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Decision

Matter of: LINTECH, LLC

File: B-409089; B-409089.2

Date: January 22, 2014

Allen M. Lowy, Esq., for the protester.

George B. Tereschuk, Esq., and Vincent Buonocore, Esq., Department of Veterans Affairs, for the agency.

Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of the protester's proposal and its exclusion from competitive range is denied where the agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

LINTECH, LLC, of Rochelle Park, New Jersey, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. VA118-13-R-0530, issued by the Department of Veterans Affairs (VA) for Resident Assessment Instrument/Minimum Data Set (RAI/MDS) software and related support services. LINTECH argues that the agency's evaluation of its proposal as well as the subsequent determination to exclude its proposal from the competitive range were improper.

We deny the protest.

BACKGROUND

The RAI/MDS software was initially developed under a Health Care Finance Administration (now the Centers for Medicare and Medicaid Services) contract. See RFP, Performance Work Statement (PWS), at 14. The software is intended to provide a standardized assessment tool supporting the completion of a

comprehensive, accurate, and reproducible patient assessment for residents of nursing homes, including VA community living centers.¹ Veterans Affairs: Health Information System Modernization Far from Complete; Improved Project Planning and Oversight Needed, GAO-08-805, June 30, 2008, at 38. The procurement here is for the third iteration of RAI/MDS software, referred to as RAI/MDS v.3.0.

The RFP, issued on September 6, 2013, contemplated the award without discussions of a fixed-price contract for a base year and four option years for commercial-off-the-shelf (COTS) RAI/MDS v.3.0, or higher, system software and testing, installation, training, and operational services. RFP at 17, 89, 91. A detailed PWS stated the requirements the software must satisfy and described the required services. See PWS at 14-66. Among other things, offerors were informed that the software would support 135 Veteran Resident facilities (or community living centers), comprised of four operating environment categories: small (up to 80,000 patients in the Veterans Health Information Systems and Technology Architecture (VistA));² medium (80,000 to 150,000 patients in VistA); large (greater than 150,000 patients in VistA); and integrated (database systems merged to support two or more medium or large facilities). Id. at 20-21.

The RFP provided for award on a best-value basis, considering the following factors and subfactors:

Technical	
	Understanding of the Problem
	Feasibility of Approach
	Completeness
Past Performance	
Price	
Veterans Involvement	

RFP at 93-95. Offerors were informed that the technical factor was significantly more important than past performance, which was significantly more important than

¹ The assessments include a resident’s cognitive status, mood and behavior, psychosocial status, physical status, activities of daily living, and other elements that when reviewed as a whole reveal areas for intervention. VA Information Resource Center, RAI/MDS Overview, June 27, 2012, www.virec.research.va.gov/RAI-MDS/Overview.htm.

² VistA is VA’s Health Information Technology system. This system provides an integrated inpatient and outpatient electronic health record for VA patients and various administrative tools. See www.ehealth.va.gov/VistA.asp.

price, which was significantly more important than veterans involvement. Id. at 93. The RFP cautioned that to be considered for award offerors must not receive a rating of less than acceptable under the technical factor. Id. at 93-94.

Detailed instructions were provided for the preparation of proposals under each factor and subfactor. Among other things, offerors were instructed to describe in detail their approach, methodology, and architecture for ensuring that the software would function within VA-approved computing environments; integrate with VA community living center VistAs; and comply with all VA directives, including federal and VA security and privacy requirements. Id. at 98.

Two offerors, LINTECH and KForce Government Solutions, Inc., of Fairfax, Virginia, submitted proposals by the September 16 closing date. The proposals were evaluated using an adjectival rating scheme as follows:

	Technical	Past Performance	Price	Veterans Involvement
LINTECH	Unacceptable	Low Risk	\$4,050,331	No Credit
KForce	Susceptible of being made Acceptable	Low Risk	\$7,264,937	Some Consideration

Agency Report (AR), Tab 9, Competitive Range Determination, Sept. 24, 2013, at 2.

The agency's adjectival ratings were supported by narrative discussion of the offerors' respective strengths, weaknesses, and deficiencies. See AR, Tab 8, LINTECH Initial Technical Evaluation Report, Sept. 24, 2013, at 1-5; Tab 19, KForce Initial Technical Evaluation Report, Sept. 24, 2013, at 1-5.

LINTECH's unacceptable rating under the technical factor reflected the evaluators' judgment that, although the proposal was assessed as having some significant strengths (such as allowing for modified security levels), LINTECH's proposal also contained numerous deficiencies and significant weaknesses. AR, Tab 8, LINTECH Initial Technical Evaluation Report, Sept. 24, 2013, at 1-5. As relevant here, the evaluators noted three deficiencies in LINTECH's proposal under the technical factor. The first deficiency concerned LINTECH failure to provide detailed information regarding how its system would comply with the security requirements of the Federal Information Security Management Act of 2002 (FISMA), National Institute of Standards and Technology (NIST), and VA Directive 6500 (Managing Information Security Risk: VA Information Security Program). Id. at 3. The remaining two deficiencies concerned LINTECH's failure to understand the PWS requirements regarding RAI/MDS implementation/installation support, and failure to

provide detailed information as to how its software/hardware architecture system would integrate with the 135 community living center VistAs.³ Id. at 3-4.

By contrast, KForce's "susceptible of being made acceptable" rating under the technical factor was based on the evaluators' judgment that the firm's proposal contained one significant strength, three strengths, three weaknesses, and only one deficiency. AR, Tab 19, KForce Initial Technical Evaluation Report, Sept. 24, 2013, at 1-5. The firm's sole deficiency was that KForce referred throughout its proposal to the 2.0 version of the RAI/MDS software, which would not satisfy the requirement to provide an RAI/MDS version 3.0 or higher. Id. at 4.

The VA established a competitive range that included only KForce's proposal. AR, Tab 9, Competitive Range Determination, Sept. 24, 2013, at 1-3. LINTECH's proposal was not included in the competitive range, because:

Overall, [its] technical proposal contained major errors, omissions/ deficiencies that indicated a lack of understanding of the problems, an approach that cannot be expected to meet requirements and involved a very high risk; and none of these conditions can be corrected without a major rewrite or revision of the proposal.⁴

Id. at 2.

After providing LINTECH with a debriefing on October 2, this protest followed.

DISCUSSION

LINTECH challenges the VA's evaluation of its technical proposal, arguing that the agency's evaluation was "unjustifiably overly literal." Protest at 2. As relevant here, LINTECH objects to the three deficiencies assessed in its technical proposal, arguing with respect to the first and third deficiencies that the RFP did not allow sufficient time to prepare an adequate response.⁵ See Protest at 4, 5-6. With

³ The VA also identified an additional three significant weaknesses in LINTECH's proposal. Id. at 2-3; see Contracting Officer's Statement, Nov. 18, 2013, at 2.

⁴ The VA subsequently conducted discussions with KForce, rated the offeror's revised technical proposal as "good," and made award to KForce on September 30 in the amount of \$6,896,206. AR, Tab 22, KForce Final Technical Evaluation Report, Sept. 30, 2013, at 1-4; Contracting Officer's Statement, Nov. 18, 2013, at 3.

⁵ The protester contends, however, that it is "extremely confident" that it will meet all PWS requirements during contract performance, and that the VA had the option to engage LINTECH in clarifying any perceived proposal shortcomings before making its award decision. Protest at 4-6.

respect to the second deficiency (that LINTECH's implementation methodology failed to understand that it was VA teams who would be performing the RAI/MDS roll-out to VA's 135 community living center facilities), the protester argues that its strategy to devise a specific plan "for each client" should have been interpreted as meaning the agency (not each facility).⁶ Id. at 5 (emphasis in original), citing AR, Tab 7, LINTECH Technical Proposal, Sept. 16, 2013, at 15.

In reviewing a protest challenging 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 stated evaluation factors and applicable statutes and regulations. FPM Remediations, Inc., B-407933.2, Apr. 22, 2013, 2013 CPD ¶ 107 at 3; Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4. Contracting agencies are not required to retain a proposal in a competitive range where the proposal is not among the most highly rated or where the agency otherwise reasonably concludes that the proposal has no realistic prospect of award. Federal Acquisition Regulation (FAR) § 15.306(c)(1); Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to either omitted or merely inadequate information addressing fundamental factors. American Med. Depot, B-285060 et al., July 12, 2000, 2002 CPD ¶ 7 at 6-7.

Here, the record establishes that LINTECH's proposal failed to satisfy the solicitation requirements in a number of regards. That is, as described above, the RFP required offerors to provide detailed information concerning their approach and

⁶ LINTECH's objections in its initial protest that the solicitation allowed offerors inadequate time to prepare proposals and provided insufficient detail regarding the infrastructure of the agency's VistA system were summarily dismissed as untimely. Our Bid Protest Regulations require such challenges to alleged, apparent solicitation improprieties to be filed before the closing time for initial proposals. See 4 C.F.R. § 21.2(a)(1) (2013). We also dismissed LINTECH's complaint in its supplemental protest that KForce's proposal should have been summarily rejected as "nonresponsive" to the RFP. This complaint failed to state a valid basis for protest, given that responsiveness concerns a sealed bid's compliance with the material requirements of an invitation for bids, and that the procurement here was conducted using negotiated procedures. See A.I.A. Costruzioni S.P.A., B-289870, Apr. 24, 2002, 2002 CPD ¶ 71 at 3. Here, the VA appropriately decided to conduct discussions with KForce to allow the firm to address its single deficiency.

methodology to satisfying solicitation requirements, such as complying with security requirements of FISMA, NIST, and VA Directive 6500; and rolling its COTS solution out to VA's 135 facilities. See, e.g., RFP at 45, 98. With respect to the solicitation's security requirements, LINTECH's proposal states that the firm would create and modify various security levels for users, see AR, Tab 7, LINTECH Technical Proposal, Sept. 16, 2013, at 11, but only addresses compliance with the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act.⁷ See id. at 14. LINTECH's proposal does not at all address compliance with security requirements of FISMA, NIST, and VA Directive 6500. In any event, LINTECH did not contend in its initial protest, with respect to this deficiency and the third assessed deficiency, that it provided sufficient detailed information, only that it was not provided with sufficient time or information to adequately address the solicitation's requirements.⁸ See Protest at 4-6.

We also find no merit to LINTECH's contention that its proposal adequately addressed the RFP requirements with respect to the second assessed deficiency -- that regarding software implementation. The PWS required the contractor to provide the VA with remote installation support (i.e., a 24/7 telephonic helpdesk) for the VA teams that would perform the RAI/MDS software installation at the agency's 135 community living center facilities. PWS at 23-24. The RFP also instructed offerors to describe, in detail, their approach and methodology for managing the implementation, training, and support on an enterprise-wide roll-out of the COTS software solution. See RFP at 99.

⁷ LINTECH argues that the strength assigned to its proposal for allowing modified security levels is inconsistent with the assessment of a deficiency for not addressing the requirements of FISMA, NIST, and VA Directive 6500. See Comments at 3. We disagree. The VA's evaluation simply recognized that LINTECH's offer of flexible security levels was a benefit but that LINTECH had failed to address all of the RFP's requirements with respect to security requirements.

⁸ In its comments, LINTECH argued for the first time that its proposal did in fact adequately address the first and third deficiencies. Comments at 3-4. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues, where, as here, the protester raises arguments for the first time in its comments that could and should have been made in its protest. Cedar Electric, Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 4. Nevertheless, we find no basis from review of LINTECH's proposal to object to the agency's assessment of these deficiencies. Rather, LINTECH's arguments reflect no more than disagreement with the VA's evaluation, which does not show that the agency acted unreasonably.

LINTECH's implementation plan did not mention remote, or telephonic, installation support to the VA's installation teams. See AR, Tab 7, LINTECH Technical Proposal, Sept. 16, 2013, at 15-16. Instead, LINTECH's proposal described a process whereby it would perform the software implementation at the VA facilities, stating as follows:

[d]uring that [implementation] process we learn the facilities [sic] unique constraints as well has [sic] how they perform current tasks on a daily basis[;]

* * * *

[a] specific plan for each client will be devised together with the client . . . [;]

* * * *

[a] dedicated implementation team is assigned to the project . . . [;]

* * * *

[t]he [LINTECH and client] project managers will discuss and conclude the implementation schedule . . . [; and]

* * * *

a kickoff meeting is scheduled with LINTECH's staff and the facility's project team. The purpose of this meeting is to familiarize the project team with the implementation process and the responsibilities of [the] facility staff.

Id. at 15. Based on such statements, the agency evaluators reasonably concluded that LINTECH failed to understand that the PWS requirement here was to support, not perform, the RAI/MDS software installation. AR, Tab 8, LINTECH Initial Technical Evaluation Report, Sept. 24, 2013, at 4.

With respect to the protester's arguments that its reference to a specific implementation plan for "each client" meant the VA as a whole, not each VA facility, LINTECH does not dispute that its proposal both indicated that it would self-perform the software implementation, and completely failed to address how it would provide remote support of the VA installation teams. It is an offeror's obligation to submit an adequately-written proposal for the agency to evaluate, United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19, including demonstrating an understanding of the stated requirements.

In short, the record shows that LINTECH's proposal was deficient in ways that reasonably indicated to the agency that LINTECH's offer reflected a lack of understanding of the requirements and posed high performance risks.⁹ The record also supports the reasonableness of the agency's conclusion that LINTECH's technically unacceptable proposal would require major revisions to become acceptable. On this basis, we find that the VA reasonably excluded LINTECH's proposal from the competitive range. See CMC & Maint., Inc., supra, at 4-5; see also Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7, 12-13.

The protester also argues that the VA should have allowed LINTECH to address the evaluated deficiencies in clarifications prior to establishing the competitive range. Protest at 2; Comments at 5. There is also no merit to this argument.

FAR § 15.306 describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; 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. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Although agencies have broad discretion as to whether to seek clarifications from offerors, offerors have no automatic right to clarifications regarding proposals and such communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. A. G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6.

LINTECH also challenges the VA's competitive range determination, complaining that the agency treated the firms unequally where LINTECH's proposal was excluded but KForce was provided an opportunity to establish the acceptability of its proposal. See Supp. Protest at 3-4. We disagree.

⁹ LINTECH also argues that the VA was aware from a pre-solicitation product demonstration that the firm possessed a fully-operational software solution, and the VA's focus on whether the offeror submitted an adequate written proposal was misplaced. Protest at 2; Comments at 6. Further, the protester asserts that the very submission of a proposal should be considered as an affirmation of its ability to meet all solicitation requirements. Protest at 2; Comments at 8. LINTECH's arguments here reflect a fundamental misunderstanding of the entire proposal process, as it is the proposal which represents an offeror's promise of performance. See Government Telecomms., Inc., supra, at 5. The RFP established that it was the offeror's responsibility to submit a proposal demonstrating ability to meet all PWS requirements.

In our view, LINTECH's disparate treatment argument is mistakenly premised on an improper "apples and oranges" comparison of offerors' proposals. As set forth above, the VA found three deficiencies (and as many significant weaknesses) in LINTECH's technical proposal, and concluded that it could not be made acceptable without a major rewrite or revision. By contrast, the VA found one deficiency and no significant weaknesses in KForce's technical proposal, and reasonably concluded that it was capable of being corrected without a major rewrite or revision. Quite simply, the difference in the VA's conclusions and competitive range determinations with regard to LINTECH and KForce was not the result of unequal treatment by the agency, but rather, resulted from the agency's recognition of different underlying facts.

Lastly, LINTECH complains that the VA improperly revised its independent government cost estimate (IGCE) in order to justify KForce's inflated price. See Supp. Protest at 4. A contracting officer is required to determine that an offeror's price is fair and reasonable, and an agency cannot make award to an offeror whose price is found to be unreasonably high. FAR § 15.402(a).

The VA's IGCE for the RAI/MDS procurement was \$3,872,150, and the agency raised the issue of KForce's apparently high initial price with the offeror during discussions. AR, Tab 18, IGCE, June 12, 2013, at 1-6; Tab 20, Discussions with KForce--Price, Sept. 25, 2013, at 2. After receipt of KForce's discussion response and revised proposal, the VA looked at how its IGCE was determined. Although the agency never revised its IGCE, it determined that the government estimate was not a valid basis of comparison. Specifically, the IGCE was based on the historical costs of sustaining the legacy RAI/MDS application and did not include costs related to ongoing support for major application upgrades; maintenance and upgrades of software, hardware, and infrastructure; and the costs associated with staffing, security, and support. Id., Tab 11, Source Selection Decision, Sept. 28, 2013, at 2. In light of this, the VA determined that KForce's final price was reasonable. We find the agency's determination to be reasonable, even though KForce's price was substantially higher than the IGCE and the price of LINTECH's technically unacceptable offer.

The protest is denied.

Susan A. Poling
General Counsel