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United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: NikSoft Systems Corporation

File: B-407195; B-407195.2

Date: November 27, 2012

Gerard F. Doyle, Esq., and Ron R. Hutichinson, Esq., Doyle & Bachman LLP, for the protester.
Ira E. Hoffman, Esq., Offit Kurman, for Delmock Technologies, Inc., the intervenor.
Richard L. Hatfield, Esq., Department of the Treasury, for the agency.
Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably concluded that protester's responses to agency's discussions questions introduced risk regarding the level of resources that protester was committing to perform the fixed-price portion of the solicitation requirements.

2. Agency reasonably evaluated protester's past performance as very good, rather than excellent, where protester's references rated the quality of protester's prior performance between very good and excellent, and the record indicates that protester's prior contracts were more relevant to the less significant of the solicitation's two basic requirements.

DECISION

NikSoft Systems Corporation protests the award of a contract to Delmock Technologies, Inc. (DTI), by the Department of the Treasury, Internal Revenue Service (IRS), pursuant to request for proposals (RFP) No. TIRNO-12-R-0004 to perform middleware information technology (IT) services for the IRS's Middleware Support Services Section. NikSoft protests that the agency improperly evaluated NikSoft's proposed approach to performing the fixed-price portion of the contract requirements, and improperly evaluated NikSoft's proposal under the past performance and past experience evaluation factors.

We deny the protest.

BACKGROUND

The solicitation was issued in December 2011,[1] seeking proposals to perform two types of IT services: (1) operation and maintenance (O&M), to be performed on a fixed price basis;[2] and (2) software development, to be performed at fixed billing rates in accordance with indefinite-delivery/indefinite-quantity (IDIQ) procedures.[3] RFP at 3. The solicitation provided that award would be made on a best value basis[4] and established the following evaluation factors, listed in descending order of importance: management solution,[5] quality assurance plan (QASP), past performance, past experience, and price. RFP at 81.

With regard to the most important evaluation factor, management solution, the solicitation directed each offeror to propose its "overall plan for managing and staffing all phases of this effort," elaborating that each proposal "shall include detailed information concerning the offeror's ability to adequately staff the operation and perform the [required] services."[6] RFP at 75. With regard to past performance and past experience, the solicitation provided that the agency would assess both

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[1] The procurement was set aside for small business concerns under the Small Business Administration's 8(a) program, and contemplated performance of a 1-year base period and four 1-year option periods. RFP at 3, 37, 60. DTI is the incumbent contractor.

[2] For the O&M portion, offerors were required to propose fixed prices for the base period and each option period, which included after-hours support as necessary. RFP at 3-8.

[3] For the software development portion of the contract, the solicitation identified various labor categories, along with the minimum and maximum number of hours that could be required for each category, and provided that task orders would be issued on an as-needed basis. Offerors were required to propose fixed billing rates for the various labor categories. Id.

[4] Offerors were advised that "the Government is more concerned with obtaining superior technical performance or reduced risk than in making an award at the lowest price." RFP at 78.

[5] Under the management solution factor, the solicitation identified the following equally-weighted subfactors: technical approach, management approach, and transition plan. RFP at 81.

[6] In evaluating proposals under the management solutions factor, the solicitation provided that the agency would assign adjectical ratings of excellent, very good, acceptable, poor, and unacceptable. RFP at 78-79.

the relevance and quality of performance under the offerors' prior contracts.[7] More specifically, under both the past performance and past experience evaluation factors, the solicitation provided that the agency would assess the extent to which an offeror had performed prior contracts that were "similar in size, scope and complexity" to the RFP requirements, and placed offerors on notice that greater similarity of prior contracts would warrant higher evaluation ratings under both factors. RFP at 79-80.

On or before the January 24, 2012 closing date, initial proposals were submitted by nine offerors, including NikSoft and DTI. Of relevance to this protest, NikSoft's initial proposal offered to provide [deleted] key personnel, specifically identifying [deleted] of those as "SMEs" (subject matter experts).[8] AR, Tab D.2, NikSoft Initial Proposal, Key Personnel, Table 5-1, at 139-41. Following review of the initial proposals, the agency established a competitive range consisting of DTI, NikSoft, and a third offeror, and opened discussions with those offerors.

Based on its review of the offerors' initially proposed staffing, the agency determined that each proposal in the competitive range adequately addressed staffing for the software development portion of the RFP.[9] In contrast, the agency found it difficult to determine the particular staffing that each offeror had proposed to perform the fixed-price O&M portion of the RFP requirements. Contracting Officer's Statement, Oct. 24, 2012, at 2. Accordingly, on May 9, the agency asked each of the offerors in the competitive range to respond to the following:

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[7] The solicitation provided that in evaluating past performance the agency would assign adjectival ratings of: excellent/low risk; very good/low to moderate risk; marginal/moderate risk; and unacceptable/high risk. RFP at 79-80. In evaluating past experience, the solicitation provided that the agency would assign ratings of excellent, good, satisfactory, and unsatisfactory. Id. at 80.

[8] Section C.6 of the solicitation, titled "Staffing Skill Requirements," listed and defined 10 labor categories, including "Subject Matter Expert," "Security Specialist," and "Program Manager"; the solicitation elsewhere identified those 3 categories as "key personnel." RFP at 27-30, 75. In addition to proposing [deleted] individuals under the SME labor category, NikSoft's [deleted] key personnel were proposed under the labor categories of program manager and security specialist, respectively.

[9] Section B of the RFP listed the required labor categories for the IDIQ software development requirements, and each of the competitive range offerors' staffing plans corresponded to the number of personnel, skill mix, and experience designated therein.

Please provide the number of Personnel, Key Personnel, labor categories (skill mix) and experience level that you are proposing to support the Middleware O&M part of the RFP. Please note any changes from your initial staffing proposal . . . .

Agency's Discussions with NikSoft, May 9, 2012, Question 1.

On May 14, NikSoft responded to this question stating:

The NikSoft initially proposed team of [deleted] resources are for O&M support. All are key personnel, with extensive qualifications and experience directly relevant to the Middleware program. All personnel as originally proposed will be assigned to the O&M responsibilities as shown in Table 1.[10]

NikSoft's Response to Agency's Discussions, May 14, 2012, at 1.

Additionally, NikSoft's May 14 response to the agency's question regarding O&M staffing varied from its initial proposal by removing the designation of "SME" for [deleted] of the [deleted] key personnel it had initially identified as SMEs. Specifically, NikSoft's May 14 submission designated [deleted] of the previously-identified SMEs as "applications engineers," and identified [deleted] previously-identified SMEs as database analyst/programmer and systems software engineer [deleted].[11] Id. at 2-5. Accordingly, the agency was concerned regarding the

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[10] Table 1 of NikSoft's response listed various sections of the solicitation's O&M requirements and identified "[a]ll team members" as having "[p]rimary [r]esponsibility" for [deleted] of the listed requirements. However, that table also expressly limited the responsibility of each team member to his or her "area of expertise." NikSoft's Response to Agency Discussions, May 14, 2012, at 1, n1.

[11] The solicitation listed 10 labor categories--including SME, applications engineer, database analyst/programmer, and systems software engineer--and provided definitions for each category. In this regard, the definition for SME broadly provided that individuals proposed for this category must have "extensive in[-]depth knowledge of PWS component(s)." RFP at 28-29. In contrast, the definitions applicable to the labor categories under which NikSoft's May 14 submission placed [deleted] of its initially-proposed personnel were more limited. Specifically, the definition for applications engineer required the more limited "ability to create/update/support information related to applications/systems"; the definition for database analyst/programmer required the more limited "ability to create/update/support information related to Infrastructure databases/systems"; and the definition for systems software engineer required the more limited "ability to create/update/support information related to Infrastructure systems support." Id.

breadth of expertise that NikSoft was committing to provide for performance of the fixed-price O&M requirements.[12]

Based on its concern over NikSoft's May 14 response, the agency gave NikSoft another opportunity to address its proposed O&M staffing, providing another set of discussions questions to NikSoft. Specifically, on May 22, the agency sent a final communication to NikSoft which began with the following summary of NikSoft's May 14 submission:

> NikSoft responded to Question 1 [the agency's May 9 discussion question quoted above] with [deleted] Total personnel (Key and Non-Key), including [deleted] SMEs. The response however, did not offset concern that weaknesses have been introduced for [specified RFP sections regarding O&M requirements]. The proposed team of [deleted] people to support Middleware O&M is not consistent with a deep understanding of the Middleware O&M RFP.

Agency's Written Discussions with NikSoft, May 22, 2012, at 2.

In addition to the agency's specific reference to NikSoft's proposal of only [deleted] SMEs, the agency's May 22 communication went on to provide a summary of O&M support activities the contractor will be expected to perform, specifically discussing required system restoration team (SRT) activities, and making several references to the importance of SMEs in successfully resolving SRT events. Id.

Among other things, the agency advised NikSoft that:

> Throughout the recent weeks, multiple SRTs have been called . . . concurrently throughout the week and into the weekend with an average of 12 hours of support required per/SME/day. It is necessary to provide 24x7x365 Middleware O&M support throughout these events. The number of personnel, key personnel, skill-mix and experience levels proposed should demonstrate multiple tiers of SME support for each critical component . . . as well as a mix of seasoned technical experts . . . for other components. . . . The inability to provide the required support coverage will introduce unacceptable risk in Middleware Production S&M support and weaknesses in the proposal would be identified.

Id.

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[12] By comparison, DTI responded to the agency's question by committing to provide [deleted] SMEs and [deleted] other technical experts.

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The agency's May 22 discussions with NikSoft concluded with the following additional questions:

> 1. Redundancy is important in critical middleware component support. How would you describe your support team in terms of redundancy, for critical middleware component support?
>
> 2. How many concurrent System Restoration Team (SRT) events can your team service at the same time?
>
> 3. How would you manage multiple concurrent SRT events being serviced throughout the night or over multiple 12 hour/days and into the weekend?
>
> 4. Based on your depth of knowledge of the Middleware O&M requirements, have you proposed enough personnel, key personnel, skill-mix and experience level to support the middleware O&M part of the RFP, without introducing an unacceptable level of risk?

Id. at 2-3.

On May 29, NikSoft responded to the agency's May 22 questions, maintaining generally that it understood the solicitation's O&M requirements. In response to the question regarding the number of concurrent SRT events it believed it could service, NikSoft asserted, "we can comfortably support [deleted] concurrent non-similar SRTs." NikSoft's Response to Agency's Discussions, May 29, at 5. In response to the agency's question regarding the number of personnel, key personnel, skill-mix and experience level it was committing to perform the O&M requirements, NikSoft added [deleted] support staff for the service desk and [deleted] "software developers." Id. at 4, 7. Although its May 29 response referred to "[deleted] key personnel (SMEs)" in its initial proposal, id. at 7, NikSoft did not otherwise revise its May 14 submission--which had expressly reduced the number of designated SMEs from [deleted] to [deleted]. Further, NikSoft did not specifically address the concern identified in the agency's May 22 communication that NikSoft had committed only [deleted] SMEs to perform the fixed-price O&M portion of the contract.

Thereafter, the agency completed its final evaluation of the proposals in the competitive range, as summarized below:

	NikSoft	DTI	Third Offeror
Mgmt. Solution	Acceptable	Excellent	Very Good
QASP	Very Good	Very Good	Very Good
Past Performance	Very Good	Excellent	Very Good
Past Experience	Good	Excellent	Good
Overall Non-Price	Acceptable	Excellent	Very Good
Price	$25,389,347	$28,501,181	$39,573,823

Source Selection Decision, Aug. 6, 2012, at 12, 15.

In summarizing its evaluation of NikSoft's proposal, the agency characterized its proposed management solution as merely acceptable, due to various risks presented--specifically including NikSoft's asserted capability to handle [deleted] concurrent SRT events with only [deleted] SMEs. Among other things, the agency stated:

> Based on the information provided in Niksoft's proposal, Niksoft demonstrates the minimum level [of] understanding of the services required to meet contract requirements. Niksoft's estimate of the number of concurrent SRTs they could service is unrealistic. Niksoft's estimate "comfortably supporting [deleted] concurrent non-similar SRTs" displays a minimal level of understanding of the requirements outlined in the RFP. Niksoft's proposed plan to have [each of] [deleted] SMEs covering [deleted] SRTs introduces risks as this is unrealistic.

Id. at 14.

In performing the cost/technical tradeoff between NikSoft's and DTI's proposal, the agency noted that although NikSoft proposed a lower cost/price, "[t]he risks associated with Niksoft's proposal increase the potential for disruption of schedule, [and] increase in cost or degradation of performance." Therefore, the agency concluded, "award to Niksoft, Inc. is not recommended." Id. at 18.

Thereafter, the agency selected DTI for award. This protest followed.

DISCUSSION

NikSoft protests that the agency improperly evaluated NikSoft's proposed approach to performing the fixed-price O&M requirements, and that the agency improperly evaluated NikSoft's proposal under the past performance and past experience evaluation factors.[13] As discussed below, we find no merit in NikSoft's allegations.[14]

Evaluation of O&M Requirements

NikSoft first protests that the agency unreasonably concluded that NikSoft was committing only [deleted] SMEs to perform the O&M contract requirements. Specifically, NikSoft asserts, "[t]o the contrary, NikSoft . . . proposed [deleted] SMEs plus the Program Manager and the Security Specialist."[15] Supplemental Protest, Oct. 5, 2012, at 5. Specifically, NikSoft asserts that it "clearly explained its intent to provide [deleted] of its proposed key personnel in the capacity of SMEs," and it maintains that, because of the agency's contrary determination, the agency's

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[13] NikSoft's initial protest asserted that it was improper for the agency to assign any rating other than excellent to NikSoft's proposal under the management solution evaluation factor. However, the protest failed to identify any portion of its proposal that properly constituted a strength--even though the solicitation expressly advised offerors that an excellent rating would be assigned where "[t]he proposal contains several strengths; most [of which] are significant." RFP at 79. Accordingly, we dismissed that portion of NikSoft's initial protest for failure to adequately state a basis for protest. NikSoft Systems Corp., Sept. 18, 2012. Upon receipt of the agency report responding to the remaining portions of NikSoft's initial protest, NikSoft timely filed a supplemental protest challenging the agency's evaluation under the management solution factor, as discussed below.

[14] In its various protest submissions, NikSoft has raised arguments in addition to, or that are variations of, those discussed below. For example, NikSoft notes that DTI's final proposed cost/price reflected a reduction from the cost/price DTI initially proposed, and asserts that the agency failed to properly consider, investigate, and/or otherwise evaluate the basis for this reduction. We have considered NikSoft's various arguments in this regard, noted that NikSoft's own proposed cost/price was more than $3 million lower than DTI's, and find no basis to question the agency's evaluation of DTI's cost/price. In summary, we have considered all of NikSoft's various arguments and allegations and find no basis to sustain its protest.

[15] NikSoft asserts that the program manager and security specialist were "functional SMEs," Supp. Protest, Oct. 5, 2012, at 5; however, NikSoft does not identify any portion of the solicitation that contemplated "functional SMEs." Rather, as discussed above, the solicitation established, and defined, 10 separate labor categories--including SME, program manager, and security specialist. RFP at 27.

criticism regarding NikSoft's capability to support [deleted] concurrent SRT events is also unreasonable. Supp. Comments, Oct. 31, 2012, at 6. In short, NikSoft asserts that the agency's evaluation of its proposed approach to performing the O&M requirements was flawed. We disagree.

It is an offeror's obligation to submit an adequately written proposal, United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19, and, in evaluating proposals, it is generally reasonable for an agency to rely on information the offeror provides in its proposal. Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5; NCR Gov't Sys. LLC, B-297959, B-297959.2, May 12, 2006, 2006 CPD ¶ 82 at 8-9. In reviewing protests that allege improper proposal evaluations, it is not our role to reevaluate proposals. Rather, we will examine the record to determine whether the agency's evaluation was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. See Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's evaluation is insufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Here, as discussed above, in responding to the agency's May 9 question regarding the specific staffing that NikSoft was proposing for performance of the fixed-price O&M solicitation requirements, NikSoft effectively acknowledged that [deleted] of the [deleted] personnel it had initially designated as SMEs did not properly qualify as such with regard to the O&M contract requirements.[16] Specifically, NikSoft changed the designated labor categories for these [deleted] individuals to categories that reflected more limited O&M expertise. Consistent with NikSoft's acknowledgment that these [deleted] personnel did not possess the broader expertise required for SMEs, NikSoft expressly advised the agency that its proposed personnel had "primary responsibility" for [deleted] of the O&M requirements only with regard to their "respective area of expertise." NikSoft Response to Agency's Discussions, May 14, 2012, at 1.

Finally, although the agency's communication of May 22 advised NikSoft that, in the agency's view, NikSoft was offering only [deleted] SMEs, see Agency's Written Discussions with NikSoft, May 22, 2012, at 2, NikSoft's May 29 response did not specifically address this concern. That is, although NikSoft's response referred to "[deleted] key personnel (SMEs)" in its initial proposal, NikSoft did not otherwise revise its May 14 submission--which had specifically reduced the number of designated SMEs from [deleted] to [deleted]. Similarly, although NikSoft's May 29 submission did include a copy of a table it had included in its initial proposal--which identified the experience of its proposed personnel--that table did not designate any

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[16] The agency notes that individuals properly designated as SMEs with regard to the software development portion of the contract may not necessarily be SMEs for the O&M portion of the contract. Supp. Agency Report, Oct. 24, 2012, at 4.

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labor category for any of the personnel.[17] NikSoft Response to Agency's
Discussions, May 29, 2012, at 16-18.

In sum, based on our review of NikSoft's initial proposal, its May 14 submission, and
its May 29 submission, we do not question the reasonableness of the agency's
evaluation of the O&M requirements. Accordingly, NikSoft's protest challenging that
portion of the evaluation is denied.

Evaluation of Past Performance

Next, NikSoft protests that the agency's rating of very good, rather than excellent,
with regard to NikSoft's past performance was unreasonable. In this regard, NikSoft
complains that "IRS's conclusions leading to less than the maximum available rating
for NikSoft under [the past performance evaluation factor] are without merit."
Protest, Aug. 20, 2012, at 29.

The agency responds that assignment of the second-highest rating (very good),
rather than the highest rating (excellent) was appropriately based on the agency's
review of the past performance questionnaires submitted by NikSoft's prior
customers, along with the agency's assessment of the extent to which NikSoft's
prior contracts were similar in size, scope and complexity to the competed
requirements. First, the agency notes that, in rating NikSoft's prior performance,
NikSoft's customers rated the performance as very good, but not excellent, in
approximately [deleted] of the performance areas.[18] Contracting Officer's
Statement, Sept. 25, 2012, at 13. Additionally, the agency states that it reviewed
NikSoft's description of its prior contracts within its own proposal, and found that
NikSoft's description of those efforts overwhelmingly focused on software
development activities rather than O&M activities.[19] Noting that the O&M

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[17] NikSoft's May 29 submission also referred generally to NikSoft's asserted
capability to "reach back" to other staffing resources. See NikSoft Response to
Agency's Discussions, May 29, 2012, at 2, 5, 6, 9, 12. However, NikSoft provided
virtually no details, or specific commitments, with regard to that asserted capability.

[18] The agency notes that DTI's customers rated DTI's prior performance as
excellent in 100 percent of the performance areas. Accordingly, although NikSoft's
performance was rated excellent with regard to the remaining [deleted] of the
performance areas, the quality of DTI's past performance was properly rated higher
than NikSoft's. Agency Report, Sept. 25, 2012, at 10-11.

[19] Specifically, the agency notes that it considered the amount of proposal text that
NikSoft devoted to describing its prior software development activities, and the
agency compared that to the amount of proposal text NikSoft devoted to describing
its prior O&M activities. The agency found that the discussion of NikSoft's prior
software development activities was approximately three times greater than the
(continued...)

requirements under the competed contract are more significant than the software development requirements, both in terms of size and complexity, along with consideration of the substance of NikSoft's customer performance questionnaires, the agency maintains that it properly rated NikSoft's past performance as very good rather than excellent.

The evaluation of an offeror's past performance is a matter of agency discretion and, by its very nature, is a subjective judgment. We will not question an agency's judgment, nor substitute our own, unless the agency's judgment is clearly unreasonable or inconsistent with the solicitation's evaluation criteria. Concepts & Strategies, Inc., B-405930, Jan. 12, 2012, 2012 CPD ¶ 47 at 7; FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7. Further, an offeror is not entitled to the highest possible evaluation rating simply because its proposal does not reflect flaws or weaknesses. See, e.g., Archer Western Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5 n.5; Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 at 4.

Here, we have reviewed the record and find no basis to question the reasonableness of the agency's assignment of a very good rating for NikSoft under the past performance evaluation factor. As noted above, NikSoft's past performance questionnaires reflected prior assessments of both very good and excellent. Further, the solicitation expressly advised offerors that, in evaluating past performance, the agency would assess the extent to which an offeror's prior contracts were similar in size, scope, and complexity to the RFP requirements at issue--and that greater similarity would be a basis for assigning higher evaluation ratings. RFP at 79-80. Although NikSoft disagrees with the agency's assessments, asserting that its prior contracts and the performance thereof warranted assessments of the highest levels of similarity and performance quality, NikSoft has not meaningfully challenged the data on which the agency relied in making its

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(...continued)
corresponding discussion of NikSoft's prior O&M activities. Contracting Officer's Statement, Sept. 25, 2012, at 12.

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determinations. Accordingly, its arguments reflect mere disagreement with the agency's judgments and, as such, provide no basis for sustaining its protest.[20]

The protest is denied.

Lynn H. Gibson
General Counsel

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[20] With regard to the past experience factor, NikSoft makes arguments that are virtually identical to those discussed above, complaining that assignment of the second highest rating (good), rather than the highest rating (excellent) was unreasonable. The agency responded that it properly concluded that NikSoft's prior contracts reflected "better than adequate," but not "extensive" experience managing contracts similar in size scope and complexity to the competed contract. Supp. Contracting Officer's Statement, Oct. 24, 2012, at 8-9. As offerors were advised in the solicitation "[b]etter than adequate" experience regarding similar contracts warranted a rating of good; "[e]xtensive" experience managing similar contracts warranted a rating of excellent. See RFP at 80. For the reasons discussed above regarding NikSoft's past performance evaluation, NikSoft's protest challenging the past experience evaluation is without merit.