of experience is clearly within the “range of qualifications” established by the TS3 contract for a level II program manager (“a bachelor’s degree . . . with a minimum of 5 years of specialized experience”) and, further, since the TOR only required an offeror to “provide substantiation for the rationale [for] using [a particular TS3] labor category” when the “range of qualifications” appeared below those required by the TOR, VSE’s reliance on a level II program manager did not trigger the requirement for further substantiation.

Finally, VSE and the agency note that URS’s own proposal fails to comply with the standard that URS asserts should be applied to render VSE’s proposal unacceptable--that is, that all personnel who fall within the TS3 category proposed must meet the TOR’s qualification requirements. Specifically, VSE points out that, within the range of qualifications for a TS3 level III program manager, which URS referenced in its proposal to meet the TOR program manager requirement, are personnel that do not meet the TOR’s qualification requirements. Specifically, the qualifications for the TS3 level III program manager include the following: “A master’s degree in a specialized field plus a minimum of 1 year of applicable experience. . . .”¹⁷ See URS Supp. Protest, Exh. A, TS3 Labor Categories/Qualifications, at 1. Accordingly, VSE maintains that URS’s proposal was similarly unacceptable under the standard URS maintains should be applied, since a master’s degree plus a minimum of 1 year of experience reflects a lower level of qualifications than a bachelor’s degree and 6 years of experience, as required by the TOR. In short, VSE maintains that, while both proposals referenced labor categories with a qualifications range that reasonably included personnel exceeding the TOR’s requirements, both categories also included personnel that did not meet those requirements.

¹⁷ As noted above, the TS3 level III program manager qualifications also included, “a bachelor’s degree in the specialized field plus 7 years of applicable experience; or, a bachelor’s degree in any field with a minimum of 9 years of specialized experience.” AR, Tab U, TS3 Labor Categories/Qualifications, at 1.

On this record, we decline to sustain URS's protest that the TS3 labor category referenced in VSE's proposal for the TOR program manager position included personnel that do not meet the TOR's minimum qualifications. If such standard were to be applied, it appears that URS's proposal would be similarly disqualified as unacceptable.¹⁸ Rather, since VSE certified that it will provide a program manager with the requisite 6 years of experience, and such personnel were reasonably within the "range of qualifications" associated with the TS3 labor category on which VSE relied, URS's protest challenging the acceptability of VSE's proposal is denied.

The protest is dismissed in part and denied in part.

Susan A. Poling
General Counsel

¹⁸ We agree that, in responding to the TOR requirement for a program manager, URS's proposal referenced a TS3 labor category that included personnel with qualifications that substantially exceed the TOR qualification requirements; however, the solicitation provided for evaluation on an acceptable/unacceptable basis.