



Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Matter of: Ace Info Solutions, Inc.

File: B-414650.10; B-414650.14

Date: May 21, 2018

David B. Dixon, Esq., John E. Jensen, Esq., Travis L. Mullaney, Esq., and Robert Starling, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.
Richard P. Rector, Esq., Dawn E. Stern, Esq., and Eric P. Roberson, Esq., DLA Piper LLP (US), for Insero Corporation, the intervenor.
Gabriel E. Kennon, Esq., and Christopher M. Alwood, Esq., Department of Homeland Security, for the agency.
Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the awardee's past performance is sustained where the record shows that the evaluation contained material errors and was not adequately documented.

DECISION

Ace Info Solutions, Inc., a small business located in Reston, Virginia, protests the issuance of a task order to Insero Corporation, a small business located in Vienna, Virginia, under request for quotations (RFQ) No. HSCETC-17-Q-00010, issued by the Department of Homeland Security (DHS) for information technology operations support services (ITOSS). The protester argues that the agency unreasonably evaluated Insero's past performance, unreasonably and unequally evaluated Insero's and Ace Info's management and technical approaches, and assigned unreasonable adjectival ratings to Ace Info's quotation.

We sustain the protest.

BACKGROUND

On March 31, 2017, DHS issued the RFQ, which consolidated seven separate ITOSS task orders into one task order under DHS's Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) II indefinite-delivery, indefinite-quantity (IDIQ) multiple-award

contract vehicle. The effort solicited includes the provision of a service desk, information technology (IT) field operations, cabling, video teleconferencing, hardware/maintenance, deployment, and financial/travel system support services, all in support of the U.S. Immigration and Customs Enforcement (ICE) Office of the Chief Information Officer (OCIO) Operations Division.

The RFQ anticipated that the resulting task order would be a hybrid fixed-price, time-and-materials, and labor-hour task order with a 12-month base year and three 12-month option years. RFQ at 1.¹ The solicitation called for the evaluation of four factors, in descending order of importance: management approach, technical approach, past performance, and price. Id. at 10. The non-price factors, when combined, were significantly more important than price. Id.

Under the management approach factor, the RFQ contemplated the evaluation of the degree to which each vendor's management approach reflected "an effective, efficient, feasible, and practical level of understanding of the operating environment and management methods for accomplishing the tasks and deliverables of the [performance work statement (PWS)], with minimal risk, and innovative and cost effective ideas." Id. at 11. The agency stated it would also evaluate each vendor's project management strategy, including indicators showing how the project would be implemented and the vendor's ability to manage resources and multiple groups of stakeholders. Id.

For the technical approach factor, the RFQ contemplated the evaluation of: (1) the extent to which each vendor's quotation demonstrated the knowledge, skill, and ability to fulfill relevant PWS requirements, (2) the extent to which the quotation demonstrated an understanding of IT operations challenges and convincingly justified how the vendor's approach would solve such challenges, and (3) the quotation's recommendations for improvements in knowledge management, remote support, and user self-help. Id. at 13.

For past performance, the RFQ contemplated the evaluation of the breadth and depth of each vendor's relevant experience on projects of similar size, scope, and complexity. Id. at 14. The agency stated that the past performance evaluation would only examine contract efforts from the last three years that have been performed by the vendor, its subcontractor, or a combination of both. Id. The RFQ noted that each vendor should have at least one past performance effort of its own that relates to the ITOSS requirement. Id. Additionally, the solicitation provided "technical scope" criteria, which consisted of six types of experience that would be evaluated for each reference. Id. The RFQ sought past performance efforts that demonstrated experience with five of the six technical scope criteria. Id.

¹ Unless otherwise indicated, citations to the RFQ refer to the amended RFQ provided in Tab 25 of the agency report (AR).

On May 8, the agency received a total of 11 quotations from interested vendors, including quotations from Insero and Ace Info. On September 29, following discussions and the submission of revised quotations, DHS issued a task order for the ITOSS requirement to Insero. Following the issuance of the task order, our Office received protests from several vendors, including Ace Info. DHS subsequently agreed to take corrective action by conducting another round of discussions and permitting vendors to submit revised quotations.

Following the submission of final quotations from 10 vendors,² the agency evaluated the quotations of Insero and Ace Info as follows:

	Insero	Ace Info
Management Approach	Excellent	Excellent
Technical Approach	Excellent	Good
Past Performance	Substantial Confidence	Substantial Confidence
Total Price	\$192,261,426	\$176,130,590

AR, Tab 332, Source Selection Decision Memorandum (SSDM), at 1, 19-22.

On January 31, 2018, the agency reaffirmed its decision to issue the subject task order to Insero, finding that Insero’s quotation conformed to all solicitation requirements and provided the best value to the agency. Id. at 26. This protest followed.³

DISCUSSION

The protester argues that the agency’s evaluation of Insero’s past performance contained material errors and departed from the evaluation criteria. Ace Info also argues that the agency unreasonably and disparately evaluated Insero’s non-price quotation. The protester further contends that DHS erred in assigning adjectival ratings to its quotation that were inconsistent with the definitions provided in the solicitation. While we do not address in detail every argument raised by Ace Info in its protest, we have reviewed each issue and, with the exception of the challenges to the agency’s past performance evaluation discussed below, we do not find any basis to sustain the protest.⁴

² One vendor withdrew its quotation.

³ The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

⁴ For example, the protester argues the agency unequally assigned a strength to Insero’s quotation for its proposed hardware warranty administration approach, when Ace Info proposed a similar approach involving two of the same IT tools. Of relevance to this argument, DHS found that “Insero’s ITOSS technical support model offer[ed] a
(continued...)

With respect to the agency's past performance evaluation, Ace Info argues that the agency's assessment mistakenly switched the background sections for two of Inserso's contract references. Ace Info also challenges the agency's post-protest correction of this error, which the protester contends resulted in the confidence rating for the two contracts at issue being changed. The protester argues that--contrary to the agency's contention that this was a "harmless 'copy and paste' error"--the record shows that the agency relied on materially incorrect information in both its past performance evaluation and its best-value tradeoff determination. Comments at 15.

Responding to this argument, the agency concedes that there was an "inadvertent error in Inserso's past performance evaluation documentation that resulted in the background information for the first and third contract references being reversed in the evaluation document." Memorandum of Law (MOL) at 18. Relying on post-protest statements submitted by the Past Performance Evaluation Team (PPET) Chair and the source selection authority (SSA), however, the agency contends that the error did not affect the confidence ratings assigned to either reference, the overall confidence rating, or the SSA's analysis of Inserso's past performance. In this respect, the PPET Chair stated that the PPET was "aware and properly documented the size relevancy determinations in the background section for each contract," PPET Chair Statement at 2. The PPET Chair further represents that the confidence ratings given to the two contract references were "reasonably assigned." Id. at 3. The SSA, in turn, provided a statement representing that the error did not affect her review since "the PPET Chair confirmed that the documentation error did not affect the confidence ratings assigned to the contracts and confirmed that the Finding and Technical Scope evaluation was correct in all respects except for the notations regarding size." SSA Statement at 2.

(...continued)

well-defined method to address hardware warranty administrative functions," citing its proposed use of "ServiceNow's Discovery Module, semi-annual physical audits against Sunflower inventory reports, and locally maintained [IT field operations] inventory logs to ensure the continual accuracy of the OCIO's asset inventory." AR, Tab 320, Technical Evaluation Team (TET) Consensus Report, at 19. The protester argues that it should receive a similar strength because it proposed to have its technicians use Sunflower and ServiceNow to "keep inventory and thorough documentation." AR, Tab 260, Ace Info Quotation Vol. I, at 92. Responding to this assertion, the TET Chair provided our Office with a statement, which explained the agency's basis for not assigning a strength based on Ace Info's proposed approach, specifically noting that the TET found that approach to be less comprehensive than Inserso's. See TET Chair Suppl. Statement at 2. For example, Inserso's approach, unlike Ace Info's, proposed additional measures to ensure the accuracy of the OCIO's asset inventory--beyond simply proposing the use of the two IT tools--such as semi-annual physical audits and locally maintained inventory logs. See id. Based on our review of the record, we find the agency's assessment to be unobjectionable in light of DHS's reasonable differentiation between the vendors' differing approaches.

Where a protester challenges the past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations, and to ensure that the agency’s rationale is adequately documented. Patricio Enters., Inc., B-412740 et al., May 26, 2016, 2016 CPD ¶ 152 at 7. In reviewing an agency’s evaluation, we accord much greater weight to contemporaneous source selection materials than to representations made in response to protest contentions. Celta Servs., Inc., B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 9. Further, we give little weight to post hoc statements that are inconsistent with the contemporaneous record. Caddell Constr. Co., Inc., B-411005.1, B-411005.2, Apr. 20, 2015, 2015 CPD ¶ 132 at 11.

Based on our review of the contemporaneous record here, we conclude that the agency made substantial errors in evaluating Inerso’s past performance and, as a result of these errors, failed to document a reasonable basis for its evaluation. In this regard, the PPET report evidences that the agency switched the background information for Inerso’s first and third contract references, listing the latter in place of the former and vice versa. DHS then compounded this error by expressly relying on the wrong information in the remainder of the PPET report. For example, the PPET report contains the following summary table:

Contract Reference Number	Contract #	Recent	Size	Scope	Complexity	PPQ Final Rating
1	FA3047-12-D-0005 DHA	Yes	\$80M Partial	Partial	Partial	Satisfactory Confidence
2	[DELETED]	Yes	\$292M Yes	Partial	Partial	Substantial Confidence
3	W81K04-13-D-0023 AFCEC ⁵	Yes	\$96.4M Yes	Partial	Partial	Substantial Confidence

AR, Tab 320, TET Consensus Report, at 24. The agency concedes that, for contract reference numbers one and three, the contract numbers and the size values are incorrect, because they are based on the swapped background information. For the “Recent,” “Scope” and “Complexity” columns, the values are the same for the first and third contract references, such that reliance on the incorrect background information did not result in incorrect values being listed.

The agency repeated this mistake in the PPET report’s finding sections, which are the only sections of the report that explain DHS’s basis for its assignment of confidence ratings to the two contract references. In these sections, DHS expressly based its confidence ratings for the first and third contract references on the incorrect size information. See id. at 26, 32.

⁵ Air Force Civil Engineer Center

As a result of these errors, substantial portions of the PPET report are either inaccurate or are based upon inaccurate information, including those portions of the report where the agency documented its rating determinations. See generally PPET Chair Statement Attach. 2, Redlined PPET Report, at 1-11. We further note that the SSA, in turn, relied on these findings in the source selection decision, even citing the incorrect size information for Inserso's first and third past performance references in the tradeoff section. See AR, Tab 332, SSDM, at 22.

The above demonstrates that the contemporaneous record is inconsistent with the post-protest statements provided by the agency, which attempt to downplay the agency's reliance on the incorrect size information. We therefore give little weight to the agency's post hoc representation that it would have reached the same result even if the PPET had considered the correct size information. See Celta Servs., Inc., supra. Further, we note there is reason to question the correctness of this representation. For example, while the agency contends that it would have assigned a substantial confidence rating to the third contract reference, which received outstanding past performance questionnaire (PPQ) ratings but was only partially similar in size, scope, and complexity to the instant requirement, it contemporaneously assigned only a satisfactory confidence rating to a contract reference (reference number one) that it believed had similarly received outstanding PPQ ratings but was only partially relevant in size, scope, and complexity. See AR, Tab 320, TET Consensus Report, at 26. It is therefore not clear from the contemporaneous evaluation record what a past performance evaluation that considered the correct size information would have concluded.

The protester additionally challenges DHS's determination that Inserso's contract with AFCEC (reference number three) was partially similar in size to the instant requirement. In this regard, the protester notes that the AFCEC contract, which received a substantial confidence rating, had an approximate annual value of \$13 million a year, which is only about 27 percent of the value of the instant procurement.

In response to this argument, the agency argues that its consideration of size was not limited to the dollar value of the contract. In support of this assertion, the agency cites a response provided to vendors prior to the submission of final quotations, where DHS was asked to "define the value of Similar Size as it applies to the Past Performance evaluation." AR, Tab 71, RFQ Amend. 4, Questions and Answers (Q&A), at 3. Answering this question, the agency stated "ICE is evaluating whether the requirement is similar in size to the requirements of the ITOSS contract (i.e.--supporting approximately 30,000 plus users X 365 days across all functional requirement areas)." Id. The agency argues that since its consideration of size was not limited to dollar value, it reasonably found the AFCEC contract to be partially similar in size based on similar features to the instant requirement, specifically, the combination of more than 10 different contracts into a single services contract, the contract being based in four different geographic locations, and the contract being rated similar in nearly every technical scope criterion.

As an initial matter, we note that this explanation is unsupported by the contemporaneous evaluation record. In this respect, the PPET report does not mention the contract features touted by DHS in its legal memorandum, nor are these features cited in the post-protest statement provided to our Office by the PPET Chair. Additionally, as noted above, the PPET report contained and relied on incorrect size information for this contract reference, belying any contention that the agency conducted a careful and considered assessment of the size of the AFCEC contract.

Further, the features highlighted by the agency in its legal memorandum (the four different geographic locations and the combination of 10 different contracts) are not considerations that the agency mentioned in its Q&A answer. In that response, the agency expressly pointed to other considerations, such as the number of users supported and the time period in which these users were supported across all of the functional requirement areas. Of relevance to the foregoing considerations, the record shows that the number of users being supported in the AFCEC contract was 2,600, which is a small fraction of the 30,000 users the agency envisioned would be supported in the ITOSS requirement. See AR, Tab 320, TET Consensus Report, at 26.

In view of the above, we conclude that the agency has failed to provide a reasonable explanation for its determination that the AFCEC contract was partially similar in size to the instant requirement. Missing from the contemporaneous record is a meaningful explanation for the agency's assessment, an omission that is significant in light of the large size discrepancy (both in dollar value and in number of users supported) between that contract and the ITOSS requirement.

Finally, the protester challenges the agency's determination that Inerser's performance of the AFCEC contract demonstrated experience with five of the six technical scope criteria.⁶ The agency and the protester agree that the AFCEC contract did not meet one of the criteria, but disagree regarding whether the contract also did not meet a second technical scope criterion, i.e., "[a]dapting to changes in processes or technology by

⁶ The protester argues that the RFQ statement that "[i]n addition, the past performance effort demonstrate experience with at least 5 of the 6 . . . technical scope criteria," RFQ at 14, should be construed as a threshold requirement that each past performance effort had to meet to be considered. The agency, in contrast, asserts that the above RFQ statement is more reasonably interpreted as meaning that an effort would be "evaluated positively" if it demonstrated experience with at least five of the six technical scope criteria. MOL at 16 (citing RFQ at 14). Here, we view the RFQ language in question as patently ambiguous since the language appears incomplete on its face, and both the agency and the protester suggest reasonable interpretations of what was intended by the provision. Where, as here, a patent ambiguity is not challenged prior to submission of solicitation responses, we will not consider subsequent untimely arguments asserting the protester's own interpretation of the ambiguous provision. Shertech Pharmacy Piedmont, LLC, B-413945, Nov. 7, 2016, 2016 CPD ¶ 325 at 4 n.2. Accordingly, for purposes of this decision, we adopt the interpretation espoused by the agency.

delivering refresher staff training, adjusting quality and other performance standards, and reviewing and updating knowledgebase content.” RFQ at 14. Ace Info notes that the agency’s determination that the contract demonstrated experience under this criterion is inconsistent with Inerso’s quotation, which represented, in a summary table within the past performance volume, that the AFCEC contract did not demonstrate such experience. See AR, Tab 288, Inerso Quotation Vol. II, at ii.

Responding to this argument, the agency asserts it reasonably determined that the AFCEC contract demonstrated experience “adapting to changes in process or technology,” based on the narrative information provided in both Inerso’s quotation and the PPQ response the agency received for the contract. MOL at 19. The agency notes, for instance, that the quotation demonstrated that Inerso “dealt with change because [the AFCEC contract] combined five different vendor contracts into a single support services contract.” Id. DHS also notes that the PPQ response praised Inerso’s “willingness to adapt with the changes imposed by the government,” including various reorganizations and new movements and implementations. AR, Tab 114, Inerso AFCEC PPQ Response, at 5.

Based on our review of the evaluation record, we agree with the protester that the agency has not adequately documented the basis for its conclusion that the AFCEC contract demonstrated experience with the above technical scope criterion. In this regard, the applicable criterion sought experience “[a]dapting to changes in processes or technology by delivering refresher staff training, adjusting quality and other performance standards, and reviewing and updating knowledgebase content.” RFQ at 14. None of the narrative portions cited by the agency in its legal memorandum discussed or related to delivering refresher staff training, adjusting performance standards, or reviewing and updating knowledgebase content. Moreover, the PPET report did not mention any such experience. And, as noted by the protester, Inerso, itself, represented that the AFCEC contract did not meet the applicable technical scope criterion. Despite all this, the agency found that Inerso fully met the criterion, explaining only that: “[y]es--Inerso had to adapt to changes in the contract.” See AR, Tab 320, TET Consensus Report, at 33. We are unable to determine from this explanation whether the basis for the agency’s conclusion was reasonable.

PREJUDICE

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17.

Here, but for the above discussed errors, the agency might have rated the awardee’s past performance substantially lower, thereby reducing the gap between the two vendors’ overall technical standing. This decrease could have resulted in a different best-value tradeoff determination, particularly given that the protester’s quotation was

lower-priced than Inserso's. In such circumstances, we resolve any doubts regarding prejudice in favor of the protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.-- Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that Ace Info has established the requisite competitive prejudice to prevail in its bid protest.

RECOMMENDATION

We recommend that the agency reevaluate Inserso's quotation in a manner consistent with the terms of the solicitation and the discussion above, and make a new source selection decision based on that reevaluation. We also recommend that the agency reimburse Ace Info its reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Thomas H. Armstrong
General Counsel