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Decision

Matter of: Calnet, Inc.

File: B-402558.2; B-402558.5; B-402558.7

Date: June 3, 2010

Paul F. Khoury, Esq., Tracye Winfrey Howard, Esq., and Brian G. Walsh, Esq., Wiley Rein LLP, for the protester.

David S. Cohen, Esq., John J. O'Brien, Esq., and William J. Bainbridge, Esq., Cohen Mohr, LLP, for McNeil Technologies, an intervenor.

Tina M. Pixler, Esq., and Leslie A. Nepper, Esq., Department of the Army, Army Materiel Command, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's proposal is denied where record shows that protester was not competitively prejudiced by any agency error.

DECISION

Calnet, Inc., of Reston, Virginia, protests the award of a contract to McNeil Technologies, of Springfield, Virginia, under Department of the Army, Army Material Command (AMC) request for proposals (RFP) No. W52P1J-09-R-0079, for advisory, atmospheric and analysis support services for U.S. forces in Iraq. Calnet asserts that the agency misevaluated McNeil's proposal.

We deny the protest.

The solicitation sought proposals for an indefinite-delivery/indefinite-quantity contract for a 6-month base period, with three 6-month option periods. Award was to be made on a "best value" basis; technical proposals initially were to be evaluated on a "go/no-go" basis and those rated "go" would then be evaluated for past performance and price, with past performance being deemed significantly more important than price. RFP at 53-55. Regarding the past performance evaluation, risk ratings were to be assigned based on past performance questionnaire (PPQ) responses received by the agency. The risk ratings were to be correlated to the PPQ responses and would be based on the following ranges: 3.7-4 points, very low risk; 3.0-3.6, low risk; 2.0-2.9, moderate risk; and 0.0-1.9, high risk. *Id.* Past performance

was to be rated in the areas of program management, resource management, quality management/performance and cost performance. Offerors were to submit PPQs for no more than three recent, relevant contracts. RFP at 48.

The agency received several proposals, including Calnet's and McNeil's, both of which were rated "go." In the subsequent past performance evaluation, McNeil's proposal was rated very low risk, while Calnet's was rated low risk. Agency Report (AR), exh. 66, at 15; exh. 67, at 4, 8. McNeil's evaluated price was \$16,302.92 (the lowest price among technically acceptable offerors), and Calnet's was \$20,203.36.¹ AR, exh. 66, at 16. On the basis of these evaluation results, the agency determined that McNeil's proposal offered the best value to the government and made award to McNeil. AR, exh. 66.

Calnet challenges the evaluation of McNeil's past performance, claiming that the agency unreasonably failed to consider one of the three PPQs received for McNeil. According to the protester, had the agency considered the third PPQ, McNeil's past performance rating would have been lower, and a different source selection decision might have resulted.

Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; in effect, a protester must show that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armorworks Enter's., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Here, we find that, even if Calnet is correct that the agency improperly failed to consider the third PPQ, Calnet was not prejudiced.

The record shows that the agency rated past performance using the same numeric scores (ranging from 1 to 4) assigned under the various elements of the PPQs. See, AR, exh. 18. The agency calculated an arithmetic average of the scores, and then assigned adjectival ratings in accordance with the thresholds established in the RFP. Based on this approach, Calnet's proposal received an average numeric score

¹ The RFP provided for the agency to calculate evaluated prices based on the simple addition of unit prices, without multiplying those prices by the RFP's estimated quantities. We note that this evaluated price bears no relationship to the extended prices submitted by the offerors, or the anticipated actual cost of the contract (for example, the extended price for McNeil was \$87,431,648, and the extended price for Calnet was \$116,495,307). AR, exhs, 41, 50, price tables. Nonetheless, no firm timely challenged the agency's price evaluation method, even though it appears to be inconsistent with the fundamental requirement for agencies to consider cost or price to the government in making the award of a contract. 10 U.S.C. § 2305 (a)(3)(A)(ii) (2006); General Dynamics Info. Tech., B-299873, Sept. 19, 2007, 2007 CPD ¶ 194 at 10-11.

of 3.3 under each of the evaluated areas (and thus an overall past performance score of 3.3) and, correspondingly, a low risk rating. AR, exh. 67, at 2-4. In the case of McNeil, the record shows that the agency received three PPQs for the firm, but decided that one of the three should not be considered in the scoring. As calculated, McNeil's average scores were 4 points each in the areas of program management, quality management/performance and cost performance, and 3.7 in resource management, resulting in its very low risk rating. AR, exh. 67, at 6-8. Including the scores from the third PPQ in the calculation would have reduced McNeil's average scores to 3.45 for program management, 3.57 for resource management, 3.5 for quality management/performance, 2.8 for cost performance, and its overall score to 3.3 points. AR, exhs. 59, 67. Since this is the same overall score received by Calnet, McNeil would have remained in line for award ahead of Calnet due to its lower price. It follows that Calnet was not competitively prejudiced by the alleged evaluation error, and that there thus is no basis for sustaining Calnet's protest on this ground.

Calnet asserts that the agency unreasonably failed to make qualitative adjustments to McNeil's past performance scores based on negative comments included in the third PPQ. However, since the negative comments were written by the reference in explanation of the ratings assigned, the agency reasonably could assume that the essence of the comments already was reflected in the numeric ratings. Moreover, the commentary underlying the ratings assigned for all three of the PPQs was specifically noted in the agency's past performance evaluation, and the source selection authority thus was fully aware of the negative comments in making the award decision. AR, exh. 67, at 6-8.

In its initial protest, Calnet asserted that the agency improperly failed to consider three cure notices that allegedly were issued to McNeil under three different contracts. The agency responded in its report that it had not found information concerning the three contracts during its evaluation when it searched the past performance information retrieval system (PPIRS) using McNeil's name and its contractor and government entity (CAGE) code, and that there was no other evidence of cure notices in connection with the three contracts. In its comments, Calnet did not rebut the agency's response. Accordingly, we consider this aspect of Calnet's protest abandoned. See Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3.

While preparing its report responding to Calnet's cure notice argument, the agency performed an additional search of the PPIRS using the contract numbers supplied by Calnet in its protest, and found several past performance reviews of McNeil in connection with one of the three contracts. AR, exhs. 61, 62 and 63. Calnet argues that this information should be factored into McNeil's past performance evaluation. However, the RFP did not require the agency to consider information beyond that included in the PPQs; it advised only that the agency could use information obtained from other sources. RFP at 55. Thus, the agency's failure to discover or consider the information during the evaluation does not constitute an evaluation impropriety and,

since this information did not come to light until well after award, there is no basis for considering it now.

The protest is denied.

Lynn H. Gibson
Acting General Counsel