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Decision

Matter of: High Plains Computing, Inc. d/b/a HPC Solutions

File: B-409736.2

Date: December 22, 2014

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John R. Tolle, Esq., Barton, Baker, Thomas & Tolle, LLP, for National Capitol Contracting, LLC, an intervenor.

Ryan M. Warrenfeltz, Sr., Esq., and Brandon Dell’Aglia, Esq., Social Security Administration, for the agency.

Matthew T. Crosby, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee’s proposal for video teleconferencing (VTC) support services was technically unacceptable because awardee lacked certification from manufacturer of certain agency VTC equipment is denied where record reflects that solicitation did not require such certification and awardee’s proposal discussed its direct relationship with manufacturer of said VTC equipment.

2. Protest that awardee was ineligible for award because its System for Acquisition Management record did not list solicitation’s North American Industry Classification System code at time of award is denied where record shows contracting officer reasonably relied on other information to find awardee met applicable size standard.

DECISION

High Plains Computing, Inc. d/b/a HPC Solutions (HPC), of Lakewood, Colorado, protests the award of a contract by the Social Security Administration to National Capitol Contracting, LLC (NCC), of Arlington, Virginia, under request for proposals (RFP) No. SSA-RFP-14-1005 for video teleconferencing (VTC) support services. HPC alleges that the award was improper because when it was made, NCC did not hold a certification from the manufacturer of certain agency VTC equipment and because its System for Acquisition Management (SAM) record did not list the solicitation’s North American Industry Classification System (NAICS) code.

We deny the protest.

BACKGROUND

The solicitation was issued on August 21, 2013 as a section 8(a) small business set-aside under NAICS code 517919, which, at the time, was connected with a size standard of \$30 million in annual receipts. RFP, Standard Form (SF) 1449, at 1; 77 Fed. Reg. 72,702, 72,704 (Dec. 6, 2012); 79 Fed. Reg. 33,647, 33,661 (June 12, 2014). The solicitation contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract with a 5-year period of performance. RFP, SF 1449, at 1. The solicitation included a statement of work (SOW) setting forth numerous requirements for support of the agency's existing VTC system. As relevant to this protest, one requirement was for "maintenance on government owned Polycom and Cisco equipment, with the option to buy additional Polycom or Cisco products." SOW § 1.5. As also relevant, the SOW provided that "[t]he Contractor shall obtain all permits, licenses, certificates, and authorizations, if required, for any [VTC system] installations." Id. § 2.13.11.

Proposals were to include separate volumes for technical approach, Section 508 information,¹ and pricing. RFP, add. D, Instructions to Offerors, at 1. Pricing was to be evaluated for consistency with the proposed technical approach and for whether it reflected a clear understanding of the requirements. RFP, add. E, Evaluation Factors, § 1.1. Additionally, if pricing was found to be "unrealistically low," the proposal could be rejected. Id.

The solicitation established a four-phase process for making award. In phase 1, the agency would evaluate whether proposals met the SOW requirements and assign ratings of acceptable or unacceptable. RFP, add. E, Evaluation Factors, § 1.1.1. In phase 2, the agency would evaluate the proposals with regard to compliance with Section 508 standards and assign adjectival ratings of excellent, good, acceptable, marginal, or unsatisfactory. Id. § 1.1.2. In phase 3, the agency would evaluate the offerors' past performance and assign ratings of exceptional, very good, satisfactory, neutral, or unsatisfactory. Id. § 1.1.3. In phase 4, the agency would make award. In relevant part, the basis for award was described as follows:

In the event there are two or more Contractors that meet the technical requirements as described in Phase 1, and are fully or equally conforming to [the] Section 508 standards described in Phase 2, and achieve a Past Performance rating of Satisfactory or above (with the

¹ Section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d (2012).

exception of Neutral) in Phase 3, the agency shall determine award based on the Contractor's lowest price.

RFP, add. E, Evaluation Factors, § 1.1.4.

The agency received two proposals in response to the solicitation--one from HPC, and one from NCC. AR, Tab 21, Summary of Award, at 5. An acquisition financial services team (AFST) convened and evaluated the price proposals. Id. at 7. Based on the AFST's evaluation, the contracting officer issued "clarification letters" to HPC and NCC regarding issues identified by the AFST. Id. at 8. Both firms submitted responses to the letters. Id. Based on the responses, the AFST established HPC's total evaluated price as \$74,045,757 and NCC's total evaluated price as \$65,120,291, a difference of nearly \$9 million. Id.

A technical evaluation panel (TEP) also convened and evaluated the proposals. AR, Tab 21, Summary of Award, at 12. In the phase 1 evaluation (SOW requirements), the TEP evaluated both firms' proposals as acceptable. Id. In the phase 2 evaluation (Section 508 standards), the TEP assigned equal ratings to both proposals. Id. In the phase 3 evaluation (past performance), the TEP also assigned equal ratings to both proposals. Id.

Thereafter, the contracting officer, who also served as the source selection authority, conducted the phase 4 evaluation (i.e., the award decision) and selected NCC for award. HPC then filed a protest with our Office, alleging, among other things, that the agency's evaluation of pricing was flawed. Before the due date for its report, the agency notified our Office of its intent to take corrective action by reevaluating the offerors' pricing and making a new source selection decision. We subsequently dismissed HPC's protest as academic. See High Plains Computing, Inc. d/b/a HPC Solutions, B-409736 (May 20, 2014).

Pursuant to the corrective action, the contracting officer documented a detailed price realism analysis in which she concluded that both offerors' pricing was realistic, consistent with the proposed technical approaches, and reflected a clear understanding of the requirements. AR, Tab 21, Summary of Award, at 9-11. She then selected NCC for award on the basis that both firms' proposals were rated equally under in the SOW requirements, section 508, and past performance evaluations, but NCC's proposal was lower-priced. Id. at 13. This protest followed.

DISCUSSION

HPC alleges that the procurement was flawed in a number of respects. We have considered all of HPC's arguments, and we conclude, based on the record, that none has merit. Below we discuss HPC's principal contentions.

HPC asserts that the agency unreasonably rated NCC's proposal as acceptable in the phase 1 evaluation. Protest at 11-15; Comments at 2-8. As discussed above, in this evaluation phase, the agency considered a proposal's acceptability relative to the SOW requirements. RFP, add. E, Evaluation Factors, § 1.1.1. As also discussed above, the SOW requirements included the maintenance and replacement of the agency's VTC equipment, including Polycom brand equipment. SOW § 1.5. HPC asserts that 85 percent of the agency's VTC equipment is Polycom equipment and that only firms holding a certification under Polycom's "Certified Partners Program" are authorized by Polycom to maintain and sell such equipment. Protest at 13; Comments at 3-5. HPC also asserts that neither NCC, nor an NCC team member, hold this certification. Protest at 14-15; Comments at 6. Based on this, HPC alleges that NCC cannot meet the SOW requirements for maintaining and selling Polycom equipment and, therefore, the agency could not reasonably have rated NCC's proposal as acceptable in the phase 1 evaluation. Protest at 14-15; Comments at 6-7.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. A protester's disagreement with the evaluation does not show that it lacked a reasonable basis. Id. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 7. For the reasons discussed below, we see no merit in HPC's claim.

First, no term of the solicitation required an offeror--or its team member--to hold a Polycom partners certification (at the time of proposal submission or otherwise). Second, the record reflects that NCC's proposal included representations from which the agency reasonably could conclude that NCC could meet the solicitation's requirements for the maintenance and sale of Polycom equipment. For example, NCC's proposal stated that "Team NCC maintains direct relationships and partnerships with manufacturers like Polycom" and that "Team NCC offers direct relationships to [Polycom]." AR, Tab 7, NCC Proposal, at 16, 76. Further, the TEP noted in its report that NCC had partnered with the incumbent, which successfully had performed the requirement for the last 10 years. AR, Tab 18, TEP Report, at 14. Finally, although, as stated above, the solicitation provided that the contractor must obtain any required certifications and authorizations, it did not obligate offerors to provide any certifications or authorizations connected with HPC's protest prior to award. See SOW § 2.13.11. Ultimately, whether NCC meets with any certification or authorization requirements is a matter of contract

administration, which we do not review.² 4 C.F.R. § 21.5(a) (2014). For all of these reasons, HPC's protest regarding the agency's evaluation of NCC's proposal in phase 1 is denied.

As a separate ground of protest, HPC challenges the agency's price realism evaluation for NCC's proposal. Protest at 15-18; Comments at 8-9. In particular, HPC alleges that Polycom partner program certification represents a substantial cost, and since neither NCC nor its team member hold this certification, NCC's pricing could not have included such costs. Protest at 15-16; Comments at 9. On this basis, HPC argues that the agency's price realism determination for NCC's proposal was flawed. Protest at 16-18; Comments at 9.

Where, as here, a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6.

HPC's allegation furnishes no basis on which to sustain the protest. As explained above, the solicitation did not require Polycom partner program certification. Thus, we do not view the omission of Polycom partner program certification costs from NCC's pricing as a basis to question the agency's judgment regarding the realism of NCC's pricing. Further, the record reflects that the contracting officer undertook a detailed evaluation of NCC's pricing and found it consistent with the firm's technical approach and reflecting a clear understanding of the agency's requirements. See AR, Tab 21, Summary of Award, at 9-11. HPC's claim that the contracting officer failed to consider a certification that was not required by the solicitation provides no basis to disturb these findings. Accordingly, this basis of protest is denied.

Finally, HPC argues that NCC was not eligible for award because at the time of award, the firm's SAM record did not list the NAICS code listed in the solicitation. Protest at 9-10; Comments at 10. According to HPC, by listing a NAICS code in the solicitation, the agency "affirmatively limited the competition only to those offerors with [that] NAICS Code [in their SAM records] as of the date of the proposal." Comments at 10.

² We note that NCC's proposal states: "Team NCC currently holds all required permits, licenses, certificates, and authorizations required for this project." AR, Tab 7, NCC Proposal, at 48.

By way of background, the Small Business Administration (SBA) establishes small business size standards--expressed as either a maximum number of employees or annual receipts in millions of dollars--on an industry-by-industry basis. Federal Acquisition Regulation (FAR) § 19.102(a)(1). SBA identifies the size standards using NAICS codes. 13 C.F.R. § 121.201 (2014). The FAR provides that size standards are “applied” by classifying the product or service being acquired under the NAICS code that best describes it; identifying the size standard SBA established for that industry; and specifying the size standard in the solicitation so that offerors can appropriately represent themselves as large or small. FAR § 19.102(b). As stated above, the solicitation here indicated that it was being issued under NAICS code 517919, which, at the time of issuance, was connected with a size standard of \$30 million. See RFP, SF 1449, at 1; 77 Fed. Reg. 72,702, 72,704 (Dec. 6, 2012); 79 Fed. Reg. 33,647, 33,661 (June 12, 2014).

Turning to HPC’s allegation, the agency responds that NAICS codes are merely a vehicle for establishing a solicitation’s size standard and that they do not establish standalone solicitation requirements, as HPC alleges.³ AR at 22. The agency further responds that NCC was eligible for award because the firm identified itself as an 8(a) small business in its proposal and because its SAM record listed numerous NAICS codes with size standards less than the one applicable to the solicitation. See id. at 20 (citing AR, Tab 7, NCC Proposal, at 3). The agency also responds that prior to award, it received a letter from SBA expressly stating that NCC was eligible for award under this solicitation. Id. (citing AR, Tab 20, SBA Ltr. to Agency (Mar. 21, 2014), at 1).

Our Office previously addressed this issue in S4, Inc., B-299817, B-299817.2, Aug. 23, 2007, 2007 CPD ¶ 164. There, the agency made award to a firm even though the firm’s Online Representations and Certifications Application (ORCA)⁴ entries did not include the NAICS code listed in the solicitation. S4, Inc., supra, at 9-10. We concluded that the award nevertheless was proper because there was no apparent statutory or regulatory requirement for the NAICS code in a solicitation

³ In this regard, the agency points out that SBA’s website provides the following guidance on this issue: “[T]he NAICS code for a given procurement opportunity may not be the same as your [small business’s] primary NAICS code. That will not keep you from bidding or making an offer, so long as you meet the size standard for the procurement and have the capacity to provide the goods or services.” AR at 22 (quoting What is NAICS?, <https://www.sba.gov/content/north-american-industry-classification-system-codes-and-small-business-size-standards> (last visited Dec. 17, 2014)).

⁴ SAM has replaced ORCA. See C.L.R. Dev. Group, B-409398, Apr. 11, 2014, 2014 CPD ¶ 141 at 3 n.3.

to be listed in an offeror's ORCA entries, and because the record showed that the contracting officer had a reasonable basis to conclude that the firm was eligible for award under the solicitation's size standard. S4, Inc., supra, at 10-11.

The circumstances here are essentially identical to those in S4, Inc. In particular, HPC has failed to identify a statute or regulation requiring that the NAICS code in the solicitation be listed in an offeror's SAM record, and the record shows that the contracting officer had a reasonable basis to believe that NCC was eligible for award under the solicitation's size standard. Accordingly, as in S4, Inc., we find the agency's award here to be proper.

The protest is denied.

Susan A. Poling
General Counsel