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Decision

Matter of: Global Dynamics, LLC

File: B-407966

Date: May 6, 2013

Craig A. Holman, Esq., and Lauren J. Schlanger, Esq., Arnold & Porter LLP, for the protester.

Antonio R. Franco, Esq., and Alexander O. Levine, Esq., PilieroMazza PLLC, for GiaCare and MedTrust JV, LLC, an intervenor.

Capt. Ahsan Nasar, Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of exclusion of protester's proposal from the competitive range is sustained where evaluation under two subfactors was unreasonable, and reasonable evaluation might have resulted in a different competitive range determination.

DECISION

Global Dynamics, LLC (GD), of Columbia, Maryland, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. W81K04-12-R-0025, issued by the Department of the Army for registered nursing services for the San Antonio Military Healthcare System. The protester contends that the decision to exclude its proposal was the result of an improper evaluation.

We sustain the protest.

BACKGROUND

The RFP, which was issued on September 14, 2012, contemplated the award of an indefinite-quantity/indefinite-delivery contract for a 5-year period to the offeror whose proposal represented the best value to the government. Proposals were to be evaluated on the basis of price and the following four non-price factors, in descending order of importance: personnel methodology, management capability, staffing approach, and past performance. When combined, the non-price factors were significantly more important than price. The personnel methodology factor

was comprised of three equally-weighted subfactors: recruitment plan, retention and employee relations plan, and compensation plan. Proposals were to be rated under the first three factors as blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable;¹ under the past performance factor, they were to be rated as substantial, satisfactory, limited, no, or unknown confidence. Price was to be evaluated by multiplying offerors' fully burdened hourly rates for the services by estimated quantities set forth in the RFP.

Under the recruitment plan subfactor, offerors were to describe their management approach to recruiting personnel; demonstrate their understanding of the type of services required and the required qualifications for personnel; furnish support for the wage, salary, and fringe benefit rates proposed; and demonstrate an understanding of the San Antonio registered nursing market. RFP, amend. 0002, at 84. Under the retention/employee relations plan subfactor, offerors were to describe, and support with market research, their approach to retaining personnel with minimal turnover, and describe their employee relations plans, including their methods of communicating timely information to contract service providers [CSPs] on subjects such as employee benefits, programs, and contract performance and their employee performance evaluation processes. Id. at 84-85.

¹ The ratings were defined as follows:

- Blue/Outstanding: Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.
- Purple/Good: Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.
- Green/Acceptable: Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.
- Yellow/Marginal: Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.
- Red/Unacceptable: Proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.

The agency received [deleted] timely proposals. A source selection evaluation board evaluated the proposals and assigned overall ratings of [deleted] to [deleted] of the [deleted] proposals. The remaining 6 proposals were rated as follows:

	Off. A	Off. B	Off. C	Off. D	Protester	Off. E
Personnel Methodology	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Recruitment	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Retention	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Compensation	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Management Capability	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Staffing Approach	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Past Performance	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Price²	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

SSAC Briefing Document. After reviewing the evaluation results, the source selection authority (SSA) decided to establish a competitive range and conduct discussions.

The SSA determined that the proposals of Offerors A-D were the most highly rated, and, as such, should be included in the competitive range. The SSA further determined that GD's proposal was not among the most highly rated, noting that [deleted], its proposal had been rated as [deleted] under the personnel methodology factor and "included several weaknesses which would require major revisions." Competitive Range Determination, Dec. 4, 2012, at 13.³ In the foregoing connection, the evaluators identified 3 weaknesses (as well as 1 strength) under the recruitment subfactor and 6 weaknesses (as well as 1 strength) under the retention subfactor.⁴

By letter of December 12, the contracting officer notified the protester that its proposal had been excluded from the competitive range and eliminated from consideration for award. The protester immediately requested a debriefing, which

² Price is rounded to the nearest million dollars.

³ The proposal of Offeror E was likewise excluded from the competitive range on the basis that it was not among the most highly-rated proposals.

⁴ Under the third personnel methodology subfactor, compensation plan, the evaluators identified 7 strengths and 1 weakness in the protester's proposal. GD has not objected to its rating under this subfactor.

the agency furnished by letter of January 15, 2013. In addition to informing the protester of the weaknesses in its proposal, the debriefing letter advised GD that it had not demonstrated adequate financial capability for the requirement, as required by the solicitation. After receiving the debriefing letter, GD filed a timely protest with our Office.

DISCUSSION

Global Dynamics protests the exclusion of its proposal from the competitive range, arguing that the weaknesses identified by the evaluators under the personnel methodology factor are without basis and/or could have been resolved without major revision of its proposal. The protester also objects to the finding that it failed to demonstrate adequate financial capability, arguing that the finding was unreasonable and, in essence, a determination of non-responsibility that--because the company is a service-disabled, veteran-owned small business--should have been referred to the Small Business Administration for consideration under Certificate of Competency (CoC) procedures.

We address the latter argument first. In its report, the agency denied that the finding pertaining to the protester's lack of financial capability played any role in the decision to exclude the protester's proposal from the competitive range. The agency's position is supported by the contemporaneous competitive range determination, which makes no mention of the protester's financial capability as a basis for excluding its proposal from the competitive range and instead focuses exclusively on weaknesses in the protester's technical proposal. Because there is no evidence that the SSA relied on--and, thus, that the protester suffered any prejudice as a result of--the allegedly improper finding pertaining to its financial capability, we do not address the matter further. See TMG Constr. Corp., B-407190, Nov. 19, 2012, 2012 CPD ¶ 343 at 6-7 (competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain a protest).

Turning to the protester's complaints regarding the evaluation of its proposal and exclusion from the competitive range, the determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency. Smart Innovative Solutions, B-400323.3, Nov. 19, 2008, 2008 CPD ¶ 220 at 3. In reviewing an agency's evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits; rather, we will examine the record to determine whether the evaluation was reasonable and consistent with the evaluation criteria. Foster-Miller, Inc., B-296194.4, B-296194.5, Aug. 31, 2005, 2005 CPD ¶ 171 at 6. Where we find that an evaluation was unreasonable and that a correct evaluation might have resulted in a different competitive range determination, we will sustain a protest. Wilson Beret Co., B-289685, Apr. 9, 2002, 2002 CPD ¶ 206 at 8-9. As explained

below, we find that the agency's evaluation here was unreasonable, and, accordingly, we sustain GD's protest.

Recruitment plan

The protester challenges the agency's assignment of a rating of [deleted] to its proposal under the recruitment plan subfactor. Specifically, GD disputes the agency's findings of weakness under the subfactor, which were as follows:

1. Proposal did not clearly define a recruitment strategy, [page] 18 describes a commitment to recruit and credential quality HCPs [health care providers] but fails to identify how they are going to recruit them. For example, what is their target for incumbents, will they focus recruiting efforts locally then expand?
2. Some of the nursing qualifications on [pages] 11–13 were incorrect, indicating that the requirement is not clearly understood, thereby increasing the risk of unsuccessful performance:
 - Medical Surgery nurses do not assist [deleted].
 - The Orthopedic and Plastic Surgery nurses requested in the PWS are for clinics, not the Operating Room. On [page] 11, the proposal indicates that the [deleted].
 - The Plastic Surgery Nurses [deleted]. These clinic RNs do not routinely provide support to the OR.
 - The proposal does not include the ACLS [Advanced Cardiac Life Support] requirement (as outlined in the PWS) for the Burn Unit nurses.
3. On pages 10–13, proposal states [deleted], etc. The PWS does not have any requirements for these certifications again indicating a lack of understanding of the requirements.

Consensus Technical Evaluation Worksheet at 3-4.

The protester disputes several facts of the evaluators' first finding of weakness, arguing that its proposal did provide a detailed plan for the recruitment of the incumbent contractor's staff and additional qualified candidates. With regard to the evaluators' specific examples of missing detail, GD pointed out that its proposal expressly identified a target for the retention of incumbents by stating that its "goal" was "to retain [deleted] of all incumbent HCPs." Protester's Technical Proposal at 30. The protester further argued that it was improper for the evaluators to fault its proposal for failing to specify whether GD would focus first on local recruitment given that the solicitation did not require offerors to provide this sort of detail; the protester also argued that only minor clarification of its recruitment plan would have been required to address the evaluators' concerns.

Based on our review, we find the agency's first finding of weakness to be unsupported. In response to the protest, the agency argued that while the protester's proposal "discuss[ed] the Protester's methodology for contacting incumbents," it "did not explain conceptually how [the protester's] incumbent retention plan would unfold" and did not identify a target for incumbent retention. The agency maintained that the protester's "stated aspiration to retain [deleted] of the incumbent workforce" was "not a retention target," but rather was "a wish, unsupported by a detailed plan to make that wish come true." Agency Report at 10-11.

Contrary to the agency's assertions, the proposal did not simply outline the protester's methodology for contacting incumbent employees; it also discussed the protester's approach to addressing incumbent employee concerns (through the [deleted]), educating incumbent employees regarding employment with GD (through the distribution of written information about the GD team, [deleted]), and [deleted] employees of the incumbent contractor to remain in their positions (by offering certain incumbent employees [deleted]). Protester's Technical Proposal at 29-30. Moreover, the proposal furnished a "goal" for the retention of incumbent employees, i.e., [deleted]. To the extent the agency draws a distinction between a "goal" and a "target," it is a distinction without a material difference. Both reasonably reflect a firm's objective to retain incumbent employees. Also, with regard to the proposal's alleged failure to indicate whether the protester would focus first on local recruiting or recruit on a national level from the outset, the record reflects that the proposal described an approach to recruiting that involved the use of national-level databases to locate qualified personnel throughout the process. Id. at 19-20. Thus, we fail to see a reasonable basis for the criticism.

We also conclude that the third weakness identified by the evaluators under the recruitment plan subfactor was unreasonable. As quoted above, the third weakness states that the protester's proposal incorrectly referred to pediatric and orthopedic certifications "as required," which indicated a lack of understanding of the solicitation's requirements. Our review of the record shows that the evaluators have misquoted, and not presented fairly, the statements in the proposal on these issues.

For example, in the proposal's representations about pediatric and orthopedic nurses, there is no statement that certification is required by the solicitation. Protester's Technical Proposal at 11. Instead, the evaluation worksheet appears to be quoting a section--located on the same page--describing the qualifications of medical surgery nurses. This sentence in its entirety states: [deleted]. Our comparison of the evaluation worksheet with the proposal leads us to agree with the protester that the weakness identified is not supported by the underlying record.

The protester also disputes the evaluators' findings regarding the second weakness pertaining to nursing qualifications, arguing that to the extent its proposal made

some mistaken references to required qualifications for certain nursing specialties, the errors were minor matters that could easily have been remedied through discussions, as opposed to weaknesses requiring major revision of the proposal. The agency argues in response that the errors were significant in that they reflected a misunderstanding of the solicitation's requirements. As set forth below, even this assessed weakness does not bear close scrutiny.

The evaluators' criticism pertaining to the orthopedic and plastic surgery nurses is essentially that the protester's description of these nursing specialties includes functions that the nurses sought here will not be required to perform because they will be working in clinics only--i.e., clinic nurses generally do not assist with operations.⁵ Even assuming that the protester's proposal reflects a failure to understand that the orthopedic and plastic surgery nurses here will not be required to assist with operations, it is not apparent how such a misunderstanding may reasonably be characterized as a significant matter requiring major revision of the protester's proposal. Deleting assistance with operations from the descriptions of orthopedic and plastic surgery nurses would not require significant rewriting of the position descriptions, nor would it have an impact on the qualifications of the individuals recruited to perform those positions. Further, it is not apparent that the protester's failure to include ACLS certification as a required credential for burn unit nurses indicated a lack of understanding of the solicitation's requirements, as opposed to simply an easily correctable oversight on the part of the protester.

In our view, the record here does not support the agency's evaluation of the protester's proposal under the recruitment plan subfactor of the personnel methodology factor. Elimination of one, two, or all three weaknesses could easily have resulted in the assignment of a rating of [deleted], rather than [deleted], under the subfactor, particularly given that in addition to the discussed weaknesses, the evaluators identified a strength under the subfactor. Moreover, increasing the proposal's rating under the subfactor from [deleted] to [deleted] might have resulted in a different competitive range determination, particularly given that [deleted]. Accordingly, we sustain the protest.

Retention/employee relations plan

The protester also disputes the evaluators' findings of weakness under the retention/employee relations plan subfactor, the first two of which were as follows:

⁵ The protester's proposal included the following descriptions of the orthopedic and plastic surgery nursing specialties:

[deleted]

Id. at 11.

- Proposal identifies incumbent concerns and need to address proactively ([page] 30) but does not define any plan used to address concerns, for example scheduled meetings/townhalls, face-to-face, appointments, timeline for communication, etc.
- In addition, proposal states desire to retain [deleted] of incumbents ([page] 30) but fails to outline a plan to do so. The lack of details on these issues may indicate a lack of planning or understanding of the complexity of the requirements and increase risk of poor performance.

Consensus Technical Evaluation Worksheet at 6. The protester maintains that its proposal both described its approach to addressing incumbent concerns and outlined its plan for retaining incumbents. In support of its argument, GD cites the following paragraphs from its proposal:

[deleted]

Protester's Technical Proposal at 29-30.

We agree with the protester that the preceding excerpt demonstrates the unreasonableness of the evaluators' finding that the proposal failed to outline a plan for addressing the concerns of incumbent employees during the transition to the new contract; that is, the proposal did address meeting with the incumbent employees to address their concerns. We also agree with the protester that the preceding excerpt demonstrates the unreasonableness of the finding that the proposal failed to outline a plan for retaining [deleted] of the incumbents. As noted in our discussion pertaining to the recruitment plan subfactor, the proposal did outline an incumbent retention plan, which included meeting with incumbent employees and addressing their concerns, providing them with information regarding employment with GD, and [deleted]. Accordingly, we also find that the record does not support the agency's evaluation of the protester's proposal under the retention/employee relations subfactor.⁶

RECOMMENDATION

⁶ Because we find that the agency's evaluation of the protester's proposal under the retention/employee relations plan subfactor was unreasonable based on the above findings, we do not address the other weaknesses in detail in this decision. We did consider them, however, and find that while none of them provides a basis for sustaining GD's protest, the final three findings all involve essentially the same issue (that is, they all focus on a lack of sufficient detail regarding management-employee communications).

We recommend that the agency re-evaluate the protester's proposal and make a new competitive range determination, and, if it determines that GD's proposal should be included in the competitive range, that it conduct discussions with the protester. We also recommend that GD be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2013). The protester's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling
General Counsel