



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: CGI Federal Inc.

File: B-410714

Date: January 28, 2015

Neil H. O'Donnell, Esq., Jeffery M. Chiow, Esq., Oliya S. Zamaray, Esq., and Katherine L. Pohl, Esq., Rogers Joseph O'Donnell, PC, for the protester. Craig S. King, Esq., Kevin R. Pinkney, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for CACI Technologies, Inc., an intervenor. Debra J. Talley, Esq., Wade L. Brown, Esq., and Margaret Talbot-Bedard, Esq., Department of the Army, for the agency. Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation of whether an awardee's proposal met a solicitation's place of performance and security requirements is denied where the record reflects the awardee's proposal included information from which the agency reasonably could conclude the requirements were met and that the evaluation was otherwise reasonable and consistent with the solicitation terms.

DECISION

CGI Federal Inc., of Fairfax, Virginia, protests the award of a task order to CACI Technologies, Inc., of Chantilly, Virginia, under task order request (TOR) No. SSES-2018, issued by the Department of the Army, Army Contracting Command, for information technology services. CGI alleges that the agency unreasonably evaluated CACI's proposal with regard to the solicitation's place of performance and security requirements.

We deny the protest.

BACKGROUND

On July 25, 2014, the agency issued the solicitation to firms holding contracts under the Software and Systems Engineering Services Next Generation (SSES NexGen) multiple award, indefinite-delivery/indefinite-quantity (ID/IQ) contract program.

Combined Contracting Officer's Statement and Legal Memorandum (CCOSLM) at 5. The solicitation contemplated the award of a cost-plus-fixed-fee task order with a base period of 1 year and a 1-year option period. TOR at 1. The solicitation advised that the task order was "being competed in accordance with the terms and conditions set forth under the SSES NexGen Basic Contract." Id. Award was to be made on a best value tradeoff basis, considering the following two factors, listed in descending order of importance: technical/risk and cost/price. Id. at 14, 17. The solicitation provided that proposals would be assigned adjectival ratings under the technical/risk factor and that a proposal must receive a rating of at least acceptable in order to be considered for award. Id. at 14.

For the technical risk factor, the solicitation provided that the agency would evaluate the extent to which a proposal "complies with . . . all requirements set forth in [the] TOR, PWS [performance work statement], Appendices, Exhibits, and Attachments." TOR at 14. In addition, the solicitation identified six "chapters" under which technical proposals would be evaluated, the following two of which are relevant here:

Chapter 5 -- Requirements Compliance

All Task Order PWS paragraphs on TOR Appendix A are checked as "The offeror understands and will comply with the referenced Task Order PWS requirement."

Chapter 6 -- DD [Department of Defense] Form 254

The offeror demonstrates that it possesses the security requirements needed to successfully perform.

Id. at 16 (typeface as in original).

As shown above, chapter five contemplated an evaluation of how an offeror completed appendix A to the solicitation. This appendix was titled "PWS compliance matrix," and it listed each PWS section, together with check boxes for offerors to indicate whether they understood and would comply with the PWS requirements. TOR, app. A, PWS Compliance Matrix.

As also shown above, chapter six contemplated an evaluation of whether an offeror met the solicitation's security requirements. As related to this evaluation, PWS appendix G set forth various security requirements, including one providing that "[t]he Contractor shall be required to have a SECRET Facility Clearance with SECRET safeguarding capabilities." PWS, app. G, Security Requirements, at 1. Also related to the chapter six evaluation, the solicitation attached a copy of DD Form 254 and instructed offerors to complete it with "the appropriate information for your company and any subcontractor (when applicable)." TOR at 6.

As noted above, the solicitation included a PWS. Two specific PWS sections are relevant here:

1.5 PLACE OF PERFORMANCE

The requirements below fall within the scope of Paragraph 3.6.1 of the SSES NexGen PWS. Classified performance will be conducted at the contractor and government facilities.

* * * * *

1.5.2 OFFSITE

Contractor facilities within 25 miles of Ft. Sill, Oklahoma will be required due to limited Government facility space during the period of performance. . . .

PWS §§ 1.5, 1.5.2 (typeface as in original). As shown above, PWS § 1.5 references § 3.6.1 of the SSES NexGen ID/IQ contract PWS. That PWS section provides as follows:

3.6.1 Contractor Facilities. The Prime Contractor must have an Office located within twenty-five (25) miles of the main gate of each of the primary [software engineering center] sites (APG, MD; Ft. Huachuca, AZ; Ft. Sill, OK; Ft. Lee, VA and Ft. Belvoir, VA). . . . The Prime Contractor and associated subcontractors will provide the necessary facilities and office space for efforts performed under this contract. . . .

Agency Report (AR), Tab S, SSES NexGen PWS, § 3.6.1 (typeface as in original).

As also shown above, PWS § 1.5 provides that under the task order here, “[c]lassified performance will be conducted” at the contractor’s facility, and PWS § 1.5.2 provides that “[c]ontractor facilities within 25 miles of Ft. Sill, Oklahoma will be required.” As relevant to this protest, before the solicitation was issued, the agency addressed PWS § 1.5.2 in response to an industry question regarding a draft version of the PWS.¹ The exchange was as follows:

[Question/Comment:] Reference PWS Section 1.5.2. Is the contractor facility located within 25 miles of Ft Sill required to be cleared for Secret? Our understanding is that any required facility

¹ Section 1.5.2 of the draft PWS was identical to § 1.5.2 of the final PWS. Compare PWS § 1.5.2, with AR, Tab C1, Draft PWS, § 1.5.2.

clearance must be obtained within 90 days of the award of the Task Order, is this correct? . . .

[Agency Response:] Yes, the contractor must abide by the security requirements specified in the DD Form 254 and PWS Appendix G. . . . The contractor must have the facility clearance at the time of contract award.

AR, Tab C4, Draft TOR Questions/Answers, at 14. Hence, consistent with the above-quoted language of PWS §§ 1.5 and 1.5.2, the agency conveyed that prior to award, the contractor must have a facility meeting the solicitation's security requirements located within 25 miles of Ft. Sill.

The agency received three proposals by the solicitation's closing date, including proposals from CGI and CACI. AR, Tab K1, Task Order Decision Document (TODD), at 2. As relevant here, CACI's technical proposal included a copy of the PWS compliance matrix in which each box, including the boxes for PWS §§ 1.5 and 1.5.2, was checked to indicate "[t]he offeror understands and will comply with the referenced Task Order PWS requirement." AR, Tab H1, CACI Technical Proposal, Ch. 5, PWS Compliance Matrix, at 1. As also relevant, with regard to the place of performance, CACI's proposal stated:

CACI is positioned to support all facility requirements for this [task order]. The place of performance is be [sic] co-located at [the agency's facilities] and the CACI contractor facility. CACI has negotiated a contingent lease on [DELETED], Lawton, OK, and planned out the facility to support a 60-day transition period to accommodate 255 staff. CACI has established a sub-lease arrangement with teammate [DELETED] at [DELETED], Lawton, OK, to support the Post Award Orientation Meeting to be held within 30 days of contract award.

AR, Tab H1, CACI Technical Proposal, at 7. Thus, CACI's proposal referenced a contingent lease for a facility at [DELETED] in Lawton and a sublease for [DELETED]'s facility at [DELETED] in Lawton. CACI's proposal also included a completed DD Form 254 that listed both CACI's headquarters address in Chantilly, Virginia, and [DELETED]'s facility at [DELETED] in Lawton. Id., Ch. 6, DD Form 254, at 7, 9.

A technical team evaluated the technical proposals and assigned ratings of good to CGI's and CACI's proposals and a rating of unacceptable to the third offeror's proposal. AR, Tab K1, TODD, at 3. The probable cost of CGI's proposal was evaluated as \$64,203,771, while the probable cost of CACI's proposal was evaluated at the lower amount of \$62,882,177. Id. at 11-12. Since the third

offeror's technical proposal was evaluated as unacceptable, the agency did not calculate a probable cost for that proposal. AR, Tab K1, TODD, at 3, 12.

After the initial technical evaluation, the agency entered into a series of exchanges with CGI and CACI. AR, Tab K1, TODD, at 3-7. Many of the exchanges concerned compliance with the solicitation's security requirements. Id. After the exchanges concluded, the contracting officer, who also served as the source selection authority, requested assistance from an agency industrial security representative regarding CGI's compliance with the solicitation's security requirements. Id. at 7.

The industrial security representative provided documentation that CGI held a [DELETED], but not a [DELETED], as required under PWS appendix G. See AR, Tab K1, TODD, at 7. The contracting officer noted that since CGI did not hold a [DELETED], CGI could not issue [DELETED] to its subcontractors. See id. at 7-8; see also AR, Tab F3, CGI Technical Evaluation Add. No. 2, ¶ 3.III.b. This issue was deemed a deficiency, and CGI's rating under the technical/risk factor was changed from good to unacceptable. AR, Tab K1, TODD, at 8; AR, Tab F3, CGI Technical Evaluation Add. No. 2, ¶ 3.IV.

With regard to CACI, the agency found that the firm and all of its major subcontractors (including [DELETED]), met the solicitation's security requirements. See AR, Tab I1, CACI Technical Evaluation, at 15; see also Supp. CCOSLM at 4.

The contracting officer documented a comparative assessment of the proposals wherein she noted that CACI's proposal was evaluated as technically superior and lower-cost than CGI's proposal, and that CGI's proposal was assigned a deficiency regarding security requirements that rendered it "unawardable."² AR, Tab K1, TODD, at 10, 12-13. The contracting officer then concluded that CACI's proposal represented the best value to the government. Id. at 12-13. On September 30, the agency issued the task order to CACI. CCOSLM at 15. Following a debriefing, CGI filed a protest with our Office.³

² Given the agency's conclusion that CGI's proposal was "unawardable," a protester in CGI's position ordinarily would lack the requisite interest to challenge other aspects of the evaluation. However, since only CACI's proposal was found acceptable, if the protest here were sustained, CACI also would be ineligible for award, and the agency would be faced with resoliciting the requirement. Since CGI would be eligible to compete under such a resolicitation, CGI is an interested party for purposes of challenging the evaluation of CACI's proposal. See Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 10 n.12.

³ The 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 orders under multiple-award ID/IQ contracts. 10 U.S.C. § 2304c(e)(1)(B) (2012).

DISCUSSION

CGI contends that the agency should have deemed CACI's proposal unacceptable because CACI allegedly did not meet a requirement under § 3.6.1 of the SSES NexGen ID/IQ contract PWS--and by extension, § 1.5 of the task order PWS here-- for a prime contractor office (as opposed to a team member or subcontractor office) located within 25 miles of Ft. Sill.⁴ CGI Comments at 7, 12; CGI Supp. Brief at 5-7.

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. Based on the record here, we see no merit to CGI's claim.

As stated above, PWS § 3.6.1 for the SSES NexGen contract provides that "[t]he Prime Contractor must have an Office located within twenty-five (25) miles of the main gate of each of the primary [software engineering center] sites," and it lists Ft. Sill as one such site. AR, Tab S, SSES NexGen PWS, § 3.6.1. As also stated above, the solicitation provided that the task order was being competed in accordance with the terms of the SSES NexGen ID/IQ contract, and PWS § 1.5 stated that the solicitation's place of performance requirements were "within the scope" of § 3.6.1 of the SSES NexGen contract PWS. TOR at 1; PWS § 1.5. Based on these provisions, we think the solicitation is fairly interpreted as requiring that the offeror have an office of its own (*i.e.*, a "prime contractor" office rather than a team member or subcontractor office) within 25 miles of Ft. Sill.

As discussed above, CACI's proposal stated as follows:

CACI has negotiated a contingent lease on [DELETED], Lawton, OK, and planned out the facility to support a 60-day transition period to accommodate 255 staff. CACI has established a sub-lease arrangement with teammate [DELETED] at [DELETED], Lawton, OK, to support the Post Award Orientation Meeting to be held within 30 days of contract award.

⁴ In its protest, CGI also raised a number of allegations challenging the unacceptable rating assigned to the firm's proposal under the technical/risk factor. Protest at 4-12. The agency in its report responded to these allegations in detail. CCOSLM at 17-26. In its comments, CGI did not address the agency's responses. Therefore, we consider CGI to have abandoned these allegations, and we will not further consider them. See JSR, Inc., B-405463, Nov. 8, 2011, 2011 CPD ¶ 265 at 5 n.6; Tiger Truck LLC, B-310759, B-310759.2, Feb. 7, 2008, 2008 CPD ¶ 44 at 3.

AR, Tab H1, CACI Technical Proposal, at 7. There is no debate among the parties that the Lawton addresses listed in CACI's proposal are within 25 miles of Ft. Sill. However, CGI interprets the proposal language quoted above to mean that CACI failed to comply with the requirement for a prime contractor office within 25 miles of Ft. Sill. More particularly, CGI argues that the proposal language means CGI "had a contingent lease that it would exercise to establish a facility if it obtained award and that it would use the existing facility of a subcontractor to meet requirements in the interim while its facility was established." CGI Supp. Brief at 5-6 (emphasis in original). Additionally, CGI alleges that CACI "has asked CGI to sublease its Lawton facility to fulfill this requirement." Comments at 7, 12. Based on this inquiry, as well as the CACI proposal language, CGI argues that "CACI did not satisfy the requirement to have a facility of its own within 25 miles of Ft. Sill." CGI Supp. Brief at 5.

To begin, we do not agree with CGI that the statement in CACI's proposal that the firm had "established a sub-lease arrangement" with its subcontractor [DELETED] reflects CACI itself did not have a facility in Lawton. To the contrary, the statement conveys that by virtue of having entered into a sublease, CACI had a facility in Lawton. CGI apparently believes the facility does not qualify as a "prime contractor" facility because CACI leased it from its subcontractor. However, based on the facts here, we fail to see how CACI's decision to secure a facility through a sublease with a team member--as opposed to a lease or sublease with some other Lawton property owner or sublessor--compels the conclusion that CACI itself does not have a facility.

Additionally, the record reflects that the agency evaluated CACI's PWS compliance matrix and noted that the firm had indicated it understood and was in compliance with "each of the PWS requirements." AR, Tab I1, CACI Technical Evaluation, at 15. CGI has not shown--and we see nothing in the record to suggest--that there was any reasonable basis for the agency to question CACI's representation regarding compliance with the solicitation's place of performance requirements.

Finally, in response to an inquiry from our Office, CACI showed that its sublease for [DELETED]'s facility in Lawton was executed independently of the procurement here. In particular, CACI explained that more than three years ago (in November, 2011, around the time of its SSES NexGen ID/IQ contract award), the firm established an office within 25 miles of each agency site by entering into a sublease with [DELETED]. CACI Supp. Brief, attach. 1, CACI Senior Vice President Decl., ¶ 4. CACI states that this was done in order to comply with PWS § 3.6.1 of the SSES NexGen contract. Id. CACI provided our Office with a copy of the November, 2011 sublease, which, among other things, reflects the rentable square feet being subleased, the monthly rental amount due, and various terms and conditions governing CACI's use of the space. CACI Supp. Brief, attach. 1, CACI Senior Vice President Decl., exh. 1, CACI/[DELETED] Sublease, at 1-4. Accordingly, CACI has shown the basis for the representation in its proposal that

the firm was in compliance with the place of performance requirement at issue here. In short, for all of the reasons discussed above, CGI's challenge to this aspect of the evaluation is denied.

As a separate but related challenge, CGI argues that even if CACI had an office of its own in Lawton, that office would not have met the solicitation's security requirements. CGI Supp. Brief at 7-9. More specifically, CGI contends that any CACI facility "would have had to have satisfied the security requirements for any task order CACI received not later than the date of the award of the task order." Id. at 7. For the reasons discussed below, we also see no merit to this claim.

As discussed above, the agency reviewed CACI's DD Form 254 and determined that CACI and [DELETED] both possessed all the required security certifications, including facilities and safeguarding clearances. See AR, Tab I1, CACI Technical Evaluation, at 15; CCOSLM at 11; Supp. CCOSLM at 4. While we believe the solicitation is fairly interpreted as requiring an offeror to have a facility within 25 miles of Ft. Sill that meets the PWS's security requirements before award, the solicitation does not stipulate that this facility must belong to the prime contractor versus a subcontractor. See PWS §§ 1.5, 1.5.1, 1.5.2. Thus, even assuming for the sake of argument that CACI's subleased space within [DELETED]'s Lawton facility somehow did not meet the solicitation's security requirements at the time of award, CACI's proposal nevertheless met the solicitation's security requirement by offering [DELETED]'s facility in Lawton. In sum, we see no basis to question the agency's evaluation of CACI's or [DELETED]'s security credentials or its determination that CACI's proposal complied with the solicitation's security requirements.

The protest is denied.

Susan A. Poling
General Counsel