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Decision

Matter of: Ameritac, Inc.

File: B-413611; B-413611.2

Date: November 28, 2016

Wayne A. Keup, Esq., Wayne A. Keup, PLLC, for the protester.
Antonio Robinson, Esq., U.S. Department of Agriculture, for the agency.
Richard B. Oliver, Esq., J. Matthew Carter, Esq., and Mary E. Buxton, Esq., Pillsbury Winthrop Shaw Pitman LLP, for Alutiiq Security and Technology, LLC, the intervenor.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation of offeror's past performance is reasonable where the evaluation of past performance is consistent with the evaluation criteria and supported by the evaluation record.
 2. Protest that agency failed to conduct meaningful discussions is denied where the agency led the offeror into the area of its proposal requiring amplification or revision.
 3. Agency's selection of a higher-rated, slightly higher-priced proposal is unobjectionable where the source selection authority identified distinctions between the proposals warranting payment of the price premium.
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DECISION

Ameritac, Inc., a small business of Concord, California, protests the award of a contract to Alutiiq Security and Technology, LLC, under request for proposals (RFP) No. AG-32SC-S-14-0010, issued by the U.S. Department of Agriculture, Agricultural Research Service, for operations and maintenance support services at the National Center for Agricultural Utilization Research Center (NCAUR) in Peoria, Illinois. Ameritac challenges the agency's evaluation of the protester's past performance, conduct of discussions with Ameritac, and award decision.

We deny the protest.

BACKGROUND

The RFP was issued on February 25, 2015, as a small business set-aside, pursuant to Federal Acquisition Regulation (FAR) part 15 procedures. RFP at 1. The solicitation anticipated the award of a fixed-price indefinite-delivery, indefinite-quality hybrid contract for a one-year base period with four one-year options. RFP amend. 9 at 37.¹ The RFP contemplated the award of a contract on a best-value tradeoff basis based on three evaluation factors: past performance/similar experience (past performance), technical², and price. Id. at 46-47. The solicitation provided that the past performance factor was twice as important as the technical factor and when combined, the two non-price factors were significantly more important than price. Id. at 47.

The agency received proposals from eight offerors. Agency Report (AR), Tab 9, Competitive Range Determination, at 1. Based on initial proposal evaluations, the agency established a competitive range consisting of six offerors, including Ameritac and Alutiiq. Id. at 3-7. In discussions with the competitive range offerors, the agency notified the firms of various issues with their initial proposal submissions. As relevant here, the agency's discussion letter to Ameritac identified specific adverse past performance information. AR, Tab 10, Ameritac Discussion Letter, at 2.

At the conclusion of discussions, the agency requested final proposal revisions.³ The final proposals of Ameritac and Alutiiq were evaluated as follows:

	Ameritac	Alutiiq
Past Performance	Acceptable	Good
Technical	Good	Good
Overall Non-price	Acceptable	Good
Price	\$12,466,324	\$12,815,595

AR, Tab 22, Source Selection Decision (SSD), at 1.

With respect to Ameritac, the agency assigned various strengths and two weaknesses under the past performance factor. Id. at 2. With respect to Alutiiq, the

¹ The RFP was amended 10 times. The ninth amendment provided a revised solicitation, which we cite to herein.

² The technical factor consisted of three subfactors: management and operation; quality control; and biobased purchasing. RFP amend. 9 at 47.

³ Ameritac sent multiple discussion questions to the agency, all of which were answered prior to the firm's final proposal submission.

agency assigned various past performance strengths and no weaknesses. Id. The source selection authority (SSA) concluded that Alutiiq provided a better past performance record than Ameritac. Id. With respect to the technical factor, the SSA concluded that the offerors were essentially equal. Id. at 4-5. Noting the importance of past performance, and the “relatively insignificant” price difference of approximately \$350,000, the SSA determined that it was in the agency’s best interest to pay the slight price premium for Alutiiq’s higher-rated proposal. Id. at 6.

Ameritac received notice of the agency’s award decision. This protest followed.

DISCUSSION

Ameritac challenges the agency’s evaluation of its past performance. The protester alleges that the agency failed to consider each of its past performance references and that the weaknesses assigned are not reasonable. Ameritac also alleges that it did not receive meaningful discussions because the agency did not identify specific examples of its concerns and thus prevented Ameritac from responding to adverse past performance information. The protester also contends that the agency’s best-value analysis was based upon a flawed evaluation and that the agency failed to document the rationale for the agency’s selection of the higher-priced offeror. Although we do not specifically address all of Ameritac’s arguments, we have fully considered all of them and find that they afford no basis to sustain the protest.

Past Performance Evaluation

Ameritac contends that the agency’s evaluation of its past performance was unreasonable. The protester alleges that the agency paid scant attention to three of Ameritac’s four past performance references and focused only on the protester’s performance on the incumbent contract. The protester also alleges that the agency’s evaluation of Ameritac’s incumbent contract performance was improper.

An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. The McConnell Group, Inc., B-405377, Oct. 21, 2011, 2011 CPD ¶ 225 at 4. The evaluation of experience and past performance, by its very nature, is subjective, and an offeror’s disagreement with an agency’s evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

Under the past performance factor, the RFP required offerors to provide a discussion of the firm’s experience performing operations and maintenance support of a complexity similar to that required by NCAUR. RFP amend. 9 at 40. Offerors were required to list up to five contracts of a similar nature and complexity that were

awarded or performed within the past five years, or are currently being performed. Id. The agency's past performance evaluation would consider the quality of relevant past performance in a similar research environment; efforts similar to the requirement; and success meeting customer expectations. Id. at 46. The RFP provided that the past performance evaluation would measure the degree to which the firm has satisfied its customers in the past. Id. The solicitation advised that the key to the evaluation was the relevance of the experience, and explained that "[l]aboratory settings have specialized systems which Contractors may not have exposure to in other settings." Id.

Ameritac submitted four past performance references with its proposal. The first was the incumbent NCAUR contract, which the protester identified as identical to the work here. AR, Tab 5, Ameritac Proposal, at 2-3. The next was a reference for its work at the Mike Monroney Aeronautical Center, which the proposal defined as a "high tech FAA [Federal Aviation Administration] research facility contract." Id. at 3, 10. The protester's final two contracts, at Fort Monroe and Fort Belvoir, were described as base operations and maintenance contracts that have "similar environments/systems/functionality and require similar work processes and project controls." Id. at 2-3, 13, 15.

The agency's evaluation of Ameritac's past performance assigned strengths for the firm's experience on the incumbent contract and for proposing a good selection of subcontractors. AR, Tab 20, Technical Consensus, at 2. The evaluators also assigned a strength for the firm's core competency in facility operation and maintenance contracting with an orientation towards high tech research facilities. Id. In this regard, the evaluators made reference to the protester's four past performance references and also listed several additional contracts which demonstrated this experience (Sandia National Laboratory; Lawrence Livermore National Laboratory; and Savannah River National Laboratory). Id. In addition to these strengths, the protester also received two weaknesses which were specific to its performance on the incumbent contract. Id. The weaknesses were assessed due to concerns with the firm's commitment to self-identify facility maintenance items and its commitment to a quality control program. Id.

With respect to Ameritac's challenge to the evaluation of the firm's past performance, we find nothing unreasonable about the agency's past performance evaluation.

The record demonstrates that the incumbent contract was the most relevant and recent contract identified by Ameritac. Indeed, the protester's proposal states that the contracts are "identical." AR, Tab 5, Ameritac Proposal, at 9. The evaluators reviewed the contractor performance assessment reports (CPARs) provided by the protester, as well as CPARs of the most recent performance of this contract, and relied upon their own personal experience with Ameritac in assigning strengths and weaknesses. AR, Tab 20, Technical Consensus 1-3. With respect to the three

other contracts, the record demonstrates that the evaluators reviewed the information provided in Ameritac's proposal and assigned a strength for the firm's overall core competency of facility operations and maintenance contracting with an orientation towards high tech research facilities.⁴ Id. at 2. Thus, we find no support for the protester's contention that the agency failed to reasonably consider each of the protester's four references. We also find that the agency's focus on the incumbent contract, as the most relevant and recent work completed by the protester, is unobjectionable. Kuhana-Spectrum, B-401270, July 20, 2009, 2010 CPD ¶ 61 at 7. (An agency may reasonably give differing weight to an offeror's prior contracts based upon their similarity or relevance to the required effort.)

The protester also argues that the agency's evaluation of Ameritac's work on the incumbent contract was unreasonable. The protester asserts that the agency does not have any record to support its contention that there were concerns with Ameritac's failure to self-identify facility maintenance items. The protester also contends that the two electrical incidents, cited by the agency as examples of quality control issues that called into question the protester's commitment to its quality control plan, should not have resulted in the assessment of a weakness in its proposal. The protester notes that the first issue was resolved to the agency's satisfaction, and the second issue was based on an error by the agency, not Ameritac.

We find that the agency's evaluation of the protester's work on the incumbent contract was reasonable and in accordance with the solicitation criteria. With respect to the first weakness, the failure to self-identify facility maintenance items, the protester's assertions that the record does not support the agency's concern, and that Ameritac was never advised of this concern during its performance of the incumbent contract, are both belied by the contractor's CPARs reports. See AR, Tab 17, CPAR (Oct. 2014--Mar. 2015), at 2 ("Government issued estimated 25 observation reports during the review period that identified items that needed correction. Contractor has typically addressed identified items within reasonable amount of time. Government concerns are that the contractor's QC [quality control] program is not identifying the items for corrections prior to government's QA [quality assurance] inspection.") On this record, it is clear that the agency had a record to support the assignment of this weakness, and that the protester had knowledge of the government's concerns. We find no basis to conclude that the agency's assignment of a weakness in this area was unreasonable.

⁴ The evaluators did not assign strengths or weaknesses for Ameritac's performance on any one of the three contracts individually. AR, Tab 20, Technical Consensus, at 2.

With respect to the second weakness, lack of commitment to a quality control plan, the protester disputes the two incidents given as examples by the agency to demonstrate the firm's quality control issues. The protester alleges that the first incident, an electrical accident that nearly resulted in a significant lost-time injury to a government employee, occurred outside the solicitation's five-year recency window, and was resolved to the agency's satisfaction. The protester also argues that the second incident, an improperly wired outlet, was due to mislabeling of the electrical panel by the government.

The solicitation advised offerors to list up to five past performance references that were awarded or performed within the past five years or are currently in force. Since this incident arose during the course of Ameritac's performance of the incumbent contract, which was still being performed at the time of the agency's evaluation, we have no reason to question the agency's consideration of this example. We also find the agency could reasonably conclude that the incident called into question the firm's commitment to its quality control plan, even if the incident was adequately resolved. It is within an agency's discretion to consider the significance of an offeror's prior performance in the context of, among other things, the contractor's actions to address prior problems. L-3 Sys. Co., B-404671.2, B-404671.4, April 8, 2011, 2011 CPD ¶ 93 at 3. With respect to the second incident, the agency concedes that the improper wiring of the outlet was due to mislabeling by the government but asserts that its concern arose because the condition was not identified by Ameritac's quality control process.⁵ AR at 7; Id. Tab 16, Ameritac Discussions Correspondence, at 12. Since it is not the function of this Office to reevaluate proposals, we will not substitute our judgment for the agency's, absent clear and material agency error. We find nothing unreasonable with this determination.

In sum, based on our review of the record, we find that the agency's past performance evaluation was reasonable.

Discussions

Ameritac also challenges the agency's conduct of discussions. Ameritac argues that the agency should have given specific examples of the agency's concerns related to Ameritac's failure to self-identify facility maintenance items on its incumbent contract. Without specific examples, the protester alleges it was prevented from providing a meaningful response to the agency's adverse past performance information.

⁵ The agency explains that Ameritac's quality control process should have included checking voltages at the new outlets after installation, which would have uncovered the improper wiring. AR, Tab 16, Ameritac Discussions Correspondence, at 12.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area where the proposal could be improved. Id.

The agency's discussions with Ameritac presented a list of 17 questions and identified 8 items as adverse past performance information, weaknesses, significant weaknesses, or deficiencies in the protester's proposal. AR, Tab 10, Ameritac Discussion Letter, at 1-3. As relevant here, Ameritac was advised that the agency had concerns with "Ameritac's commitment to self-identify facility maintenance items" and "Ameritac's commitment to a Quality Control program." Id. at 2. The letter also provided two examples of instances where the agency had concerns. The first, an electrical incident nearly resulting in a significant lost-time injury to a government employee, and the second, an incident in which a 110 volt electrical outlet was improperly wired. Id. Upon receipt of the discussion letter, Ameritac submitted multiple rounds of questions to the agency, which were addressed prior to the submission of the protester's final revised proposal. See AR, Tabs 11-16, Ameritac Discussions Correspondence.

On this record, we conclude that the agency reasonably informed Ameritac of the agency's concerns about the company's commitment to self-identify facility maintenance issues and its commitment to its quality control program. In addition, these concerns led Ameritac into the area of its proposal requiring revision or amplification. In this regard, the agency answered multiple questions pertaining to this issue. While the protester argues that the agency should have provided specific examples of the agency's concerns, as stated above, an agency is not required to spoon-feed an offeror to discuss every area where the proposal could be improved. Accordingly, we find no merit to Ameritac's allegations that the agency's discussions with the protester were not meaningful.

Best-Value Decision

Finally, Ameritac contends that the award decision was based upon a flawed

evaluation and that the SSA failed to document his rationale for awarding a contract to the higher-rated, higher-priced offeror.⁶

The SSA's analysis was included in the source selection decision memorandum, which contained a lengthy summary of the SSA's independent analysis and comparison of the proposals. AR, Tab 22, SSD, at 2-5. For example, the SSA noted strengths in Alutiiq's MP2 experience in a sister lab⁷, where it received excellent CPARs ratings; experience working in a lab environment with AFRL [Air Force Research Laboratory]; and that its primary subcontractor performs similar contracts across the United States for many federal government customers. Id. at 2. With respect to Ameritac, the SSA noted strengths in its incumbent experience that included direct experience with NCAUR's MP2 systems; a good selection of subcontractors; and that the core competency of Ameritac is facility operations and maintenance contracting with an orientation towards high tech research facilities. Id. The SSA also noted the weaknesses assigned to Ameritac's past performance. Under the technical factor, the SSA found strengths in both offerors' proposals related to the management and operations subfactor, and identified a weakness in Ameritac's failure to propose a full-time electrician or plumber. Id. at 3. However, even with Ameritac's weakness, the SSA concluded that the firms were essentially equal under this subfactor. Id. at 4. With respect to the quality control subfactor, both proposals were assigned strengths, which were noted by the SSA, and no weaknesses. Again the SSA concluded the firms were essentially equal. Id. at 5. Finally with respect to the final subfactor, biobased purchasing, the SSA noted no strengths or weaknesses and found the offerors to be essentially equal. Id.

After comparing of the offerors' strengths and weaknesses, the SSA noted that Alutiiq identified better past performance than Ameritac which was the most important evaluation factor, while the two offerors were essentially equal under all the technical subfactors. Id. at 6. Based on his overall assessment of the strengths and weaknesses presented by the offerors, the SSA determined that paying a slightly higher total price for Alutiiq's stronger record of past performance was reasonable and in accordance with the stated evaluation criteria, where non-price factors, when combined, were significantly more important than price. Id.

On this record, we have no basis to conclude that the SSA failed to document the rationale to support his decision that the higher-priced offer provided the best value to the agency. Terex Gov't Programs, B-404946.3, Sept. 7, 2011, 2011 CPD ¶ 176

⁶ We need not consider the protester's allegation that the award decision was based upon a flawed underlying evaluation based on our conclusion that the agency's evaluation of the protester's past performance was reasonable.

⁷ MP2 is a government furnished work maintenance system. RFP, Performance Work Statement, at 11.

at 3. (There is no need for extensive documentation of every consideration factored into a tradeoff decision; rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and price of the competing proposals and that the source selection was reasonably based.)

The protest is denied.

Susan A. Poling
General Counsel