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Decision

Matter of: SOC LLC

File: B-415460.2; B-415460.3

Date: January 8, 2018

Gerald H. Werfel, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

Paul R. Hurst, Esq., Kendall Enyard, Esq., Michael N. Navarre, Esq., Dwight Draughon, Esq., and Caitlin Conroy, Esq., Steptoe & Johnson LLP, for Triple Canopy, Inc., the intervenor.

Kathleen D. Martin, Esq., Department of State, for the agency.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

1. Protest that agency unreasonably evaluated protester's technical proposal as unacceptable is denied where protester failed to demonstrate compliance with mandatory solicitation requirements.
 2. Protest that agency was required to engage in clarifications is denied where clarifications may not be used to permit offeror to revise proposal to make it acceptable.
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DECISION

SOC LLC, of Chantilly, Virginia, protests the issuance of a task order to Triple Canopy, Inc., of Reston, Virginia, and the rejection of the proposal SOC submitted in response to task order request for proposals (TORFP) No. SAQMMA17R0125, issued by the Department of State for personal protective services, logistical support services, and specialized security services in support of the United States Embassy in Kabul, Afghanistan. SOC asserts that the agency unreasonably evaluated its proposal, engaged in unequal treatment, and unreasonably evaluated the awardee's past performance.

We deny the protest.

BACKGROUND

The TORFP was issued to six companies holding the Department of State's Worldwide Protective Services II (WPS II) indefinite-delivery, indefinite-quantity (IDIQ) contracts to provide security services, including personal protection, static guards, and emergency response teams in support of the United States Embassy in Kabul, Afghanistan. Contracting Officer's Statement (COS) at 1. The solicitation provided that a task order would be issued on the basis of the best value to the government considering three factors: technical, past performance, and cost/price. Agency Report (AR), Tab 1, TORFP § M, at 1.¹ The technical factor was comprised of seven subfactors: staffing plan; training management plan; mobilization and transition plan; logistics and property management and accountability plan; management approach; risk management; and key personnel. Id. at 2. The agency assigned an adjectival rating of superior, acceptable, marginal, or unacceptable to each technical subfactor and the overall technical factor. A proposal was required to be rated acceptable or better for the overall technical factor to be eligible for award. Id. The solicitation advised vendors that the agency intended to issue the task order without holding discussions. Id. at 5.

Task order proposals were due on July 24, 2017. COS at 14. Each of the six vendors holding an IDIQ contract submitted a proposal. Id. SOC was rated unacceptable under the mobilization and transition plan, and under the key personnel subfactors; marginal for the logistics and property and management accountability plan subfactor; and acceptable for the remaining subfactors. AR, Tab 8, Source Selection Decision, at 9. SOC was rated unacceptable overall for the technical factor, and, as a result, its proposal was eliminated from the competition. The task order was issued to Triple Canopy, Inc., in the amount of \$599,196,659. Id. at 12. This protest followed.²

DISCUSSION

SOC challenges the evaluation of its technical proposal as unacceptable. Specifically, SOC argues that the agency should not have assigned it a deficiency and rated it unacceptable under the mobilization and transition plan subfactor for failure to provide documentation and address its plans for renewing SOC's private security company (PSC) license. SOC also argues that it should not have been assigned a deficiency and rated unacceptable under the key personnel subfactor since it proposed a program manager that exceeds the solicitation's requirements. The agency argues that its evaluation was reasonable because SOC failed to provide the required documents concerning the license and SOC's proposal failed to show the program manager met the minimum years of experience required by the solicitation. As a result, the agency

¹ All citations to the solicitation are to amendment 06.

² As the estimated value of this proposed task order exceeds \$10 million, this protest is within our jurisdiction. 41 U.S.C. § 4106(f)(2).

also argues that it was reasonable to assign an unacceptable rating to SOC's technical proposal. For the reasons set forth below, we find no basis to sustain the protest.

Private Security Company License

The proposal of SOC was assigned a deficiency under the mobilization and transition plan subfactor and rated unacceptable because its proposal failed to identify all required licenses and permits. AR, Tab 3, Consensus Evaluation, at 5. The evaluation states that although SOC submitted its business license to conduct business in Afghanistan, it did not submit a current PSC license or documentation that it held one in the past 12 months and had applied for renewal.³ Id.; COS at 29. Instead, SOC submitted the license of a company unrelated to SOC that had expired on March 10, 2017.⁴ Id.

As relevant to this protest, under the mobilization and transition plan subfactor offerors were required to identify all required licenses and a schedule to acquire any required licenses not currently in their possession. TORFP § L at 5-6. Offerors were also required to identify critical actions that would take place during the transition phase to ensure that all solicitation requirements would be met with no interruption or reductions in existing services. Id. A PSC license was among the licenses that offerors were required to hold. TORFP, attach. A, Performance Work Statement (PWS), at 2. With respect to the PSC license, the solicitation specifically required offerors to provide a copy of a current PSC license issued to the prime contractor from the Afghanistan Ministry of the Interior (MOI), or documentation from the MOI showing that the prime contractor possessed a valid license within the past 12 months, that it had applied for a renewal of this license, and that the license renewal has not been denied. Id. Offerors

³ The agency also found that SOC's statement that its general counsel's office would renew licenses when required failed to identify a process, including a schedule, to acquire required licenses. AR, Tab 3, Consensus Report, at 5. The agency report, but not the evaluation documents, makes it clear however that the deficiency was assigned for not providing a PSC license or documentation that SOC held one in the past 12 months and had applied for renewal of the license, as opposed to SOC not explaining in detail how it planned to renew the expired license. SOC was also assigned two weaknesses under this subfactor. SOC does not challenge those weaknesses and it is not clear how they contributed to the unacceptable rating for the subfactor.

⁴ Documentation in the proposal showed that the expired license was held by another company, **[DELETED]**. AR, Tab 9, SOC Vol. IV, at 84-91. Additional documentation in the proposal showed uncompleted transfer actions as of the date the proposal was submitted. Specifically, **[DELETED]**, which had a 100 percent interest in the expired license, transferred its business to **[DELETED]**. Id. Once the PSC license was transferred to **[DELETED]**, it was under contract to sell the PSC license to a subsidiary of SOC **[DELETED]**. At the time SOC's proposal was submitted, neither of the license transfers had been completed. Agency e-mail, Nov. 28, 2017, Responses to Questions 2 and 5; AR, Tab 9, SOC Vol. IV, at 84-91.

were advised that this was a mandatory minimum requirement. Id. The evaluation of an offeror's proposal is a matter within the agency's discretion. Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9 (task order competition under FAR subpart 16.5). An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Here, as indicated above, offerors were required to submit a current PSC license issued to the prime contractor from the Afghanistan MOI, or documentation from the Afghanistan MOI showing that the prime contractor possessed a valid license within the past 12 months, it had applied for a renewal of this license, and the license renewal has not been denied. TORFP, attach. A, PWS, at 2. SOC does not assert that it submitted either a current PSC license, or documentation that it held a license within the past 12 months and had applied for renewal of the license. Instead, SOC acknowledges that it submitted an expired license and asserts that this should be considered sufficient and that it provided sufficient information regarding the process it would use to renew its PSC license.⁵ Given the clear instructions in the solicitation as to what was required with respect to the PSC license and SOC's failure to provide the required documentation with its proposal, the agency's decision to assign SOC a deficiency, and evaluate its proposal as unacceptable under the mobilization and transition plan subfactor was reasonable.⁶

Key Personnel

Under the key personnel subfactor offerors were required to provide resumes for key personnel, including the program manager, which demonstrated that the proposed

⁵ In its protest, SOC also asserts that it was issued a PSC license on October 2, 2017. However, the license was required to be submitted with the proposal which was due on July 24. This license issued after the procurement was completed, cannot be used to cure SOC's failure to submit the PSC license with its proposal.

⁶ SOC protests that in evaluating proposals, the agency treated SOC and another offeror unequally. Specifically, SOC asserts that another offeror was assigned a weakness under the mobilization and transition plan subfactor because its PSC security license was set to expire on March 11, 2018, and it did not identify the critical action to renew the license upon expiration. The offeror was rated acceptable. In contrast, SOC complains that it was assigned a deficiency, and rated unacceptable, because it did not provide sufficient information regarding the process it would use to renew its PSC license. According to SOC, both offerors failed to provide adequate information, but only SOC was assigned a deficiency and rated unacceptable. SOC has not demonstrated that the agency engaged in unequal treatment. SOC, unlike this other offeror, was assigned a deficiency because it did not have a current PSC license or demonstrate that it had one in the past 12 months which was currently being renewed, not solely because it did not provide sufficient information with respect to renewing the license.

individual met all position requirements specified in the IDIQ contract. TORFP § L at 9. If the resumes failed to meet these requirements, the offeror would be rated unacceptable under the subfactor. Id. As relevant to this protest, the program manager was required to have a minimum of five years of work experience in planning, evaluating, analyzing, and implementing government security type programs, specifically personal protection, emergency response team or guard force programs. WPS II IDIQ Contract, attach. 1, at 10.

SOC was assigned a deficiency and rated unacceptable under the key personnel subfactor because in evaluating the proposed program manager's resume, the agency found that the individual had only 3 of the required 5 years of experience.⁷ According to the agency, the resume SOC submitted for the program manager indicated that the individual had worked for DynCorp from April 2009 until August 2011, and was on active duty in the Marine Corps from May 2005 until May 2011. AR, Tab 3, Consensus Evaluation, at 10.⁸ Despite the fact that the resume showed the program manager worked for both the Marine Corps and DynCorp at the same time, the agency credited the program manager with three years of experience at DynCorp; the agency did not credit the program manager with any experience for the rest of the time the resume showed the individual was in the Marine Corps because that experience did not demonstrate the required planning, evaluating, analyzing, and implementing government security type programs. Memorandum of Law at 17-18.

SOC asserts that the evaluation is unreasonable because even allowing for the overlap in the DynCorp and Marine Corps experience, the proposed program manager has an additional five years of experience with the Marine Corps (May 2005 through March 2009). Supp. Protest and Comments at 10. SOC asserts that the program manager's resume demonstrates that during the time with the Marine Corps, the individual had experience with security procedures, camp security plans, evasion plan of action, operational response planning, unity security and emergence action plans, and security inspections. Id. According to SOC, this is relevant experience as defined by the solicitation.

⁷ SOC was also assigned two weaknesses under this subfactor. SOC does not challenge these weaknesses and it is unclear how they contributed to the unacceptable rating.

⁸ The resume also shows the program manager had experience working as a safety advisor which the agency found not relevant, and experience working in Iraq and Lebanon which the agency did not consider because the resume indicated that the program manager was in both places at the same time. AR, Tab 3, Consensus Evaluation, at 10. The protester does not allege that this experience should be considered to make up the required experience.

The resume SOC submitted for the program manager for the individual's time in the Marine Corps is as follows:

Special Operations Battalion Assistant (1/09-05/11)

. . . Assisted in the review of unit security procedures. . .

Marine Special Operations Team 9 Assistant Team Leader (5/08–12/08)

. . . Wrote numerous [standard operating procedures (SOPs)], including camp security plans. Reviewed the team's Evasion Plan of Action. . .

Marine Special Operations Group Current Operations Officer (6/07–4/08)

. . . Assisted in formulation and review of the unit's security and emergency action plans. . .

Marine Special Operations Group Logistics Support Officer (1/07–5/07)

Ensured Special Operations teams stayed within budgets. Saved \$350,000 by locating wrongfully shipped communications equipment.

Marine Special Operations Team 5 Assistant Team Leader (5/05–12/06)

Selected from a group of 14 peers to deploy with Operational Detachment Alpha. Mentored six foreign officers. Wrote 10 SOPs that increased operational response planning. Developed team training schedules that increased readiness by 15%. Deployed to East Africa for six months total.

AR, Tab 2, SOC Technical Proposal, at R-2. The agency asserts that it did not consider this information because while the description of the program manager's duties and responsibilities in some of the various positions with the Marine Corps reference some security-related work, those descriptions are generic and fail to provide sufficient detail that would provide a basis to map his Marine Corps experience to the specific experience requirements for a program manager that are identified in the solicitation. E-mail from Agency, Nov. 29, 2017. Specifically, from the vague descriptions, the agency could not determine if the proposed program manager had the required experience in government security type programs such as personal protection, emergency response team, or guard force programs. We find reasonable the agency's conclusion that the protester's vague description of the program manager's experience was not sufficient to demonstrate the individual had the specific experience required by the solicitation. Accordingly, the agency reasonably assigned a deficiency and rated SOC unacceptable under the key personnel subfactor.⁹

⁹ We also note that even if we considered the experience relevant it would add at most 20 additional months and leave the program manager short of the 5 years of required
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Technical Ratings

SOC next asserts that even if the agency reasonably evaluated its proposal with respect to the PSC license and the experience of the program manager, the issues do not rise to the level of a deficiency. We disagree. The solicitation advised offerors of the mandatory requirement that the offeror have a current PSC license, or documentation from the Afghanistan MOI that the prime contractor held a license within the past 12 months and was in the process of renewing it. With respect to the experience requirement, the solicitation advised offerors that if the resume of each key person did not demonstrate that the individual meets all position requirements, the subfactor would be rated unacceptable. TORFP § L, at 9. Under these circumstances, the agency reasonably concluded that failure to meet clearly stated mandatory requirements were deficiencies.

Clarifications/Discussions and Awardee's Past Performance

SOC also complains that the agency was required to engage in clarifications or discussions with respect to the deficiencies in SOC's proposal regarding the PSC license and key personnel experience issues. We disagree.

As noted above, this task order procurement was conducted as a competition between WPS II contract holders and was subject to the provisions of Federal Acquisition Regulation (FAR) subpart 16.5, which does not establish specific requirements for conducting clarifications or discussions. Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7. The solicitation here stated that the agency intends to evaluate proposals and award "without discussions with Offerors, (except clarifications as described in FAR 15.306(a), if required)." TORFP § M, at 5. Where, as here, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness, will, in large part, reflect the standards applicable to negotiated procurements. Technatomy Corp., supra.

Section 15.306 of the FAR describes a range of exchanges that may take place when an agency decides to conduct exchanges with offerors during negotiated procurements and states that clarifications are limited exchanges between an agency and an offeror that may occur where contract award without discussions is contemplated. FAR § 15.306(a). An agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. Id. However, clarifications may not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the

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experience. See AR, Tab 2, SOC Technical Proposal, at R-2. In this regard, none of the experience gained at the Marine Corps between April 2005 and May 2007 is security related. See id.

proposal, or revise the proposal. Superior Gunite, B-402392.2, Mar. 29, 2010, 2010 CPD ¶ 83 at 4.

Here, any exchanges between the agency and SOC regarding the license and key personnel would have concerned the acceptability of SOC's proposal and would have required that SOC revise its proposal in some manner to cure the proposal deficiencies or material omissions. Accordingly, SOC could not have corrected its proposal through clarifications.

SOC further asserts that the agency was required to hold discussions with SOC because its price was so much lower than the awardee's. An agency need not conduct discussions with a technically unacceptable offeror. Electronic Systems USA Inc., B-246110, Feb. 14, 1992, 92-1 CPD ¶ 190. Further, the solicitation, expressly advised that the agency contemplated making award without discussions. TORFP § M at 5. An agency's decision not to initiate discussions is a matter we generally will not review. Tribalco, LLC, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 6.¹⁰

Finally, SOC challenges the evaluation of Triple Canopy's past performance. Since we find that the agency's evaluation of SOC's technical proposal as unacceptable was reasonable, and there is an offeror other than Triple Canopy that submitted an acceptable proposal, SOC is not an interested party to challenge the evaluation and award to Triple Canopy. 4 C.F.R. § 21.0(a); see SWR, Inc., B-284710.2, Nov. 15, 2000, 2000 CPD ¶ 206 at 4 n.1 (where there is another acceptable proposal eligible for award, a protester is not an interested party where it would not be in line for award were its protest sustained).

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁰ The protester contends, citing to BCPeabody Constr. Servs., Inc. v. United States, 112 Fed. Cl. 502 (2013) and Level 3 Comm., LLC v. United States, 129 Fed. Cl. 487 (2016), that while the agency's use of exchanges is discretionary, that discretion is not absolute. SOC maintains that the agency abused its discretion by failing to engage in exchanges here because SOC's price is much lower than the awardee's. However, the cited decisions are not controlling on our Office. CJW-Desbuild JV, LLC, B-414219, Mar. 17, 2017, 2017 CPD ¶ 94 at 4 n.2. Furthermore, the circumstances in the cited decisions are distinguishable from the circumstances here in that as a pre-condition to finding that the agency abused its discretion by failing to conduct clarifications, the court in effect found that the plaintiffs' proposals contained minor or clerical errors. Here, in contrast, the protester failed to satisfy minimum solicitation requirements, which are not minor or clerical errors.