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Decision

Matter of: NetCentrics Corporation

File: B-417285.3

Date: June 5, 2019

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

DIGEST

Protest that agency improperly rescinded a task order shortly after award is denied where, in its final quotation revision, protester misrepresented that a key person was a current employee, when in fact, the proposed key person was no longer employed by the firm.

DECISION

NetCentrics Corporation of Herndon, Virginia, protests the decision of the Department of Defense, Washington Headquarters Services, to rescind the order it awarded NetCentrics under request for quotations (RFQ) No. HQ0034-18-R-0044, for information technology support services. NetCentrics asserts that the agency unreasonably determined that its quotation contained a material misrepresentation regarding key personnel.

We deny the protest.

BACKGROUND

The solicitation was issued on March 22, 2018, pursuant to Federal Acquisition Regulation (FAR) part 8, to vendors holding General Services Administration

Information Technology Schedule 70 contracts. Agency Report (AR), Tab 1, RFQ, at 2, 83.¹ The solicitation provided for the issuance of an order on a best-value tradeoff basis considering technical approach and capability, past performance, and price. AR, Tab 8, RFQ amend. 7, at 1503.

As relevant to this protest, under the technical approach and capability factor, vendors were required to submit resumes for two key personnel, one of which was the deputy program manager. AR, Tab 9, RFQ, amend. 8, at 1565, 1584. The agency desired, but did not require, commitment letters for key personnel. Id. at 1565. However, the solicitation also noted that when key personnel are used as an evaluation factor in a best-value procurement, a vendor can be rejected if it does not have a firm commitment from the persons that are listed in the quotation. Id. at 1587. Further, the RFQ explained that the agency would evaluate the adequacy of the vendor's technical approach and capabilities for providing the personnel matrix and key personnel resumes. AR, Tab 8, RFQ amend. 7, at 1506. Specifically, with respect to the staffing plan, the agency would evaluate and assess the vendor's staffing approach, plans to manage unexpected turnover, and impact on contract performance. Id.

NetCentrics' initial quotation, submitted on August 10, included the resume of Mr. A for the deputy program manager position. AR, Tab 11, NetCentrics Quotation, at 2123-2126. The resume indicated that Mr. A was currently employed by NetCentrics and available immediately. Id. at 2123-2124 (showing employment status/availability as "Current Employee/Immediate"). On November 20 and 30, the agency sent vendors discussion questions and requests for final quotation revisions. AR, Tabs 19 and 20, Discussion Letters. None of the questions posed to NetCentrics concerned its deputy program manager or its key personnel. See id. NetCentrics submitted its revised quotation on December 3 with the identical resume for Mr. A that was included in its initial quotation, which, again, showed that Mr. A was a current employee of NetCentrics and available immediately. AR, Tab 12, NetCentrics Revised Quotation, at 2225-2226.

On January 31, 2019, following the evaluation of final revisions, the agency issued an order to NetCentrics. AR, Tab 15, Notice of Award. On February 5, NCI Information Systems, Inc. (NCI), another vendor that responded to the solicitation, submitted a protest to our Office. NCI argued, among other things, that NetCentrics should not have been awarded the order because it misrepresented the availability of Mr. A. NCI specifically asserted that Mr. A left NetCentrics before the order was issued, and before revised quotations were submitted.

As discussed in detail below, the agency contacted NetCentrics to determine whether Mr. A was an employee at the time NetCentrics submitted its revised quotation. Based on NetCentrics' answer, the agency concluded that NetCentrics made a material

¹ The agency report was submitted with Bates numbering. Our citations to the agency report in this decision refer to the Bates numbers, as applicable.

misrepresentation in its revised quotation when it failed to advise the agency that Mr. A was no longer a current employee of the firm.

On February 26, the agency decided to take corrective action in response to NCI's protest and rescinded the order issued to NetCentrics. Corrective Action Notice, Feb. 26, 2019. After our Office concluded that NCI's protest was rendered academic, we dismissed it. NCI Information Sys., Inc., B-417285, B-417285.2, Mar. 5, 2019 (unpublished decision). This protest followed.

DISCUSSION

NetCentrics protests that the agency's decision to rescind its order is improper. According to NetCentrics, the solicitation did not require letters of commitment, and the firm planned to rehire Mr. A and make him available immediately. Protest at 7-8. NetCentrics asserts that, in any case, the agency did not rely on Mr. A in evaluating its quotation.² Id. at 9-10. In contrast, the agency argues that NetCentrics materially misrepresented the status of Mr. A in its final quotation, and that the agency relied on this misrepresentation, in part, when it assigned a strength to NetCentrics' quotation for its key personnel. MOL at 15-41. As a result, the agency argues it was reasonable to rescind NetCentrics' order.

The issue of whether personnel identified in a proposal or quotation will, in fact, perform under the subsequently-awarded contract or task order is generally a matter of contract administration that our Office does not review. See Bid Protest Regulations, 4 C.F.R. § 21.5(a); Patricio Enters. Inc., B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 4-5 (FAR part 15). Nonetheless, we will consider an allegation that a vendor's quotation contains a misrepresentation concerning personnel that materially influences an agency's evaluation. See id. A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact on the evaluation. CSI Aviation, Inc., B-415631 et al., Feb. 7, 2018, 2018 CPD ¶ 68 at 6. A requirement for vendors to submit a resume for a key personnel position constitutes a material solicitation requirement. YWCA of Greater Los Angeles, B-414596 et al., July 24, 2017, 2017 CPD ¶ 245 at 4.

² We have considered all of NetCentrics' arguments and find that none provide a basis to sustain the protest. For example, NetCentrics argues that the agency could not "have relied on the out-of-date reference to [Mr. A's] employment status in evaluating NetCentrics' proposal." Protest at 9. In this regard, the protester argues that the agency was aware that Mr. A had left NetCentrics in November because NetCentrics replaced Mr. A on the incumbent contract. Id. Regardless, we have stated before that a vendor's or offeror's technical evaluation is dependent on the information furnished. See Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 9. As NetCentrics' quotation included Mr. A as a key person, the agency reasonably considered the information furnished in NetCentrics' quotation concerning Mr. A. Memorandum of Law (MOL) at 38-39.

NetCentrics first argues that there was no misrepresentation regarding Mr. A because when it submitted the revised quotation, it intended to rehire Mr. A and make him available. NetCentrics argues that it has provided support for this assertion to the agency.

In this regard, on February 6, the agency sent an email to NetCentrics explaining that there was an assertion that as of December 2018, Mr. A, proposed by NetCentrics for a key personnel position, no longer worked for NetCentrics. In the email, the agency explained that it independently reviewed information, which showed that Mr. A had been a director for another company since November 2018. AR, Tab 18, Determination of Contracting Officer, Exh. B, Agency Email to NetCentrics, at 2429. The agency also stated that NetCentrics continued to propose Mr. A in its final quotation, which was submitted on December 3. The revised quotation specifically stated that NetCentrics' key personnel have a "[DELETED] [the program to enhance] program stability because of reduced leadership turnover." Id. In the email, the agency asked if Mr. A was still employed by NetCentrics, and if not, when he left NetCentrics' employment. Id. The agency also asked if NetCentrics was able to produce Mr. A for the deputy program manager position consistent with the terms of its quotation. Id.

On February 7, NetCentrics confirmed that Mr. A left its employment on November 3, 2018, but represented that it had verified that Mr. A was interested in and available to return to NetCentrics in the position of deputy program manager. AR Tab 18.2, Email Response from NCI, at 2431a. Specifically, NetCentrics stated that:

NetCentrics' managers have maintained contact with [Mr. A] since his departure from NetCentrics as a fulltime employee. We told [Mr. A] of our award of the [task order] and verified that [Mr. A] is available to return, and his interest in returning, as a fulltime employee of NetCentrics in the position of Deputy Program Manager for the [task order] consistent with the terms of our proposal.

Id.

The agency sent a follow-up email to NetCentrics to confirm that in NetCentrics' quotation, dated December 3, 2018, Mr. A's resume stated that he is a "Current Employee" and is available to work "Immediately," and to also confirm that Mr. A was not, in fact, a current employee of NetCentrics when it submitted its revised quotation. AR, Tab 18, Determination of Contracting Officer, Exh. D, Agency Letter, Feb. 7, 2019, at 2433. The agency therefore asked the vendor to certify that its revised quotation was true and accurate at the time it was submitted regarding the availability and commitment of Mr. A to perform upon award as the deputy program manager. Id. The agency asked NetCentrics when it first contacted Mr. A regarding the award of the current task order and his employment on the task order. Id. at 2433. The agency also requested an affidavit describing all commitments made by Mr. A to NetCentrics demonstrating an intent to perform on the task order. The agency specifically requested commitments

made before the protester's final revised quotation was submitted and after award. In addition, the agency requested NetCentrics to provide any rationale or information it had regarding its understanding and belief that Mr. A would leave his current employment (where he started in November 2018) to return to NetCentrics upon award of the task order. Id. at 2433-2434.

NetCentrics responded that its revised quotation was true and accurate as submitted because even though Mr. A was no longer a NetCentrics employee, the protester intended to rehire Mr. A if it received the order, and provide him for at least one year. AR, Tab 18, Determination of Contracting Officer, Exh. E, Letter from NetCentrics, Feb. 11, 2019, at 2436. NetCentrics also submitted a declaration from its senior vice president for strategic programs. In the declaration, the vice president stated that Mr. A assisted in the preparation of the quotation, knew he was being proposed for deputy program manager, and did not indicate that he would be unavailable to perform on the task order in the deputy program manager role. Id. at 2437. The vice president additionally relayed that before Mr. A left NetCentrics, he expressed his interest and willingness to return to NetCentrics if NetCentrics received the award under the RFQ. Id. at 2437-38. The vice president also relayed that on February 6, Mr. A confirmed that he remained interested in returning to NetCentrics employment as the deputy program manager. Id.³

The contracting officer concluded that the information submitted by NetCentrics confirmed that the company knew by October 30, 2018, that Mr. A was leaving, but nonetheless did not amend the revised quotation submitted on December 3. AR, Tab 18, Determination of Contracting Officer, at 2405-2406. The agency also concluded that when Mr. A left, there was no firm commitment from him to return to NetCentrics to take the deputy program manager position if NetCentrics was awarded the task order. The agency also concluded that it had nothing to demonstrate that Mr. A knew at the time that NetCentrics submitted its revised quotation that he was proposed as the deputy program manager. Id. at 2401-2402. Rather, it was only on February 6, after the order was issued, that NetCentrics reached out to Mr. A to determine his intent to return. Notwithstanding NetCentrics' assertions regarding the availability of Mr. A, the contracting officer concluded that Mr. A's stated intent to return was still not a firm commitment. Id. at 2403- 2404.

We find the agency's conclusions to be reasonable. NetCentrics provided the agency a revised quotation which stated that Mr. A was a current employee and available immediately to perform work on the task order. After it awarded the order, and after

³ On March 1, Mr. A submitted a letter of commitment to NetCentrics which stated he is committed to becoming the deputy program manager if NetCentrics is awarded the order and will be available to start on the effective date of award. Protest, Exh. 12, Letter of Commitment, March 1, 2019. This letter was submitted at the time this protest was filed and did not indicate that Mr. A was committed to working on the project at the time NetCentrics' revised quotation was submitted. See id.

receipt of a protest, the agency sought to determine whether Mr. A was, in fact, employed by NetCentrics at the time the company submitted its revised quotation, and whether he would be available “immediately” as stated in the quotation. In addition, while the record shows that Mr. A left open the possibility of returning to NetCentrics, there is no evidence that he was immediately available, as the resume submitted to the agency stated.

The record also shows that NetCentrics relied on the expertise and experience of Mr. A to help demonstrate the merits of its technical approach and management plan. Among other things, the quotation noted that Mr. A was part of a proven management team, and was chairman of the risk management board. AR, Tab 12, NetCentrics Revised Quotation, at 2200, 2201. NetCentrics also represented that its key personnel, of which Mr. A was one of two required by the RFQ, exceeded position requirements in experience, education, and desired or relevant certifications. Id. at 2221.

While the agency did not assign NetCentrics’ quotation a specific strength for Mr. A., it did assign the quotation a strength based on the proposed incumbent personnel, their participation as part of a stable contract team led by experienced managers, and their in-depth knowledge of the agency’s requirements. AR, Tab 13, Technical Evaluation, at 2255. The agency also assigned the quotation a strength because the vendor proposed key personnel with a 1-year commitment to the program. Id. at 2258. These strengths were assigned in part based on the agency’s understanding that Mr. A was a current employee of NetCentrics, and available immediately to begin in the role of deputy program manager. AR, Tab 18, Determination of Contracting Officer, at 2406-2407.

In sum, while the protester asserts that it intended to rehire Mr. A, and that no letter of commitment was required, the solicitation did indicate letters of intent were desired. Moreover, the solicitation advised vendors that failure to have a firm commitment from key personnel could result in rejection. This indicated that, at a minimum, the agency would consider the commitment of key personnel to this award. The record also shows that the agency’s evaluation considered the current employment of key personnel. The protester’s failure to advise the agency that Mr. A was no longer a current employee when it submitted its revised quotation deprived the agency of the opportunity to properly evaluate the quotation. The agency thus reasonably considered this a material misrepresentation, and acted reasonably in rescinding the order to NetCentrics.

Thomas H. Armstrong
General Counsel