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# Decision

**Matter of:** MacAulay-Brown, Inc.

**File:** B-417159

**Date:** March 13, 2019

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Jason A. Carey, Esq., J. Hunter Bennett, Esq., and Brooke G. Stanley, Esq., Covington & Burling, LLP, for the protester.

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## DIGEST

Protest that the agency improperly assessed a deficiency to the protester's proposal is denied, where the agency reasonably concluded that the proposal did not substantively address a solicitation requirement.

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## DECISION

MacAulay-Brown, Inc., of Dayton, Ohio, protests the award of a contract to Parsons Government Services Inc., of Pasadena, California, under request for proposals (RFP) No. W52P1J-19-R-0014, issued by the Department of the Army, for defensive cyberspace operations mission planning. MacAulay contends that the Army misevaluated its proposal, failed to conduct a price realism analysis, made an irrational best-value determination, and improperly used Federal Acquisition Regulation (FAR) subpart 13.5 procedures.

We deny the protest in part and dismiss it in part.

## BACKGROUND

The RFP provided for the award of a fixed-price contract to provide a mission execution framework that provides a real-time, dynamic network environment for cyber defenders to collaborate, understand, plan, manage, and execute defensive cyberspace

operations missions.<sup>1</sup> AR, Tab 2, RFP, at 2. The RFP contemplated a 5-year period of performance. AR, Tab 3, Statement of Work (SOW), at 6.

The RFP provided for award to the offeror whose offer represents the best value to the government based on an integrated assessment of an oral presentation, technical/management approach, and price. AR, Tab 11, RFP amend.1, attach. 3, Evaluation Factors for Award, at 1, 3. The oral presentation was significantly more important than the other two evaluation factors and technical/management approach was slightly more important than price. Id. at 3. The RFP advised offerors that any offer that was evaluated as unacceptable in terms of any of the evaluation factors might be rejected. Id. at 4. In addition, the RFP advised that any significant inconsistency between the offeror's oral presentation, technical/management approach, and proposed price, if unexplained in the offer, might be grounds for rejection of the offer as a result of the offeror's misunderstanding of the work required or an inability to perform any resultant work under the contract. Id.

The RFP stated that, under the technical/management approach factor, the agency would evaluate each offeror's methodology and approach to implementation of the solicitation requirements to ensure, among other things, that it is realistic and feasible, and that it will ensure minimum interruptions to installation operations caused by network outages. Id. at 6. In this regard, with respect to software infrastructure requirements, the RFP provided for a continuity of operations program (COOP) as follows:

The Contractor shall deliver subject matter expertise to support multiple armories in the event that COOP is implemented and services are moved to the backup location. Contractor support shall involve assisting in the performance of the responsibilities of the armory personnel to include System Administrator (SA)/[Defense Base Act (DBA)] responsibilities. The Contractor shall ensure that COOP servers are maintained at the proper level and that all cybersecurity controls are in place. The Contractor shall ensure specific duties/responsibilities and alternate work locations will be outlined in the [Defense Cyberspace Operations (DCO) standard operating procedures (SOP)] documentation ([to be determined]).

AR, Tab 3, SOW, at 17-18. The RFP also provided a list of 13 COOP tasks for which the contractor would be responsible. Id. at 18.

The Army received proposals from seven offerors, including MacAulay and Parsons. AR, Tab 35, Source Selection Decision Memorandum, at 3. The technical evaluation

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<sup>1</sup> The solicitation included cost-reimbursable contract line items for travel and training. Agency Report (AR), Tab 10, RFP amend. 1, attach. 2, Instructions for Offerors, at 11.

team found three proposals, including MacAulay's, to be unacceptable under the technical/management approach factor, and therefore not eligible for award. Id.

With respect to MacAulay's proposal, the evaluators assessed a deficiency for "fail[ing] to state within the offer any recognition of continuity planning and recovery options available to minimize interruptions to installation operations caused by network outages in the event that connectivity . . . [was] degraded or disrupted," as required by the RFP. AR, Tab 31, MacAulay Technical Evaluation, at 5. The evaluators concluded that MacAulay's proposal merited this deficiency, and an unacceptable rating, because its failure to acknowledge one of the SOW's functional requirements relating to COOP constituted a material failure to meet the government's requirements. Id. at 3, 5.

The technical evaluation team rated Parsons' proposal as outstanding under the technical/management approach factor and assessed two significant strengths, one strength, and no weaknesses or deficiencies to the proposal.<sup>2</sup> AR, Tab 32, Parsons Technical Evaluation, at 3. After evaluating the proposed prices of the three offerors eligible for award, the decision authority selected Parsons' proposal--which proposed the lowest price of \$37,067,999--as presenting the best value to the government. AR, Tab 35, Source Selection Decision Memorandum, at 9.

After receiving a debriefing, MacAulay protested to our Office.

## DISCUSSION

MacAulay argues that the Army unreasonably assessed a deficiency to its proposal and thus found its proposal unacceptable. Protest at 20-21; Comments at 11. MacAulay contends that the Army incorrectly concluded that its proposal failed to include "any recognition" of continuity planning and recovery options to minimize disruptions to operations. Protest at 20. MacAulay asserts that its proposal described its methodology for addressing network disruptions in detail. Id. at 21-22.

The Army states that MacAulay was assessed a deficiency for failing to provide any recognition of the COOP requirement. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 21. The agency explains that, although MacAulay's proposal generally describes prevention of network outages, the proposal does not align the description to the actual functional requirements of the SOW, including the functional tasks, and therefore merited a deficiency. Id. at 22. The agency also states that MacAulay failed to adequately describe its plan to support the COOP. Id. at 23.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. 22nd Century Techs., Inc.,

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<sup>2</sup> Both MacAulay and Parsons were rated as good under the oral presentation factor. AR, Tab 35, Source Selection Decision Memorandum, at 3.

B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 8. Rather, we will review the record only to assess whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. A protester's disagreement with an agency's judgment, without more, is insufficient to establish that an agency acted unreasonably. Watts-Obayashi, Joint Venture; Black Constr. Corp., B-409391 et al., Apr. 4, 2014, 2014 CPD ¶ 122 at 9. Moreover, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Dewberry Crawford Grp.; Partner 4 Recovery, B-415940.10 et al., July 2, 2018, 2018 CPD ¶ 297 at 13-14.

The protester points to numerous phrases in its proposal to support the position that it adequately addressed the requirement to minimize disruptions. Protest at 21. However, we do not find that these phrases show that the agency acted unreasonably in concluding that MacAulay failed to substantively address continuity planning and recovery operations.

For example, MacAulay asserts that its proposal stated that "the company's team could draw on a 'deep breadth of talent and knowledge' for the 'upfront planning, risk identification and mitigation, solution testing, and implementation modeling and evaluation' needed to ensure that 'minimal to no interruptions to installation operations occur from network outages or the solution implementation.'" Id. This reference, however, cherry-picks from a paragraph in the proposal concerning the experience of MacAulay and its team members and provides no substance concerning the functional tasks related to the continuity of operations. See AR, Tab 23, MacAulay Technical Proposal, at 8. In another example, MacAulay asserts that its proposal stated that "the team would apply 'a rigorous system engineering process' to 'assess and mitigate potential interruptions.'" Protest at 21. However, the record shows that the protester has strung together phrases from two different paragraphs to support its position--one discussing the "Team MacAulay model" and the other discussing its system engineering process aligned with its [DELETED]. See AR, Tab 23, MacAulay Technical Proposal, at 8. Again, these disparate phrases do not demonstrate a coherent plan for addressing continuity of operations.

The record provides no basis to question the agency's evaluation of MacAulay's proposal. Accordingly, we deny this protest ground.

### Remaining Challenges

MacAulay also argues that the Army failed to evaluate the realism of offerors' prices as required by the solicitation. Protest at 16-19; Comments at 4-10. In this regard, MacAulay argues that Parsons submitted a "perilously" low price, and the agency should have found the price to be unrealistic and rejected the offer. Protest at 17-19; Comments at 5-9. The agency argues that although it was not required to do so, it nonetheless performed an analysis of the pricing to determine whether it was too low.

COS/MOL at 13-15. MacAulay also argues that the best-value decision is irrational because the underlying evaluation was flawed. Protest at 22; Comments at 13.

Under our Bid Protest Regulations, only interested parties may protest procurement actions by federal agencies. 4 C.F.R. § 21.1(a). That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it would not be in line for an award if its protest were sustained. TASC, Inc., B-412674.2 et al., Aug. 25, 2016, 2016 CPD ¶ 230 at 8.

The record shows that MacAulay was reasonably found technically unacceptable and therefore ineligible for award. Further, there were other offerors whose proposals were found to be technically acceptable and MacAulay has not challenged the technical acceptability of those offerors. Consequently, even if we found that MacAulay's remaining allegations had merit, the other acceptable offerors, rather than MacAulay, would be in line for award. Accordingly, we dismiss MacAulay's remaining allegations because it is not an interested party. See, e.g., MRI Techs., B-407421, B-407421.2, Dec. 28, 2012, 2013 CPD ¶ 17 at 13 (protester is not an interested party to challenge agency's price realism evaluation where the protester reasonably was found technically unacceptable).

#### Untimely Protest Ground

Finally, MacAulay argues that the Army improperly used the simplified acquisition procedures in FAR subpart 13.5 for this procurement. Protest at 23. As a general rule, FAR subpart 13.5 authorizes the use of simplified acquisition procedures for procurements of commercial items when the value does not exceed \$7 million. FAR § 13.500(a). Section 13.500(c) of the FAR raises the threshold for using simplified acquisition procedures to \$13 million for procurements of commercial items that facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.<sup>3</sup> FAR § 13.500(c). In addition, section 1641 of the National Defense Authorization Act for Fiscal Year 2017, Pub. Law No. 114-328, added cyber as a basis for using the simplified acquisition procedures authorized under FAR § 13.500(c). The Department of Defense subsequently issued a class deviation applicable to FAR § 13.500(c) to implement this statutory addition. See AR, Tab 50, Class Deviation No. 2018-O0018, attach. 1, at 5. Specifically, the class deviation permits defense agencies to use simplified acquisition procedures for acquisitions to facilitate defense

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<sup>3</sup> Section 13.500(c) provides that "[u]nder 41 U.S.C. [§] 1903, the simplified acquisition procedures authorized in [subpart 13.5] may be used for acquisitions that do not exceed \$13 million when--(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used . . . to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack." FAR § 13.500(c).

against cyber attack when the acquisition value does not exceed \$13 million. Id. at 23-24.

The Army asserts that FAR § 18.202 provides it the authority to use simplified acquisition procedures for procurements, such as this one, valued above the \$13 million limit imposed by FAR § 13.500(c), and modified by the above-referenced class deviation to include cyber.<sup>4</sup> Supp. MOL at 2-3. The Army also asserts that MacAulay's allegation that the agency improperly used simplified acquisition procedures is untimely. Id. at 3.

MacAulay argues that the Army has violated the limits set on the use of this authority in statute, in the FAR, and in the class deviation. Supp. Comments at 2. MacAulay contends that there is no language in FAR § 18.202 that independently authorizes agencies to raise the simplified acquisition threshold above the level set in FAR § 13.500(c). Id. Instead, FAR § 18.202 simply refers the reader to other FAR provisions that authorize the use of simplified acquisition procedures, such as FAR § 13.500(c). Id. In this regard, MacAulay notes that the final rule implementing FAR part 18 explains that it "provides a single reference to the acquisition flexibilities already available in the FAR." Id. at 3 (quoting FAR Case 2005-038, Emergency Acquisitions, 72 Fed. Reg. 46,343 (Aug. 17, 2007)).

We find MacAulay's challenge to the Army's use of simplified acquisition procedures for a procurement of this value (i.e., greater than \$13 million) is an untimely challenge to the terms of the solicitation. See 4 C.F.R. § 21.2(a)(1). The RFP advised offerors that the procurement would be conducted using simplified acquisitions procedures contained within FAR subpart 13.5. RFP at 2. Therefore, to be timely, MacAulay was required to file its protest of the use of simplified acquisition procedures by the closing date for receipt of proposals.

MacAulay acknowledges that this protest ground is a challenge to the terms of the solicitation, but asks that we consider the issue under our significant issue exception to the timeliness rules. Protest at 24. Under 4 C.F.R. § 21.2(c), our Office may consider a protest that raises issues significant to the procurement system. In this regard, what constitutes a significant issue is to be decided on a case-by-case basis. Cyberdata Techs., Inc., B-406692, Aug. 8, 2012, 2012 CPD ¶ 230 at 3. In order to prevent our timeliness rules from becoming meaningless, however, exceptions are strictly construed

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<sup>4</sup> Section 18.202 states, in relevant part, that the threshold for the authority to use simplified procedures for certain commercial items "may be increased when it is determined the acquisition is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, (See 13.500(c).)" FAR § 18.202(d).

and rarely used. Global Aerospace Corp., B-414514, July 3, 2017, 2017 CPD ¶ 198 at 7 n.7. We decline to consider the issue at this time.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel