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Decision

Matter of: IAP World Services, Inc.

File: B-415678

Date: February 12, 2018

J. Alex Ward, Esq., Ethan E. March, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP, for the protester.

Sharon L. Larkin, Esq., James M. Larkin, Esq., and Elizabeth A. Ferrell, Esq., Larkin Ferrell LLP, for CACI Technologies, Inc., the intervenor.

Rachel E. Woods, Esq., and Joseph Beazley, Esq., Department of the Army, for the agency.

Kenneth Kilgour, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals is denied where record shows that agency's proposal evaluation was reasonable and consistent with the solicitation and procurement statutes and regulations.

DECISION

IAP World Services, Inc., of Cape Canaveral, Florida, protests the issuance of a task order to CACI Technologies, Inc., of Chantilly, Virginia, under request for task order proposals (RTOP) No. W56KGU-17-R-0012, issued by the Department of the Army, U.S. Army Contracting Command-Aberdeen, for operational, technical, and fielding support in the engineering, integration, fabrication, fielding, sustainment, training, and material acquisition of command, control, communications, computers, intelligence, surveillance and reconnaissance equipment and systems, and foreign military sales equipment and systems. The protester challenges the fairness and reasonableness of the agency's proposal evaluations.

We deny the protest.

BACKGROUND

The RTOP was issued to holders of the unrestricted suite of the Army's Rapid Response Third Generation (R2-3G) indefinite-delivery, indefinite-quantity service

contract. Agency Report (AR), Tab 3, RTOP amend. 2 at 1. The cost-plus-fixed-fee and cost task order, with a base period of 12 months with two 12-month options, would be issued to the offeror whose proposal represented the best value to the government, considering two non-price factors--technical and past performance--and cost/price. Id. at 1, 21. Technical was more important than past performance and past performance was more important than cost/price. Id. at 21. The technical factor contained the following four subfactors, listed in descending order of importance: technical approach, management plan, key personnel, and quality assurance surveillance plan. Id. As relevant here, under the technical approach subfactor, offerors were to describe their approach to meeting performance work statement (PWS) paragraphs 1.2 through 1.8 and 3.0, as well as their associate subparagraphs. Id. at 22. The solicitation further stated that the agency would evaluate the proposal to determine the extent to which it demonstrated a clear understanding of all of the task order requirements and whether all of the requirements of the PWS had been completely considered, defined, and satisfied. Id. at 22-23.

To be eligible for award, a proposal was required to achieve a rating of no less than acceptable under the technical factor, which required a rating of no less than acceptable under each of the four technical subfactors. Id. An acceptable proposal was one that met the requirements of the RTOP and indicated an adequate approach and understanding of the requirements, where the strengths and weaknesses are offsetting or have little or no impact on contract performance. Id. at 25. An unacceptable proposal was one that did not meet the requirements and contained one or more deficiencies. Id.

The PWS contained the following relevant provisions. With respect to security matters, the PWS advised offerors that Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, is used in solicitations and contracts that authorize contractor personnel to accompany U.S. armed forces deployed outside of the United States, and that this clause discusses compliance with laws, pre-deployment requirements and required training. AR, Tab 4, PWS ¶ 1.7.10. Further, with respect to security matters, the PWS advised offerors that DFARS clause 252.225-7043, Antiterrorism/Force Protection for Defense Contractors Outside of the United States, is used in solicitations and contracts that require performance or delivery in a foreign country, and allows the combatant commander to exercise oversight to ensure the contractor's compliance with combatant commander and subordinate commander policies and directives. Id. ¶ 1.7.11. With respect to purchasing of required material, the PWS required contractors to endeavor to obtain three quotations or document why they did not and describe to the contracting officer how the price of the purchase was determined to be fair and reasonable. Id. ¶ 7.0. The PWS also advised offerors that, if applicable, purchase requests shall contain a bill of materials. Id. at ¶ 7.1.

The protester and the awardee submitted the only two proposals. AR, Tab 19, Pre-negotiation Objective Memorandum (POM)/Price Negotiation Memorandum (PNM) and Task Order Decision Document (TODD), at 5. CACI's proposal was the only one

evaluated by the agency as technically acceptable. Id. The protester's proposal was evaluated as unacceptable under the technical approach subfactor of the technical factor, and thus unacceptable for the technical factor overall. Id. at 10. Specifically, the agency concluded that IAP failed to explain how they would meet the requirements of PWS ¶ 1.7.4 concerning installation access requirements; PWS ¶ 1.7.5 concerning certain security requirements; PWS ¶ 1.7.10 concerning DFARS clause 252.225-7040; PWS ¶ 4.0 concerning travel to provide training and other services to task force units; PWS ¶ 5.0 concerning non-disclosure agreements; and PWS ¶ 7.1 concerning bill of materials. Id. at 13-14. The agency concluded these deficiencies made the proposal unawardable. Id. at 13.¹ The task order was issued to CACI with a ceiling price of \$84,752,110. Id. at 41. This protest followed.²

DISCUSSION

IAP challenges the agency's evaluation of its proposal and argues that the agency disparately evaluated technical proposals, and that, but for that disparate evaluation, CACI's proposal would have been found technically unacceptable. Comments at 2-7. The agency asserts that its evaluation was fair and in accordance with the solicitation. We have reviewed the protest allegations and, although we do not address them all, find no basis to sustain the protest.³

We note at the outset that, in reviewing protests challenging an agency's evaluation of task order proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation

¹ The agency also assigned IAP's proposal one strength and three weaknesses. AR, Tab 19, POM/PNM and TODD, at 13.

² The task order at issue is valued in excess of \$25 million. Accordingly, our Office has jurisdiction to consider IAP's protest. 10 U.S.C. § 2304c(e)(1)(B).

³ IAP asserts several challenges to the reasonableness of the agency's evaluation of its proposal. For example, the protester challenges the agency's evaluation of IAP's past performance. Protest at 18-20, Comments at 19-20. As discussed below, we find that the agency reasonably evaluated CACI's proposal as technically acceptable. We also find that the agency reasonably assessed two deficiencies in IAP's proposal--for failure to address DFARS clause 252.225-7040, and for failure to propose that, if applicable, all purchase requests would include a bill of materials. Because these deficiencies alone render IAP's proposal unacceptable overall under the technical factor and thus unawardable, we need not address the merits of the remaining protest allegations. See RTOP at 21, 25 (noting that an unacceptable proposal contains one or more deficiencies, and, in order to be eligible for award, a proposal must be evaluated as acceptable).

criteria, as well as applicable statutes and regulations. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. Where a protester alleges unequal treatment in a technical evaluation, the protester must show that the differences in ratings did not stem from differences in the proposals. ASRC Commc'ns, Ltd., B-414319.2 et al., May 9, 2017, 2017 CPD ¶ 167 at 7.

PWS ¶¶ 1.7.10, Compliance with DFARS Clause 252.225-7040

The agency assessed the protester's proposal a deficiency for failing to address PWS ¶ 1.7.10 "because there is no reference to the inclusion of the DFARS clause 252.225-7040."⁴ AR, Tab 12, Agency Evaluation of IAP's Proposal, Technical Approach Subfactor, at 14. IAP asserts that CACI's proposal should also have been assessed a deficiency for failing to explain how CACI would comply with DFARS clause 252.225-7040, under PWS ¶ 1.7.10. Comments at 3-5; Protester's Reply to Agency's Response to Comments at 2-4.

Under the technical approach subfactor, offerors were to describe their approach to meeting the requirements of the PWS. RTOP amend. 2 at 22. With respect to PWS ¶ 1.7.10, concerning security matters, the PWS advised offerors that DFARS clause 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, authorizes contractor personnel to accompany U.S. armed forces deployed outside of the United States, and that this clause discusses compliance with laws, pre-deployment requirements and required training. PWS ¶ 1.7.10.

The agency reviewed CACI's proposal and determined that it met the requirements of PWS ¶ 1.7.10 and indicated a thorough approach and understanding of the requirements. AR, Tab 8, Agency Evaluation of CACI's Proposal, Technical Approach Subfactor, at 4. CACI's proposal references DFARS clause 252.225-7040 and states that it adheres strictly to agreements, guides and antiterrorism considerations at each installation where the work is performed. AR, Tab 34a, CACI Technical Proposal, Technical Approach Subfactor, at 18 (noting that CACI "steadfastly supports any requirements to accompany U.S. Armed Forces deployed outside of the United States," and that all anti-terrorism/operations security "compliance, laws, regulations, and requirements are [in accordance with] DFARS Clause 252.225-7040 and 252.225-7043").

In defending its assessment of a deficiency in IAP's proposal, the agency noted that the protester's proposal "does not state [] how it will meet this [DFARS clause 252.225-7040] requirement, nor that it actually will, in fact, meet it." Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 13. IAP asserts that the evaluation standard applied by the agency is found not in the plain language of the

⁴ IAP concedes that its proposal does not mention this clause. Protest at 10 (noting that "[i]t is true that IAP's proposal does not specifically mention this DFARS clause").

contemporaneous agency evaluation, but rather in the explanation of the evaluation provided by the contracting officer in the agency report. Comments at 5. The protester asserts that, by this standard, the awardee's proposal should also have been assessed a deficiency because CACI's proposal merely referenced this DFARS clause, without explaining how CACI would satisfy this requirement. Comments at 3-4.

The protester's reliance on the language in the combined contracting officer's statement of fact and memorandum of law is misplaced. The contemporaneous evaluation assessed the protester's proposal a deficiency for its failure to reference the applicable DFARS clause. The agency's evaluation contained no requirement that the offeror's proposal provide a detailed explanation of how the offeror proposed to meet the requirement. See AR, Tab 12, Agency Evaluation of IAP's Proposal, Technical Approach Subfactor, at 14. In reviewing whether an agency's procurement decision was reasonable and consistent with applicable law, regulation, and the terms of the solicitation, we consider the agency's contemporaneous evaluation record. Unisys Corp., B-406326 et al., Apr. 18, 2012, 2012 CPD ¶ 153 at 14 n.14. The contemporaneous evaluation record supersedes any conflicting statements by the contracting officer in the agency report. See id.

In sum, the protester does not challenge the following three facts: IAP's proposal does not reference DFARS clause 252.225-7040; the awardee's proposal referenced that clause and committed to compliance with its terms; and the contemporaneous agency evaluation assessed the protester's proposal, but not the awardee's, with a deficiency for failure to reference that clause. The evaluation does not evidence disparate treatment, where the differing evaluation ratings are based on substantive differences in the offerors' proposals.⁵ See ASRC Commc'ns, Ltd., supra. Further, although the protester may nonetheless believe that CACI's proposal did not provide sufficient information with respect to PWS ¶ 1.7.10, this represents nothing more than IAP's disagreement with the agency. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 16. We see no basis on which to question the reasonableness of the evaluation of either proposal.

⁵ Similarly, IAP asserts that CACI's proposal should have been assessed a deficiency for failure to explain how it would comply with the requirements of DFARS clause 252.225-7043 under PWS ¶ 1.7.11. Comments at 5. CACI's proposal stated that, with respect to PWS ¶ 1.7.11, all of CACI's anti-terrorism/operations security compliance, laws, regulations, and requirements would be in accordance with DFARS clause 52.225-7043. AR, Tab 34a, CACI Technical Proposal, Technical Approach Subfactor, at 18. Likewise, IAP's proposal referenced compliance with DFARS clauses 252.225-7043. AR, Tab 26a, IAP Technical Proposal, Technical Approach Subfactor, at 9. For the reasons stated above, we also find this evaluation is reasonable and does not evidence disparate treatment. See ASRC Commc'ns, Ltd., supra; Engility Corp. supra.

PWS ¶ 7.0, Requiring Three Quotations Prior to Purchase

The agency concluded that both IAP and CACI met the requirements for PWS ¶ 7.0 concerning purchasing required material under the task order. IAP asserts that the agency unreasonably failed to assess a deficiency in CACI's proposal for failure to address the PWS requirement that, when making material purchases, the contractor shall endeavor to obtain three quotations or document why this was not done. Comments at 5-6, citing PWS ¶ 7.0. The agency contends, however, that IAP's proposal was no more explicit than CACI's regarding how it would meet this requirement, and that the agency's evaluation reasonably failed to assess neither proposal a deficiency for failure to meet this requirement. Agency's Response to Protester's Comments at 5, citing AR, Tab 26a, IAP Technical Proposal, Technical Approach Subfactor, at 36-37.

The agency's evaluation states that the protester's proposal "meets the requirement and indicates an adequate understanding of the requirements by proposing that the contractor shall endeavor to obtain 3 quotes or must document why this was not performed." AR, Tab 12, Agency Evaluation of IAP's Proposal, Technical Approach Subfactor, at 13. As the agency notes, nowhere in its technical proposal does IAP explicitly state that it will meet this requirement. Agency's Response to Comments at 5 (citing to AR, Tab 26a, IAP Technical Proposal, Technical Approach Subfactor, at 36-37). Nevertheless, given the purchasing experience that the protester demonstrated in its proposal, the agency asserts that it reasonably concluded that the protester's performance would, in fact, conform to this requirement. Id.

The agency's evaluation of CACI's proposal under this same requirement found that the awardee's proposal "meets requirements and indicates an adequate approach and understanding of the requirements when purchasing materials, to obtain 3 quotes or document why it was not done." AR, Tab 8, Agency Evaluation of CACI's Proposal, Technical Approach Subfactor, at 12 (citing to AR, Tab 34a, CACI Technical Proposal, Technical Approach Subfactor, at 38). CACI's proposal stated that it uses a procurement system that is approved and certified by the Defense Contract Management Agency (DCMA) in accordance with PWS ¶ 7.3, Approved Purchasing Plan, and that this system is used to manage the procurement process of material purchases. AR, Tab 34a, CACI Technical Proposal, Technical Approach Subfactor, at 38-39. Although the protester may believe that CACI's proposal did not provide sufficient information here, this represents nothing more than IAP's disagreement with the agency's judgement. Accordingly, we see nothing unreasonable in the agency's conclusion that the awardee's proposal also met this requirement.⁶

⁶ Again, the protester asserts that the GAO should impose a more stringent standard than is contained in the agency's contemporaneous evaluation. See Protester's Reply to Agency's Response to Comments at 7. As we have noted, however, the agency's "announced standard" is found in the contemporaneous evaluation record, not in the

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PWS ¶ 7.1, Requiring a Bill of Materials

Finally, the protester argues that CACI's proposal should have been assessed a deficiency for failure to address the requirement under PWS ¶ 7.1 that all purchase requests contain a bill of materials. Comments at 6-7; Protester's Reply to Agency's Response to Comments at 5-6. Evaluating CACI's proposal under that requirement, the agency found that it "meets the requirement and indicates an adequate approach and understanding of the requirement." AR, Tab 8, Agency Evaluation of CACI Proposal, Technical Approach Subfactor, at 12 (citing to AR, Tab 34a, CACI Technical Proposal, Technical Approach Subfactor, at 38). As the agency explains, CACI's proposal stated that its procurement system is approved and certified by DCMA. Agency's Response to Comments at 6 (citing to AR, Tab 34a, CACI Technical Proposal, Technical Approach Subfactor, at 38). Moreover, CACI's proposal states that CACI's procurement system allows for the import of bill of materials data and "allows the authorization requirements of PWS [¶] 7.1 to be fully and transparently implemented." Id. (quoting AR, Tab 34a, CACI Technical Proposal, Technical Approach Subfactor, at 39). We see no basis on which to question the reasonableness of the agency's determination that the awardee's proposal met this requirement.

In contrast, the agency asserts that IAP's proposal failed to address PWS ¶ 7.1. Agency's Response to Comments at 6. The agency's evaluation of the protester's proposal found it "deficient in proposing that if applicable all purchase requests shall contain a Bill of Materials as required. The proposal does not reference PWS [¶] 7.1 throughout the proposal." AR, Tab 12, Agency Evaluation of IAP's Proposal, Technical Approach Subfactor at 13. The protester asserts that the agency ignored the extensive detail in IAP's proposal about its ordering process and that the only difference between the two competing proposals is that CACI's proposal used "the magic phrase 'Bill of Materials.'" Protester's Reply to Agency's Response to Comments at 6. The protester ignores the claim in CACI's proposal that CACI's procurement system can comply with all PWS ¶ 7.1 requirements. Moreover, the protester fails to point to a specific portion of its proposal where it communicates the same capability to the agency. Given that CACI's proposal stated that its procurement system allows the authorization requirements of PWS ¶ 7.1 to be fully and transparently implemented, while IAP's proposal failed to address that requirement, we see nothing disparate or unreasonable in the agency's evaluation of the offerors' proposals.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

combined contracting officer's statement and memorandum of law. See id. (arguing that the agency report has announced a standard that "all PWS requirements must be fully addressed").