



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Phoenix Management, Inc.

File: B-412220

Date: December 21, 2015

Johnathan M. Bailey, Esq., and Kristin E. Zachman, Esq., Bailey & Bailey, P.C., for the protester.

Michael J. Kraycinovich, Esq., and George P. Farley, Esq., Department of the Army, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the exclusion of the protester's proposal from the competition for failing to comply with material solicitation instructions regarding staffing is denied where the record demonstrates that the agency's noncompliance determinations were reasonable and consistent with the solicitation's instructions.

DECISION

Phoenix Management, Inc. (PMI), a small business, of Austin, Texas, challenges its exclusion from the competition for a task order under request for proposals (RFP) No. W52P1J-15-R-0047, which was issued by the Department of the Army, Army Contracting Command-Rock Island, for logistics services at Fort Rucker, Alabama, and Eglin Air Force Base, Florida, as part of the Enhanced Army Global Logistics Enterprise (EAGLE) program. PMI argues that the Army unreasonably eliminated its proposal from the competition for allegedly failing to comply with the RFP's minimum labor hour and labor category classification requirements.

We deny the protest.

BACKGROUND

The RFP was issued as a small business set-aside and sought proposals from EAGLE basic ordering agreement (BOA) holders for logistics support services, including maintenance, supply, and transportation services at Fort Rucker, Alabama (Rucker North) and Eglin Air Force Base, Florida (Rucker South). RFP at 2. The

RFP anticipated the award of a cost-plus-fixed-fee task order with a fixed-price contract line item for the transition requirements. Id. The RFP contemplated a 1-year base performance period and four 1-year options. Id.

The RFP identified three equally-weighted evaluation factors: (1) technical; (2) past performance; and (3) cost/price. Id. at 62.¹ Prior to evaluating proposals under the three evaluation factors, however, the Army was to conduct a “strict compliance review” to determine if the proposal satisfied all of the Section L proposal preparation requirements. Id. at 61. The RFP advised that any offeror’s proposal that was determined to be non-compliant would not be evaluated or further considered for award. Id.

PMI, which holds an EAGLE BOA, submitted a proposal by the RFP’s closing date. The Army reviewed PMI’s proposal and found it to be non-compliant with respect to two RFP requirements. Agency Report (AR), Tab 2B, Elimination Notice (Sept. 25, 2015), at 1-3. First, the agency found that the protester incorrectly rounded the number of proposed full-time equivalent (FTE) personnel listed in the required staffing labor/mix Microsoft Excel spreadsheet included as attachment No. 2 to the RFP, which led to PMI failing to propose the minimum required hours for the supply and services functional area. Id. at 1-2. Second, the Army found that PMI failed to properly identify in attachment No. 2, as required by the RFP, whether certain proposed labor categories were subject to a collective bargaining agreement (CBA), the Service Contract Act (SCA), or exempt from the SCA. Id. at 3. Based on these two areas of noncompliance, the agency removed PMI’s proposal from the competition on September 25. Id. This protest followed.

DISCUSSION

PMI challenges the Army’s elimination of its proposal from the competition. The protester argues that its proposal materially complied with the RFP’s labor hour and labor category characterization requirements, and the instances of noncompliance identified by the agency were de minimus in nature. For the reasons discussed

¹ The RFP contemplated a modified best-value basis for award. Award was to be made to the responsible offeror whose proposal conformed to the RFP’s requirements and that: (1) proposed the lowest evaluated price; (2) was technically acceptable; and (3) received a substantial confidence rating under the past performance factor. RFP at 63. In the event that none of the offerors with technically acceptable proposals were assessed to have a substantial confidence assessment in past performance, the Army reserved the right to award to an offeror with other than a substantial confidence assessment. Id. In such an event, the source selection authority was to consider all factors and make a best-value determination, where past performance was to be significantly more important than cost/price. Id.

below, we conclude that the agency's evaluation was reasonable and therefore find no basis to sustain the protest.

In reviewing protests challenging the evaluation of an offeror's proposal, or as here, the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather our Office examines the record to determine whether the agency's judgment was reasonable, and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award.² Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3-4.

Minimum Labor Hours

The RFP's proposal preparation instructions required offerors to populate a staffing/labor mix Excel spreadsheet designated as attachment No. 2 to the RFP. RFP at 47. Offerors were required to propose the number of FTEs for Functional Labor Category 1 labor positions that, when multiplied with the associated labor hours proposed by the offeror for an FTE, would be equal to or greater than the total required hours set forth in the RFP. Id. at 48.³ Relevant here, the minimum required hours for Rucker South for the supply and services functional area are 18,240 hours. Id.

The RFP also included specific information for entering and rounding the FTE-related data in attachment No. 2:

The Offeror must insert number of FTEs (or less than full time equivalents expressed as FTEs) within the applicable FTE Count column. The Offeror's staffing must be rounded to the nearest hundredth decimal (i.e., two decimal places to the right of the whole number). Formatting the cells to display only two decimal places is not considered rounding; the values entered in each cell should only contain two decimal places. FTEs entered by the Offeror with greater than two decimal places will be rounded by the Government

² Although the solicitation anticipates the issuance of an order under a BOA, the solicitation was issued as an RFP and specifically stated it would be conducted as a "negotiated" procurement. RFP at 1.

³ Functional Labor Category 1, or FLC1, personnel are individuals specifically identified to directly accomplish the tasks and functions of the workload provided in Exhibit A to the RFP, as opposed to supervisory or management personnel that are covered under Functional Labor Category 2. RFP at 47.

to the nearest hundredth decimal (two decimal places to the right of the whole number) using the Microsoft Excel formula “=Round(number,num_digits)” in accordance with generally accepted rounding methods, i.e., numbers 5 through 9 are rounded up to the next whole number; numbers 1 through 4 are rounded down to the next whole number.

Id. at 48-49.

The RFP warned that “[o]fferors must satisfy the minimum hours requirement . . . without exception,” and a proposal with proposed hours that were not equal to or greater than the RFP’s minimum required hours “shall be rendered noncompliant and will not be evaluated nor further evaluated for award.” Id. at 62.

PMI submitted a completed attachment No. 2, which included its proposed FTE counts for both Rucker North and Rucker South. AR, Tab 2D, PMI attachment No. 2. PMI prepared its attachment No. 2 by identifying its proposed labor categories and calculating the number of FTEs necessary to meet the RFP’s minimum proposed hours for each functional area. Contrary to the RFP, however, PMI did not input its proposed FTEs rounded to the nearest hundredth decimal or utilize the Excel rounding formula set forth in the RFP. Rather, while the Excel spreadsheet in PMI’s attachment No. 2 was formatted to display the data to the hundredth decimal, the protester inserted formulas instead of actual FTE figures in the data fields. The formulas, which originated with PMI, appear to sum the proposed hours necessary to perform a specific task and then to divide the sum by the total number of annual hours for a FTE in order to calculate how many total FTEs would be necessary to perform individual tasks. The output of the formulas included underlying total FTE figures going beyond the hundredth decimal place. For example and as relevant here, for the installation supply support activity under the supply and services functional area at Rucker South, PMI’s attachment No. 2 displays the following FTE counts to two decimal places:

Offeror Position Title	FTE Count
Supply Technician II	[DELETED]
Stock Clerk	[DELETED]
Warehouse Specialist	[DELETED]
Total:	[DELETED]

Id., Rucker S FTE Count Base Period Spreadsheet.

The displayed figures above, however, result in an apparent inconsistency, as the sum of the three FTE counts is only [DELETED], not the [DELETED] displayed as the total. If, however, the Excel spreadsheet is formatted to display the FTE counts to beyond the hundredth decimal, the outputs of the formulas in the Excel cells submitted by PMI were:

Offeror Position Title	FTE Count
Supply Technician II	[DELETED]
Stock Clerk	[DELETED]
Warehouse Specialist	[DELETED]
Total:	[DELETED]

AR, Tab 6, Army Analysis of PMI attachment No. 2, Rucker S FTE Count Base Period Spreadsheet.

Thus, the discrepancy in the first chart--where the three constituent FTE counts did not match the total displayed FTE count--is resolved only by considering the figures beyond the hundredth decimal place captured in the second chart.

The above discrepancy is at the heart of the parties' dispute. Because PMI neither entered its FTE counts rounded to two decimal places nor utilized the Excel rounding formula contemplated by the RFP, the Army, consistent with the express terms of the RFP, applied the RFP's rounding formula to PMI's FTE counts. After applying the rounding formula, the agency then totaled the proposed hours for each functional area and multiplied them by the proposed hours for the positions proposed by PMI. The Army then subtracted the total hours proposed by PMI from the RFP's minimum number of hours. The agency determined that PMI's proposal was noncompliant because the difference between [DELETED] FTEs and [DELETED] FTEs proposed by the protester for the supply and services functional area at Rucker South yields a shortfall in the minimum hours. Specifically, the [DELETED] FTE count that the agency calculated by using the RFP criteria, yields only [DELETED] hours, or [DELETED] hours less than the RFP's minimum required 18,240 hours. AR at 5-8; Tab 2B, Elimination Notice (Sept. 25, 2015), at 1-2.

PMI argues that the Army's evaluation was unreasonable for several reasons. First, the protester alleges that any clerical or formatting error in its proposal was de minimus in nature and does not warrant exclusion of its proposal from the competition. Protest (Oct. 1, 2015) at 13. PMI next alleges that its proposal was compliant because its FTE counts were displayed to two decimals, as required. Id. at 16; PMI's Comments (Nov. 12, 2015) at 6. The protester also argues that both attachment No. 2 and other parts of its proposal made clear that PMI intended to propose labor hours equal to or in excess of the RFP's minimum hours. Protest (Oct. 1, 2015) at 13-14; Comments (Nov. 12, 2015) at 7-8. Additionally, PMI alleges that it was irrational for the Army to focus on the proposed FTE counts, when the RFP's minimum requirements were expressed in terms of minimum labor hours. Comments (Nov. 12, 2015) at 9-12. In sum, the protester argues that the agency's "rote application of the ROUND function to each cell altered the underlying non visible data and produced a number of manhours which PMI never intended to submit." Protest (Oct. 1, 2015) at 15. We find no basis to sustain the protest.

While PMI expresses dissatisfaction with the Army's evaluation of its proposal, none of its objections demonstrate that the evaluation was inconsistent with the express and detailed instructions set forth in the RFP. Contrary to the protester's allegation, it is apparent from the analysis conducted by the agency of PMI's submitted attachment No. 2, and our own review of the native Excel file, that PMI did not enter its FTE counts rounded to the hundredth decimal place, as required by the RFP. Rather, while Excel limited the display to the hundredth decimal place, it is clear that the protester provided formulas in the cells that, when automatically calculated by Excel, resulted in FTE figures that went beyond the hundredth decimal. PMI's argument that displaying, but not rounding, the figures to two decimal places was compliant with the RFP ignores the unequivocal direction that "[f]ormatting the cells to display only two decimal places is not considered rounding; the values entered in each cell should only contain two decimal places." RFP at 48-49.

The record confirms that the agency followed the RFP's disclosed evaluation scheme in evaluating PMI's proposal. The RFP provided the specific consequence for an offeror's failure to comply with the requirement to provide figures rounded to the hundredth decimal place--the Army would implement a specific Excel rounding formula to evaluate the proposed figures. RFP at 49. While PMI argues that the resulting discrepancy in its proposed FTEs is de minimus, and could have been resolved through consideration of other representations in its proposal, those arguments are not relevant. In this regard, an agency is not required to adapt its evaluation to comply with an offeror's submissions--the question is not what an agency could possibly do to cure a noncompliant submission, but, rather, what it is required to do. Strategic Resources, Inc., B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4. Moreover, where, as here, proposal submission requirements are clear, an agency is not required to assume the risks of potential disruption to its procurement to permit an offeror to cure a defect in its proposal submission caused by the offeror's failure to comply with a mandatory solicitation requirement. Id. On this record, we find that the Army reasonably found PMI's proposal to be noncompliant.

Labor Category Classifications

The RFP's proposal preparation instructions required each offeror to "insert the SCA, Exempt, or CBA labor code in the CBA/SCA/Exempt column [of attachment No. 2] for all proposed labor categories." RFP at 48. The RFP warned that failure to provide "proper identification of SCA/CBA/Exempt . . . shall render the Offeror's proposal non-compliant," and that a non-compliant proposal "will not be further evaluated and will not be further considered for award." Id. at 47.

In response to the RFP's requirement to specifically identify for each labor category whether the position was subject to a CBA, the SCA, or exempt, PMI populated the required column in attachment No. 2. AR, Tab 2D, PMI attachment No. 2. For three of the positions at Rucker North, however, PMI unilaterally proposed a fourth

category of salaried, non-exempt, or “SNE.” Id., Rucker N FTE Count Base Period Spreadsheet.⁴ The only contemporaneous explanation for the three SNE positions identified by PMI during the protest was the following sentence from the protester’s cost proposal narrative:

We are also proposing the following [SNE] positions: [DELETED].

PMI Comments (Nov. 12, 2015), exh. no. 7, PMI Cost Proposal: Direct Labor Rate Data (June 8, 2015), at 1.

The Army found that PMI’s use of a fourth designation (SNE) that was not authorized by the RFP violated the requirement for offerors to identify each labor category using only the CBA/SCA/Exempt designations. AR at 4-5; Tab 2B, Elimination Notice (Sept. 25, 2015), at 3.

PMI argues that the Army’s noncompliance determination was unreasonable. The protester argues that the three proposed positions designated as SNE are unique because they are supervisory positions, but are subordinate to a higher level manager. PMI Comments (Nov. 12, 2015) at 3. PMI contends that the three positions cannot be part of the bargaining unit subject to the CBA because they are supervisors. Id. The protester also contends, without elaboration, that the three positions “cannot be SCA-exempt positions, but at the same time the experience and other qualifications required for these positions make them a salaried position.” Id. PMI argues that the Army “doesn’t actually claim that it didn’t understand PMI’s proposal, that it didn’t understand what the reference ‘SNE’ referred to, or that it couldn’t intelligibly evaluate PMI’s proposed staffing,” but, rather, that it “offers no more than that it caught PMI not literally following the RFP instructions in this de minimus respect, which has no apparent connection to the agency’s minimum needs and is no more than a trap for the unwary.” Id. at 4-5. On this record, we find that the agency reasonably evaluated PMI’s proposal as noncompliant.

As addressed above, PMI concedes that its proposal did “not literally follow[] the RFP instructions.” Id. at 5. Rather, PMI argues that its unilateral decision to deviate from the labor classifications in the RFP and attachment No. 2 was reasonable and adequately addressed elsewhere in its proposal. PMI, however, accepted the classification scheme set forth in the RFP and attachment No. 2 without protest, yet

⁴ For the Rucker North [DELETED] position, we note that PMI designated the position as “SCBA.” AR, Tab 2D, PMI attachment No. 2, Rucker N FTE Count Base Period Spreadsheet. The Army did not argue that this apparent noncompliance warranted the exclusion of the protester’s proposal from the competition. Based on our other determinations herein, we need not resolve whether this apparent noncompliance would have provided an alternative basis for eliminating PMI’s proposal from the competition.

chose to propose a non-compliant classification. Thus, the protester assumed the risk that the agency would downgrade its proposal for noncompliance with the solicitation's proposal preparation instructions. Coffman Specialties, Inc., B-284546, B-284546.2, May 10, 2000, 2000 CPD ¶ 77 at 4. Furthermore, we do not find relevant whether the Army could have discerned PMI's intentions in offering a labor classification not specifically authorized by the RFP. As addressed above, an agency is not required to adapt its evaluation to comply with an offeror's submissions. Strategic Resources, Inc., supra. Therefore, we find that the Army reasonably found PMI's proposal noncompliant.

The protest is denied.

Susan A. Poling
General Counsel