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Decision

Matter of: ASRC Communications, Ltd.

File: B-412093; B-412093.2

Date: December 23, 2015

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Sarah L. Stanton, Esq., Department of the Air Force, for the agency. Scott H. Riback, Esq., and Tania Calhoun, 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 sustained where record shows that agency initially identified a deficiency in awardee's proposal that precluded award to the firm, and the record does not support the agency's conclusion that the firm's revised proposal provided a reasonable basis to eliminate the deficiency.

DECISION

ASRC Communications, Ltd., of Beltsville, Maryland, protests the award of a contract to Aleut O&M Services LLC, of Colorado Springs, Colorado, under request for proposals (RFP) No. FA2521-13-R-0019, issued by the Department of the Air Force for operations, mission support and facilities/infrastructure maintenance and sustainment at Cape Canaveral Air Force Station (CCAFS) in Cape Canaveral, Florida. ASRC alleges that the agency miscalculated the Aleut proposal and improperly made award to that firm.¹

¹ In its initial and supplemental protests, ASRC advanced several arguments in addition to those discussed here, but subsequently withdrew them. Protester's Comments, at 1 n.1.

We sustain the protest.

BACKGROUND

The RFP, set aside for small businesses, contemplates the award, on a best-value basis, of a hybrid, fixed-price, cost-plus-fixed-fee, cost-reimbursement type contract to perform various operations, maintenance and engineering support services for facilities and systems at CCAFS for a 5-year base period and a 1-year option period. RFP § B. Firms were advised that proposals would be evaluated considering cost/price and two non-cost/price considerations, technical capability and technical risk, which were equal in importance and, collectively deemed equal in importance to cost/price. RFP at 188. Within the technical capability factor, there were four equally-weighted subfactors: program management, operations and maintenance, mission support, and engineering support.² RFP at 187.

The RFP stated that, for cost/price, the agency would evaluate proposals for completeness, reasonableness, balance and affordability, and also would consider whether the proposal offered downward pricing in each successive contract year. RFP at 191-192. Firms also were advised that the agency would evaluate each offeror's proposed method of preventing the improper allocation of costs between the fixed-price contract elements and the cost-reimbursement contract elements, and also between direct labor and indirect cost pools. RFP at 192. Finally, the RFP provided that the agency would perform a cost realism evaluation of the cost-reimbursement elements of the offerors' proposed price/cost.

In response to the RFP, the agency received a number of proposals, including those of ASRC and Aleut. The agency evaluated proposals; engaged in discussions; and solicited, obtained, and evaluated final proposal revisions (FPRs). The agency assigned the following ratings to the ASRC and Aleut proposals:

² Proposals were to be assigned ratings at the subfactor level. The technical capability adjectival ratings were blue/outstanding, purple/good, green/acceptable, yellow/marginal or red/unacceptable. RFP at 188. The technical risk ratings were low, moderate or high. RFP at 190-191.

Technical Capability and Risk		Aleut	ASRC
Program Management	Technical Rating	Good	Good
	Risk Rating	Low	Low
Operations and Maintenance	Technical Rating	Good	Outstanding
	Risk Rating	Moderate	Low
Mission Support	Technical Rating	Good	Acceptable
	Risk Rating	Low	Low
Engineering Support	Technical Rating	Acceptable	Outstanding
	Risk Rating	Low	Low
Proposed Total Evaluated Price		\$285,413,875	\$307,372,779
Most Probable Cost Total Evaluated Price		\$285,413,875	\$307,372,779

Agency Report (AR) exh. 30, Source Selection Decision Document, at 3. On the basis of these evaluation results, the agency made award to Aleut as the best-value offeror, concluding that, although the ASRC proposal was superior to the Aleut proposal, that superiority was not worth the cost premium associated with making award to ASRC. *Id.* at 6. After being advised of the agency's source selection decision and requesting and receiving a debriefing, ASRC filed the instant protest.

PROTEST

ASRC maintains that the agency misevaluated the Aleut proposal. We note at the outset that, in reviewing an agency's evaluation of proposals, we examine the supporting record to determine whether the decision was reasonable and in accordance with the RFP's evaluation criteria, along with applicable procurement statutes and regulations. *Cherry Rd. Techs.; Elec. Data Sys. Corp., B-296915 et al.*, Oct. 24, 2005, 2005 CPD ¶ 197 at 6. The agency must have adequate documentation to support its judgment. *Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al.*, Sept. 6, 2007, 2008 CPD ¶ 28 at 11-12. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for our Office to conclude that the agency had a reasonable basis for its evaluation conclusions. *Id.*

ASRC argues that, in evaluating FPRs, the agency improperly removed a deficiency that had been assigned to the Aleut proposal during the agency's evaluation of initial proposals under the mission support subfactor. The record shows that the agency originally assigned the Aleut proposal this deficiency for failing to demonstrate an adequate approach to performing the requirements of section 1.10 of the performance work statement (PWS) relating to operation and maintenance of the naval ordnance test unit (NOTU) port/wharf and cranes services.

The record shows that the agency made four specific findings in connection with this deficiency: (1) Aleut's proposal cited experience to demonstrate its capability to maintain the Trident Wharf demineralized water system located at the NOTU facility

that did not actually demonstrate its capability to maintain that facility (PWS section 1.10.4); (2) its proposal made reference to providing port services for an airfield and hangar located at the NOTU facility, when in fact, there is no airfield or hangar at that facility (PWS section 1.10.2); (3) Aleut proposed personnel with skill sets that did not appear to meet the requirements necessary to perform minor ship repairs, as required (PWS section 1.10.3); and (4) Aleut's proposed work control supervisor, NOTU port/wharf supervisor and engineer did not have the appropriate certification and training to perform crane management and operations, operation support, maintenance support, records keeping duties, certifying official duties, training, and corrosion control (PWS section 1.10.8). AR, exh. 15, Aleut's Initial Technical Evaluation Report, at 21-24. The record shows that, based on this deficiency, the agency assigned the Aleut proposal a red/unacceptable/high risk rating for the mission support subfactor, which rendered the proposal ineligible for award.³

ASRC contends that, in its FPR, Aleut only addressed one of the four identified concerns leading to the assignment of the deficiency; namely, it eliminated the reference to an airfield and hangar at the NOTU facility. ASRC maintains that the Aleut proposal continued to include all of the other concerns identified by the agency and therefore should have received the same red/unacceptable/high risk rating originally assigned. ASRC argues that the Aleut proposal was not eligible for award.

The agency responds that Aleut provided additional narrative details in its FPR that resolved all four of the agency's initial concerns. The agency directs our attention to specific portions of a supplemental narrative included in the Aleut proposal that it argues support its position.

We discuss the agency's specific responses below. However, we conclude that the protester is correct with respect to the three unresolved concerns originally identified by the agency in its initial evaluation report. We note at the outset that the agency's contemporaneous FPR evaluation record is both conclusory and contradictory. Specifically, the agency's evaluation of Aleut's FPR includes the following conclusory statement:

NOTU: The offeror demonstrated the ability to provide PWS Section 1.10 requirements including operations and maintenance of wharf facilities and infrastructure, naval port crane requirements, shore services and minor repairs to docked water vessels. A detailed approach for each NOTU requirement was provided to include applicable staffing and associated skills, approach elements for successful accomplishment of requirements, and an outline of relevant experience.

³ A red/unacceptable rating was defined as: "Proposal does not meet requirements and contains one or more deficiencies and is unawardable." RFP at 188.

AR, exh. 25, Aleut Final Technical Evaluation Report, at 20; see also AR, exh. 26, Proposal Analysis Report, at 56. Two pages later, however, there is a box of text entitled “Rationale for Meets Requirement.” AR, exh. 25, Aleut Final Technical Evaluation Report, at 22. The actual text in that box is a verbatim repetition of the four enumerated areas of concern identified in the agency’s initial evaluation report for Aleut. We do not understand--and the agency has not explained--why these apparently inconsistent findings are included in the agency’s contemporaneous evaluation of Aleut’s FPR.⁴ We also note that the contemporaneous record does not include any other statement of the agency’s underlying rationale in support of the conclusory statement quoted above. Turning to the agency’s position as represented during the protest, we discuss each of the three concerns originally identified, along with the agency’s response.

First, with respect to the concern relating to a lack of experience demonstrating Aleut’s ability to operate the Trident Wharf demineralized water system (PWS section 1.10.4), the agency directs our attention to a narrative statement included in the Aleut FPR that provides as follows: “[deleted].” AR, exh. 24, Aleut FPR, at 85. The agency claims that it relied on this statement to conclude that Aleut did in fact have experience demonstrating its capabilities to operate the demineralized water system.

We see no reasonable basis for the agency to have relied on this statement to resolve the identified concern. This statement makes no reference to Aleut’s experience operating a demineralized water system, or doing anything else for that matter; rather, it is a statement relating to Aleut’s proposed use of [deleted]. This statement also does not describe how Aleut actually will maintain the Trident Wharf demineralized water system. Additionally, an examination of the Aleut proposal shows that it includes the exact same statement of the firm’s experience in support of its capabilities to maintain the Trident Wharf demineralized water system in both its initial proposal and its FPR. Compare AR, exh. 13, Aleut Initial Proposal, at 72 with AR, exh. 24, Aleut FPR, at 84. Finally, and most importantly, the statement quoted by the agency actually is a paraphrasing by Aleut of an entirely different section of the PWS (PWS section 1.10.2 relating to the provision of port services rather than section 1.10.4 relating to maintenance of the Trident Wharf demineralized water system). Accordingly, we see no reasonable basis for the agency to have concluded that this concern was resolved.

Second, as to the concern relating to Aleut’s proposal of personnel with skill sets that did not appear to meet the requirements necessary to perform minor ship

⁴ It is possible that the text in the box was mistakenly included in the evaluation report for Aleut’s FPR. However, we would expect the agency to bring such an error to our attention in its report, as it did with respect to another, different, error in its FPR evaluation report. AR at 40.

repairs (PWS section 1.10.3), the agency states that it relied on the following statement in the Aleut FPR: “[deleted].” AR, exh. 24, Aleut FPR, at 85. The record shows that Aleut made no changes to its proposed staffing to meet this element of the requirement. Compare AR, exh. 13, Aleut Initial Proposal, at 72, with AR, exh. 24, Aleut FPR, at 86. In addition, in both its initial proposal and its FPR, Aleut included identical statements as follows: “[deleted].” Id. Thus, the record shows that Aleut proposed to [deleted] in both its initial proposal and FPR. Finally, to the extent the agency might have relied on the language cited to support its conclusion, the quoted passage does not describe the skill sets of the personnel that Aleut intends to use [deleted]. In light of these considerations, we see no reasonable basis for the agency to have concluded that this concern was resolved based on the language identified by the agency.

Finally, with respect to the concern that Aleut’s work control supervisor, NOTU port/wharf supervisor and engineer did not have the appropriate certification and training to perform their duties (PWS section 1.10.8), the agency states that it relied on a statement in Aleut’s FPR concerning Aleut’s proposed operations and maintenance (O&M) division manager. According to the agency, Aleut’s FPR narrative provided for an O&M division manager with adequate certification and training, as well as a plan to provide ordnance certification training for crane operators. AR at 33.

The narrative in the Aleut FPR includes the following statements:

[deleted]

AR, exh. 24, Aleut FPR, at 84. We do not see how these statements have anything to do with the certification and training qualifications of the team members identified by the agency, namely, the firm’s proposed work control supervisor, its port/wharf supervisor, and its engineer.

Leaving aside the fact that the three identified employees are not mentioned in the narrative identified by the agency, PWS 1.10.8 includes several subsections that detail the requirements for crane management that include specific requirements for crane maintenance, inspection, repair, load testing and certification of the cranes themselves in accordance with a Naval Facilities Engineering Command Management of Weight Handling Equipment directive. In connection with these requirements, the offeror was required to designate a certifying official, and there is nothing in the narrative identified by the agency to suggest that Mr. A (or any other Aleut employees) meets these requirements.

In addition, the offeror was required to provide training and certification programs for all crane operators, crane inspectors, crane mechanics, crane electricians, load test directors and certifying officials. Simply stated, nothing in the narrative references relied on by the agency in responding to the protest demonstrates that Aleut’s

proposed work control supervisor, port/wharf supervisor, or engineer possesses the necessary training or certifications themselves, and nothing in the narrative describes how Aleut will provide the training (other than ordnance handling training) required by the PWS to its applicable personnel.

Finally, the provisions of the Aleut proposal relating to these requirements are identical in both the initial proposal and the FPR. Compare AR, exh. 13, Aleut Initial Proposal, at 29, 73 with AR, exh. 24, Aleut FPR, at 39, 87. We therefore find that there was no reasonable basis for the agency to have concluded that this concern was resolved in the Aleut FPR.

In light of the foregoing discussion, we conclude that there was no basis in the record for the agency to have eliminated the deficiency originally identified in the Aleut proposal. It follows that there is no basis in the record for the agency to have changed its original assignment of a red/unacceptable/high risk rating to the Aleut proposal. We therefore sustain ASRC's protest.⁵

RECOMMENDATION

We recommend that the agency reevaluate the Aleut proposal in a manner that is consistent with the discussion above (or, alternatively, reopen discussions and request revised proposals before reevaluating). Should the agency conclude that the Aleut proposal is unacceptable (or not the best value) based on that reevaluation, we further recommend that the agency terminate the contract awarded to Aleut and make a new source selection decision.

⁵ ASRC also argues that the agency should not have assigned the Aleut proposal a purple/good rating under the operations and maintenance subfactor. ASRC's allegation in this respect is largely semantic; ASRC basically maintains that, in light of the narrative portion of the agency's evaluation report, Aleut should have received a lower rating than the one assigned. We need not consider this allegation in detail, since we sustain ASRC's protest for the reasons discussed above and recommend that the agency reevaluate the Aleut proposal.

Finally, we recommend that the agency reimburse ASRC the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel