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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Goldbelt Falcon, LLC

File: B-410251

Date: November 21, 2014

Robert E. Korroch, Esq., and William A. Wozniak, Esq., Williams Mullen, for the protester.

Wade L. Brown, Esq., and Erica A. Harder Smith, Esq., Department of the Army, for the agency.

K. Nicole Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency improperly rejected the protester's proposal as unacceptable based on an initial compliance review is denied where the agency reasonably found that the protester failed to propose the minimum number of labor hours required by the solicitation.

DECISION

Goldbelt Falcon, LLC, of Chesapeake, Virginia, protests the elimination of its proposal from competition under request for proposals (RFP) W52P1J-14-R-0018, issued by the Department of the Army, Army Materiel Command, for logistical support services. Goldbelt challenges the Army's compliance review and the resulting decision to exclude Goldbelt's proposal from the competition.

We deny the protest.

BACKGROUND

The Army currently procures certain requirements for logistics services through the Enhanced Army Global Logistics Enterprise (EAGLE) Program. Agency Report (AR) at 1. Under this program, the Army procures material maintenance services, retail/wholesale supply services, and transportation support services by entering into basic ordering agreements (BOAs) with contractors. Id.

The Army issued the RFP, set aside for small business holders of the BOA, on May 6, 2014. The RFP sought to procure logistics support services at Fort Lee, VA and Joint Base Langley-Eustis/Joint Expeditionary Base Little Creek-Fort Story, VA (Langley-Eustis), including maintenance, transportation, and supply support. RFP at 2. The solicitation contemplated the issuance of a cost-plus-fixed-fee/fixed-price task order with a 12-month base period and four 1-year options. Id. The RFP established a best value source selection process, considering technical, past performance and price. RFP § M.4.1.¹

As an initial step in the evaluation process, the RFP provided for a compliance review of each proposal. In this regard, section M.3 of the RFP indicated as follows:

The Government will compare the Offeror's proposal to Section L in order to perform a compliance review. Any Offeror's proposal determined non-compliant per the terms noted in Section L or determined non-compliant [with] paragraphs a. through c. below will not be evaluated and will not be further considered for award.²

RFP § M.3.

This section further emphasized that “[o]nly Offerors whose proposals are determined to be compliant will move to Step 1 of the evaluation process.”³ RFP § M.3(d). Section L provided general instructions for preparing a proposal and contained similar language advising firms that “[f]ailure to provide proposals in compliance with the instructions specified in this RFP shall render the Offeror's proposal non-compliant” and that such proposals would not be further evaluated for an award. RFP § L.2.1.

With regard to the compliance review, the RFP required firms to complete attachment number 0002, Staffing/Labor Mix, and to classify proposed employees in one of two labor categories, functional labor category (FLC) 1 or FLC2. The RFP defined the FLC1 category as encompassing contract or task order employees who

¹ The estimated value of the task order at issue is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

² Section M.3 and paragraphs (a) through (c) established the process for performing the compliance review, which was to include verification, by the agency, that the offeror's proposal met minimum labor hour requirements established by the RFP.

³ Compliant proposals would be evaluated using a four-step process considering the technical, past performance, and cost/price factors. RFP § M.4.

will directly accomplish the tasks/functions of the workload provided, e.g., a mechanic in support of the maintenance effort. RFP § L.5.2.1.1(c)(5)(ii). The FLC2 category included contract or task order employees who are required for completion of the RFP requirements, but who do not directly perform the tasks/functions of the workload, e.g., a project manager or administrative assistant. RFP § L.5.2.1.1(c)(5)(iii). As a related matter, the RFP included Exhibit AB, which set forth qualification requirements for certain key positions, to include various supervisor positions. AR, Tab 4z, Exhibit AB. Of relevance to the protest, Exhibit AB established qualification requirements for the ammunition supply point supervisor position, noted as a key position, (i.e., five years of documented supervisory experience; the ability to provide information and reports, resolve issues and recommend actions to improve delivery of services to customers; and skills in verbal and written communications to conduct meetings, execute plans, and prepare reports, plans, and working instructions). Id. at 5.

In connection with the FLC1 requirements, the RFP established minimum FLC1 hours by functional area for the Fort Lee, VA effort (19,200 hours for maintenance, 67,190 hours for transportation, and 7,550 hours for supply) as well as the Langley-Eustis effort (112,900 hours for maintenance and 7,550 hours for supply). RFP § L.5.2.1.1(c)(6)(ii). According to the RFP, if a firm's proposed FLC1 hours did not equal or exceed the RFP's minimum FLC1 hours for each functional area, the agency would consider the proposal noncompliant and it would be eliminated from the competition. RFP § M.3(c)(2). Moreover, the RFP expressly precluded FLC2 hours from being counted towards the minimum FLC1 hour requirements and advised that employees incorrectly identified as FLC1 would not count toward the total minimum hour requirements. RFP § L.5.2.1.1(c)(6)(iii); RFP § L.5.2.1.1(c)(6)(vii).

On May 30, the Army distributed a letter (notification letter) to all firms, which provided additional instructions for responding to the RFP. AR, Tab 13e, Notification Letter, May 30, 2014. The notification letter cautioned firms that management and supervisory functions are not considered FLC1 tasks and advised offerors that the key positions listed in Exhibit AB, to include the ammunition supervisor position, were "actual full-time positions that must be proposed." Id. The notification letter also established that "any employee classified as FLC1 that is not in compliance with the language of the solicitation will be considered incorrectly identified." Id.

The letter also addressed the possibility that a firm might wish to cross utilize employees between FLC1 and FLC2. AR, Tab 13e, Notification Letter at 1. In such situations, the notification letter directed firms to "review all requirements of the solicitation to determine if it chooses to propose any portion of the positions listed at exhibit AB, functional management or supervisors to fulfill the minimum FLC1 hours," and advised that any division between the functional labor categories must be consistent with the requirements of the solicitation. Id. In such cases, the RFP required firms to show, in attachment number 0002, the percentage of hours

applicable to each labor category for employees who would be used to perform both FLC1 and FLC2 work. RFP § L.5.2.1.1(c)(6)(xiii).

Goldbelt, which holds an EAGLE BOA, submitted a proposal on June 5. As relevant to this protest, Goldbelt proposed an ammunition supervisor, one of the key positions listed in Exhibit AB and required by the RFP, but classified the ammunition supervisor as FLC1, in attachment 0002. See AR, Tab 6a, Goldbelt's Proposal, Attachment 0002 at 5. Goldbelt counted the ammunition supervisor's proposed hours toward the minimum required FLC1 hours for the supply functional area related to the Langley-Eustis effort. Id.

During its compliance review of Goldbelt's proposal, the Army concluded that Goldbelt had incorrectly listed the ammunition supervisor as a FLC1 position. AR at 6. According to the Army, the full spectrum of supervisory duties required of a supervisor would prevent the ammunition supervisor from being 100% productive as an FLC1 employee. Id. Since Goldbelt did not provide information indicating cross utilization between FLC1 and FLC2 work, the Army subtracted the total number of ammunition supervisor hours proposed from Goldbelt's proposed FLC1 hours. Id. After making the adjustment, Goldbelt was 1,790 hours short of the required minimum for the supply functional area related to the Langley-Eustis effort. AR at 6. Based on its failure to meet the minimum required hours, the Army found Goldbelt's proposal noncompliant and excluded it from further consideration. This protest followed.

DISCUSSION

Goldbelt argues that the Army unreasonably excluded its proposal from the competition based on its adjustment of Goldbelt's proposed FLC1 hours. Protest at 8. First, Goldbelt argues that the Army went beyond the scope of the compliance review process when it determined that Goldbelt had incorrectly identified the ammunition supervisor as an FLC1 employee and adjusted Goldbelt's proposed FLC1 hours. Goldbelt's Comments on the AR at 5. Goldbelt contends that "the Army is conflating the straightforward compliance review envisioned by the solicitation with the evaluation of staffing and labor mix under the technical factor." Id. Second, Goldbelt asserts that "[b]y assuming that an offeror must use a particular labor category as a manager or supervisor during the compliance review, the army is essentially performing the technical evaluation without the benefit of the offeror's technical proposal" Id. at 6. According to Goldbelt, the Army "unilaterally modified Goldbelt's hours without any consideration for the technical solution set forth in Goldbelt's proposal or the adequacy of the management structure." Id.

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 order to be deemed reasonable, an agency's interpretation of a solicitation provision must be consistent with the solicitation when read as a whole and in a reasonable manner. Solec Corp., B-299266, Mar. 5, 2007, 2007 CPD ¶ 42 at 2. A protester's disagreement with the agency's conclusions does not render the evaluation unreasonable. The Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 12.

Goldbelt's first argument, that the agency exceeded the scope of the RFP's compliance review process, is without merit. The RFP established a process for conducting a compliance review which, among other things, allowed the agency to determine whether a firm proposed the required minimum number of FLC1 hours, to include whether a firm had misclassified employees as FLC1. See RFP § L.5.2.1.1(c)(6)(vi); AR, Tab 13e, Notification Letter at 1. The instructions were clear that the agency would consider whether positions were incorrectly identified as FLC1, and that incorrectly identified employees would not count toward the total minimum hour requirements. AR, Tab 13e, Notification Letter at 1; RFP § L.5.2.1.1(c)(6)(vii). Thus, by allowing the agency to consider whether a firm had incorrectly classified employees as FLC1, and to adjust a firm's proposed FLC1 hours when incorrectly classified, the compliance review process implicitly granted the agency latitude to exercise judgment in verifying a firm's compliance with the minimum number of required FLC1 hours, beyond simply tallying the hours proposed by a firm. As such, the Army's determination that the ammunition supervisor had been incorrectly classified as FLC1, and the decision to adjust Goldbelt's proposed hours accordingly, was within the scope of the compliance review process set out in the RFP.

Goldbelt's second argument, that the Army unreasonably reclassified the ammunition supervisor position from FLC1 to FLC2, is also without merit. Goldbelt's Comments on the AR at 5. According to Goldbelt, the agency incorrectly understood the solicitation as requiring firms to have the ammunition supervisor perform in a managerial or supervisory role, to some degree. Id. at 4. Goldbelt challenges this view arguing that the solicitation does not expressly "prohibit an offeror from determining that it has proposed sufficient management to supervise the tasks to be performed [set out in the performance work statement] without the need for the ammunition supervisor to perform those managerial functions." Id. at 5.

The record indicates that the agency adhered to the solicitation criteria in concluding that Goldbelt incorrectly classified the ammunition supervisor as FLC1. AR at 8. Reading the solicitation as a whole, and giving effect to all its parts, it is clear that the agency intended for the ammunition supervisor to perform supervisory duties that would be considered FLC2. As an initial matter, the RFP designated the ammunition supervisor as a key position and required firms to propose an ammunition supervisor meeting certain supervisory qualifications. AR, Tab 4z,

Exhibit AB, at 5; AR, Tab 13e, Notification Letter, May 30, 2014. Moreover, regarding the classification of the ammunition supervisor in attachment 0002, the notification letter sent to the firms instructed that “management and supervisory functions are not considered FLC1 tasks,” thereby establishing, by default, that the required supervisory positions, including the required ammunition supervisor, were to be classified as FLC2 positions. AR, Tab 13e, Notification Letter at 1. To the extent the RFP allowed offerors to cross utilize key employees listed in Exhibit AB to perform FLC1 work, it expressly required that the offeror indicate its intent on attachment 0002. RFP § L.5.2.1.1(c)(6)(xiii). Goldbelt, however, did not indicate that it planned to cross-utilize its ammunition supervisor between FLC1 and FLC2 positions. Accordingly, the agency had no choice but to conclude that the ammunition supervisor had been incorrectly classified as FLC1, and we have no basis to question the agency’s evaluation in this regard.

The protest is denied.

Susan A. Poling
General Counsel