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Decision

Matter of: ICF Incorporated, LLC

File: B-414247; B-414247.3; B-414247.5

Date: April 7, 2017

Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., and Kirsten W. Konar, Esq., Vedder Price, PC, for the protester.

Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for Mathematica Policy Research, the intervenor.

Justin V. Briones, Esq., and Jose Otero, Esq., Department of Education, for the agency.

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

DIGEST

1. Protester's various challenges to the agency's evaluation of technical proposals are denied where the agency's evaluation record reasonably supports the agency's judgments and conclusions.

2. Where solicitation expressly provided that each offeror was expected to propose the cost/price specified in the solicitation, and to propose the "most benefit possible" for that specified amount, the agency reasonably made its best-value determination on the basis of the highest technically-rated proposal, and protester's assertions that the agency was required to perform a "value" assessment, separate and apart from the technical evaluation, is contrary to the terms of the solicitation and fails to state a basis for protest.

DECISION

ICF Incorporated, LLC, of Fairfax, Virginia, protests the Department of Education's award of a contract to Mathematica Policy Research, of Princeton, New Jersey, pursuant to request for proposals (RFP) No. ED-IES-15-R-0016 for various research and support services aimed at furthering a range of educational objectives. ICF challenges multiple aspects of the agency's evaluation of proposals.

We deny the protest.

BACKGROUND

On February 5, 2016, the agency issued RFP No. ED-IES-15-R-0016, seeking proposals for offerors to serve as Regional Educational Laboratories (REL),¹ for a 5-year period, in each of several regions.² Offerors were advised that the successful contractor will be responsible for three types of activities: (1) applied research; (2) dissemination of scientifically-valid research; and (3) technical assistance related to application and use of scientifically-valid research. RFP at 40.

The solicitation provided that award would be made on a best-value basis considering cost/price and technical merit, and established the following technical factors, listed in descending order of importance: (1) quality and credibility of the technical approach; (2) technical and managerial qualifications and experience of the proposed project director and deputy director; (3) qualifications of the non-director/non-deputy director project staff; (4) quality and feasibility of proposed plans contained within the three "Concept Papers" required by [solicitation] appendix A; (5) soundness of the management plan and timelines; (6) organizational capabilities, experience, and resources; (7) small business participation; and (8) past performance. RFP at 139.

With regard to cost/price, the solicitation identified the estimated annual funding levels for each region,³ and provided that each offeror's proposal should "make the most of available funding." RFP at 143. Specifically, the solicitation stated:

[T]he Department expects that each offeror will propose a budget that utilizes the maximum projected funding level for each region. An offeror gains nothing by proposing a lower cost/price than the maximum amount provided [by the funding estimate]. Each offeror is expected to use the maximum amount available to each region to provide the most benefit possible to each region. An offeror with an inferior technical proposal but lower proposed budget will not overtake an offeror with a

¹ The solicitation states: "Over the past decade, the REL program has contributed to a significant cultural change that continues to gain momentum in education--namely, the increasing focus on basing education decisions on high-quality research evidence." Agency Report (AR), Tab D, RFP at 39.

² The agency states that the regions covered by this solicitation were the Mid-Atlantic, Midwest, Appalachia, West, Southeast, Central, Northeast and Islands, Northwest, and Pacific. AR, Tab A, Contracting Officer's Statement, at 1-2. Separate competitions were conducted for each region. ICF's protest concerns only the competition for the Mid-Atlantic region.

³ The estimated annual budget for the Mid-Atlantic region was \$4,992,000. RFP, Instructions to Offerors, at 14.

technically excellent proposal and a budget that proposes to use the maximum regional allocation.

RFP, Instructions to Offerors, at 15.

On April 5, the agency received 3 proposals for the Mid-Atlantic region, including proposals from ICF and Mathematica.⁴ Thereafter, the agency established a competitive range consisting of ICF and Mathematica, and conducted discussions with those offerors. The agency's discussions with ICF directed ICF's attention to aspects of its proposal that had been identified as significant weaknesses.⁵ For example, with regard to the most important evaluation factor (quality/credibility of technical approach), the agency advised ICF that its proposed activities, and their relationship to the agency's needs, "lack[ed] clear organization and justification."⁶ AR, Tab K, Discussion Questions, at 1. In this regard, the agency elaborated:

Specifically, the proposal includes a variety of proposed activities with different partners, for different audiences, and that deal with different topics. Throughout the proposal, the reviewers found that the individual activities, as well as the cumulative portfolio of activities, were not described in a well-organized or well-justified way. Please provide a brief (up to 10 pages) explanation of the overall approach including justification, regional needs addressed, expected actionable outcomes, and the ways in which the offeror will coordinate with partners and stakeholders to achieve the overall goals of the REL contract.⁷

Id.

⁴ ICF is the incumbent contractor.

⁵ In evaluating proposals under the technical evaluation factors, the agency identified various strengths, weaknesses, significant weaknesses, and/or deficiencies, and assigned adjectival ratings of excellent, satisfactory, marginal, or unsatisfactory under each factor. AR, Tab L, Technical Evaluation Panel Consensus Memorandum, at 2.

⁶ With regard to evaluation under factor 1 (quality/credibility of technical approach), the solicitation provided, among other things, that each proposal would be evaluated on the basis of whether it was "clearly written, coherent, [and] well organized." RFP at 140.

⁷ Among other things, the solicitation's performance work statement (PWS) advised offerors that the agency expected "[a] coherent agenda of work supported by the REL, including clear links to partnership goals and a plan for carrying out the work," adding that "[c]oherent agendas involve activities that build on and relate to each other." Id. at 49.

Final revised proposals were submitted on October 3, and the proposals were thereafter evaluated as follows:

	Mathematica	ICF
1. Quality and Credibility of Technical Approach	Excellent	Satisfactory
2. Qualifications/Experience of Project Director and Deputy Director	Satisfactory	Excellent
3. Qualifications of Non-Director/Non-Deputy Director Staff	Excellent	Satisfactory
4. Quality and Feasibility of Concept Paper Plans	Satisfactory	Satisfactory
5. Soundness of Management Plan and Timelines	Satisfactory	Satisfactory
6. Organizational Capabilities, Experience, and Resources	Excellent	Excellent
7. Small Business Participation	Satisfactory	Excellent
8. Past Performance	Excellent	Excellent

AR, Tab O, Post Negotiation Memorandum, at 6.

In evaluating ICF's proposal as satisfactory under the most important factor (quality/credibility of technical approach), the agency stated, among other things, that:

[ICF] was provided an opportunity to provide a summary of their overall approach including justification, regional needs addressed, expected actionable outcomes, and the ways in which the offeror will coordinate with partners and stakeholders to achieve the overall goals of the REL contract. The response provided to this question was not sufficient. The offeror's explanation of the overall approach does not include additional detail that provides description or justification of the coherence of the collective set [of] proposed alliances or for the activities proposed within each alliance—[redacted].

AR, Tab L, Technical Evaluation Panel Consensus Memorandum, at 3.

In contrast, in evaluating Mathematica's proposal as excellent under this most important evaluation factor, the agency concluded that Mathematica's proposal

“provided a thoughtful description of the overall approach to prioritizing alliances and partners . . . and provided a framework that guides how stakeholders’ needs, proposed activities, actionable outcomes and the REL outcomes are connected.” Id. at 8.

In evaluating ICF’s proposal as satisfactory under factor 3 (qualifications of non-director/non-deputy director staff) the agency stated that ICF’s proposed staff were “qualified, but some of the proposed task leads had limited experience conducting the work they were proposed to lead.” AR, Tab O, Post Negotiation Memorandum, at 7. In contrast, in evaluating Mathematica’s proposal as excellent under this factor, the agency concluded that Mathematica’s proposed staff “exceeded the Department’s expectations” and further noted that “[a]ll proposed task leads exceeded the qualifications listed in the [solicitation].” Id.

With regard to evaluation of cost/price, the agency concluded that both offerors “proposed equivalent budgets in accordance with the formula stated in the [s]olicitation” and that their technical proposals were reasonable, realistic, and consistent with their cost/price proposals.⁸ Id. at 18. Accordingly, Mathematica’s proposal was selected for award on the basis of its higher technical ratings under the most important evaluation factors. This protest followed.

DISCUSSION

ICF’s protest asserts that the agency’s technical evaluation was flawed and that the agency failed to properly consider the value proposed by each offeror.⁹ As discussed below, ICF’s assertions are without merit.

⁸ The solicitation required offerors to submit specified cost/price information, including labor rates and cost estimates for each task, in order for the agency to assess the reasonableness and realism of the offerors’ proposals as well as assess the consistency between their cost/price and technical proposals. See RFP, Instructions to Offerors, at 15-18. ICF has not asserted that Mathematica’s proposal was either unreasonable or unrealistic with regard to cost/price, nor that its cost/price and technical proposals were inconsistent.

⁹ In its multiple protest submissions, ICF has raised arguments that are in addition to, or variations of, those specifically addressed in this decision, including assertions that the agency applied unstated evaluation factors and engaged in disparate treatment of the offerors. We have considered all of ICF’s various assertions and find no basis to sustain its protest.

Technical Evaluation

First, ICF complains that the agency improperly assigned ratings of only satisfactory to ICF's proposal under evaluation factor 1 (quality/credibility of technical approach) and evaluation factor 3 (qualifications of non-director/non-deputy director staff), and that the agency improperly assigned ratings of excellent to Mathematica under those factors. We have considered all of ICF's various complaints regarding the agency's technical evaluation and find no merit in them.

For example, with regard to the most important evaluation factor (quality/credibility of technical approach), ICF asserts that the only reasonable rating for its proposal was excellent because it submitted "an outstanding technical proposal." Protest at 27. More specifically, ICF complains that, following the agency's discussion question, quoted above, wherein the agency advised ICF that its proposed activities were not "well-organized or well-justified," ICF responded by "insert[ing] several exhibits" into its proposal that discussed how its proposed research alliances "have evolved," and that "frame[d] the justification and needs for the proposed activities." Protest at 28. ICF further complains that, since the agency assigned ICF's proposal a strength for having submitted the additional exhibits, it was "unreasonable," "implausible," and "inconsistent" for the agency to continue to rate its proposal as only satisfactory under this factor. Id. at 30-37.

The agency responds that, despite its request for specific information regarding the cohesion and coordination of activities among and between ICF's partners and shareholders, the additional information ICF provided "did not tie all of the alliances together," "did not provide a summary of its overall approach, including justification, regional needs addressed, expected actionable outcomes, and ways in which [ICF] will coordinate with [its] partners and shareholders," and "did not resolve the significant weakness" in ICF's proposal. AR, Tab A, Contracting Officer's Statement, at 26; Tab L, Technical Evaluation Panel Consensus Memorandum, at 3; Agency's Legal Memorandum, Feb. 3, 2017, at 29. Accordingly, the agency concluded that, while ICF's additional exhibits warranted a strength, and ICF's proposal demonstrated adequate capability to meet the solicitation's performance requirements, its proposal did not exceed those requirements.¹⁰ Id.

¹⁰ The solicitation put offerors on notice that a satisfactory rating would be assigned where an offeror's solution "meets the performance or capability standards" and contains "no more than one significant weakness." The solicitation also advised that a rating of excellent would only be assigned where an offeror's solution "exceeds specified performance or capability in a beneficial way to the Department" and "does not contain any deficiencies or significant weaknesses." AR, Tab D, RFP at 144.

It is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4; Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. MicroTechnologies, LLC, supra; STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 4-5. In this regard, an offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. MicroTechnologies, LLC, supra, at 7.

Here, we have reviewed the evaluation record and find no basis to conclude that the agency's evaluation was unreasonable. While ICF asserts that its proposed technical solution was "outstanding," the agency specifically advised ICF of the agency's concerns regarding multiple issues and concluded that ICF failed to adequately respond to those concerns. The record shows that the agency viewed ICF's proposal as focusing primarily on process rather than the substantive activities to be performed within and across the various proposed alliances. AR, Tab L, Technical Evaluation Panel Consensus Memorandum, at 3; Tab S, Technical Evaluation Panel Member's Statement, at 2. Based on our review of the agency's evaluation record, it is clear that, while ICF disagrees with the agency's multiple well-documented judgments, nothing in the agency's evaluation is unreasonable. Further, while ICF complains that the agency "ignored" its response to the discussion questions, the record establishes that, in fact, the agency considered ICF's additional information, and assigned a strength to ICF's proposal based on ICF's submission of additional exhibits--yet reasonably concluded that the substance of ICF's response was insufficient to resolve the agency's various, specifically identified, concerns. ICF's protest to the contrary is without merit.

By way of another example, ICF asserts that the agency unreasonably assigned a rating of satisfactory to ICF's proposal under evaluation factor 3 (qualifications of non-director/non-deputy director staff). ICF asserts that, because the agency identified some strengths in its proposal under this factor and only one weakness, ICF's proposal was entitled to a rating of excellent.

The agency responds that, while ICF's proposal met the solicitation requirements with regard to evaluation factor 3, it did not exceed them. AR, Tab A, Contracting Officer's Statement at 28; Tab O, Post-Negotiation Memorandum, at 7. Specifically, the agency states that, while ICF's proposal was not evaluated as containing any significant weaknesses under this factor, the evaluators assigned the proposal a weakness, noting that "[s]ome staff proposed for leading tasks have relevant but limited experience conducting the work that they are proposed to lead." AR, Tab H, Technical Evaluation Panel Consensus Memorandum, at 7. The agency elaborated on this weakness, stating that ICF's "minor incompatibilities" included the proposed

lead for task 5, Training, Coaching, and Technical Support (TCTS),¹¹ who “has some experience . . . but the length and depth of this experience is short [redacted].” Id. Accordingly, the agency concluded that ICF’s proposal was properly rated as satisfactory, rather than excellent under factor 3.

As noted above, where a protester challenges an agency’s technical evaluation, we will not substitute our judgment for that of the agency, and a protester’s disagreement with the agency’s judgment, without more, is insufficient to establish that an agency acted unreasonably. MicroTechnologies, LLC, supra; STG, Inc., supra. Further, there is no requirement that an agency award the highest possible rating under an evaluation factor simply because the proposal contains strengths and/or is evaluated as having no, or limited, weaknesses. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6.

Here, the record shows that the agency considered the qualifications and experience of ICF’s proposed staff, reasonably concluding that the experience of some of ICF’s proposed personnel was limited.¹² Accordingly, the agency reasonably concluded that ICF’s proposal met, but did not exceed, the solicitation requirements with regard to factor 3. ICF’s protest with regard to factor 3 appears to be based on the premise that the agency’s evaluation properly began with the presumption that ICF was entitled to an exceptional rating and that, thereafter, the agency “downgrade[d]” that rating to satisfactory. See Second Supp. Protest, Feb. 13, 2017, at 38, 39. ICF’s apparent perception regarding the “downgrad[ing]” of its proposal is in error. As discussed above, the solicitation expressly provided that a satisfactory rating would be assigned where an offeror’s solution “meets the performance or capability standards” and that an excellent rating would be assigned only where an offeror’s solution “exceeds” those standards in a way that is beneficial to the agency. RFP at 144. Here, it is clear that the agency determined that ICF’s proposed personnel did not exceed the solicitation requirements in a way that was beneficial to the agency. Accordingly, ICF’s assertion that the agency was required to assign its proposal the highest possible rating simply because it contained some strengths and only one weakness is without merit.¹³

¹¹ The solicitation identified 6 tasks that the contractor will be required to perform, and designated the “task leads” for tasks 3, 4, 5, and 6 as key personnel. RFP at 53-71; Instructions to Offerors at 6.

¹² The solicitation expressly provided that the agency would evaluate the experience of proposed personnel in particular, identified areas. RFP at 141.

¹³ ICF also asserts that the agency was required to bring the limited experience of its proposed personnel to ICF’s attention during discussions. We disagree. The Federal Acquisition Regulation (FAR) requires that an agency’s discussions identify all deficiencies and significant weaknesses in an offeror’s proposal. FAR § 15.306(d). Here, the agency evaluated the qualifications of ICF’s proposed

(continued...)

By way of yet another example, ICF asserts that the agency improperly evaluated Mathematica's proposal as excellent under evaluation factor 3, arguing that Mathematica's proposal, with regard to its task 5 lead, failed to comply with certain solicitation requirements that established minimum time commitments for some of the task leads. With regard to task 5 leads, the solicitation required a "60% time [commitment] throughout the contract."¹⁴ RFP at 140. ICF acknowledges that Mathematica's task 5 lead was committed to performing [redacted] hours over the duration of the 5-year contract performance period, but asserts that this constituted a "time commitment percentage [of only] [redacted]". ICF Comments on Second Supp. AR, Mar. 21, 2017, at 7. On this basis,¹⁵ ICF asserts that Mathematica's proposal failed to comply with the solicitation's 60 percent time commitment requirement for Mathematica's task 5 lead. Third Supp. Protest, March 6, 2017, at 42.

The agency responds that the solicitation required offerors to identify the amount of time, over the 5-year life of the contract, that each of the task leads was committed to perform on this contract, and to also disclose the amount of time, over the 5-year period, that each task lead was committed to work on "other projects." RFP, Instructions to Offerors, at 7-8. Mathematica's task 5 lead was employed by [redacted], a Mathematica subcontractor, and [redacted] calculates an FTE as [redacted] hours per year. AR, Tab AA, Second Supp. Contracting Officer's Statement, at 9; Tab Y, Mathematica's Final Revised Proposal, at 469. In determining compliance with the time commitment requirement, the agency divided the total number of hours proposed for Mathematica's task 5 lead [redacted] by the total number of hours the task 5 lead is committed to her employer during that period [redacted] to conclude that the task 5 lead complied with the solicitation's commitment requirements [redacted]. AR, Tab AA, Second Supp. Contracting Officer's Statement, at 9.

As noted above, we will examine a procuring agency's evaluation to ensure that it was reasonable, consistent with the terms of the solicitation criteria, and consistent

(...continued)

personnel as meeting, but not exceeding, the solicitation requirements. Clearly, this was neither a deficiency nor a significant weakness in ICF's proposal. Accordingly, ICF's assertion that the agency was required to discuss this matter with ICF is without merit.

¹⁴ The solicitation similarly established 50 percent time commitments for the task 4 and task 6 leads. RFP at 140.

¹⁵ ICF indicates that its calculations are based on the assumption of [redacted] hours per year for a full time employee (FTE). ICF Third Supp. Protest, Mar. 6, 2017, at 13.

with procurement statutes and regulations. MicroTechnologies, LLC, supra; STG, Inc., supra, at 4-5.

Here, based on our review of the agency's evaluation record and the terms of the solicitation, we find nothing unreasonable in the agency's determination that Mathematica's proposal complied with the solicitation requirements regarding the time commitment of its task 5 lead. As noted above, the solicitation required that offerors identify the amount of time that each task lead was committed to perform on this contract, as well as the time they were committed to work on "other projects." That is, the solicitation sought to ensure that competing commitments for a task lead's time were not excessive. Based on the solicitation requirements, we find nothing unreasonable in the agency's reliance on the total number of hours an employee is committed to his/her employer as the basis for determining the percentage of commitment to this contract. ICF's protest challenging the agency's evaluation of Mathematica's proposal under evaluation factor 3 is denied.¹⁶

Best-Value Determination

Finally, ICF asserts that the agency's evaluation of offerors' proposals was flawed because the agency "failed" to perform a comparative assessment of the "value" provided by each offeror. First Supp. Protest, Jan. 3, 2017, at 2-3. In this regard, ICF acknowledges that the solicitation "mandated a clear evaluation method whereby all offerors would propose essentially the same cost/price," yet asserts that the agency was required to perform a "cost/price analysis"--separate and apart from the agency's comprehensive technical evaluation--to determine the "better overall value" of the competing proposals. Id. ICF notes that, because it proposed [redacted], its proposal offered [redacted], id. at 15, and maintains that, therefore, the "true value" of ICF's proposal "exceeded the value" of Mathematica's proposal. Protest at 1-2, 20-21. Accordingly ICF maintains that the agency "failed" to perform a separate "value" analysis that would have recognized this allegedly greater value.

The agency responds that the evaluation scheme employed here was intended to "reinforce the relative importance that the [agency] placed on the quality of an offeror's technical solution, relative to their proposed prices," and that it did, in fact, perform the appropriate value determination in its performance of the technical

¹⁶ ICF also argues that several of Mathematica's task leads committed to slightly less than the required percentages in a few of the individual contract years during the 5-year performance period, and maintains that the solicitation's time commitment requirements must be applied on a year-by-year basis. We reject this assertion. As noted above, the solicitation provided that the time commitment requirements applied "throughout the contract," and we find nothing unreasonable in the agency's consideration of the total time commitment, over the 5-year performance period, to determine compliance with the solicitation requirements.

evaluation. AR, Tab Z, Supp. Contracting Officer's Statement, at 3. That is, in performing the technical evaluation, the agency states that it considered both the quality and quantity reflected in each offeror's proposal, and that those considerations were incorporated into the technical ratings--which led to the agency's determination that Mathematica's proposal offered significantly greater value than ICF's proposal. Id. The agency further notes that the solicitation expressly advised offerors that, "[a]n offeror with an inferior technical proposal but lower proposed budget will not overtake an offeror with a technically excellent proposal." RFP, Instructions to Offerors, at 15.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). These requirements contemplate that protesters will provide, at a minimum, allegations to establish the likelihood that the protester will prevail in its claim of improper agency action. Pacific Photocopy & Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

Here, we have reviewed the solicitation requirements and conclude that ICF's assertion that the agency was required, and failed, to perform a "value" analysis, separate and apart from the agency's technical evaluation, fails to state a valid basis for protest. As discussed above, the solicitation clearly advised offerors that they were to propose essentially the same cost/price, and there is no dispute that ICF and Mathematica did so. Further, the solicitation clearly established the various technical evaluation factors against which the value of the offerors' proposals would be considered. As discussed above, the agency's technical evaluation was reasonable and consistent with the solicitation's stated evaluation factors. ICF's assertions that the "true value" of its proposal "exceeded the value" of Mathematica's proposal merely reflects its ongoing disagreement with the agency's determination regarding the technical superiority of Mathematica's proposal. To the extent ICF is attempting to recast its ongoing disagreement with the agency's evaluation as the agency's "failure" to perform a separate "value" analysis, ICF's assertions are contrary to the terms of the solicitation and fail to state a valid basis for protest.

The protest is denied.

Susan A. Poling
General Counsel