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Decision

Matter of: Ausley Associates, Inc.

File: B-417509; B-417509.2; B-417509.3

Date: July 24, 2019

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Sharon L. Larkin, Esq., and James M. Larkin, Esq., The Larkin Law Group LLP, for CACI, Inc.--Federal, an intervenor.

Patrick G. Nelson, Esq., Rachel S. Sanders, Esq., Christopher C. Schwan, Esq., and Debra J. Talley, Esq., Department of the Army, 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 proposals and source selection decision is denied where record shows agency's evaluation and source selection were reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

Ausley Associates, Inc., of Lexington Park, Maryland, protests the issuance of a task order to CACI, Inc.-Federal, of Chantilly Virginia, under request for proposals (RFP) No. RS3-18-0035, issued by the Department of the Army for special electronic mission aircraft intelligence, surveillance and reconnaissance pilot and flight operations support services. Ausley argues that the agency miscalculated proposals and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP contemplates the issuance, on a best-value tradeoff basis, of a principally fixed-price task order under the Army's Rapid Response Third Generation (RS3) multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract. The awardee was to perform the services over a base year, two 1-year option periods, one 10-month option period, one 6-month option period to cover any extension under the RFP's

extension of services clause, and a final 14-day option to cover post-performance phase-out activities, considering price and several non-price considerations.¹ Proposals would first be evaluated as acceptable or unacceptable under a corporate experience factor. Among those proposals deemed acceptable under the corporate experience factor, the RFP provided that technical,² small business participation and price factors would be used to evaluate proposals and to make a best-value tradeoff decision, with technical being deemed significantly more important than price, and price being deemed significantly more important than small business participation.³ RFP at 17-18. The RFP provided that prices would be evaluated for reasonableness, compliance and completeness, but specifically advised that prices would not be evaluated for realism. RFP at 23.

In response to the solicitation, the agency received a number of proposals, including those of the protester and the awardee. The agency evaluated proposals, engaged in discussions, and solicited, obtained and evaluated final proposal revisions. Based on those actions the agency assigned both Ausley's and CACI's proposals acceptable ratings under the corporate experience factor and excellent ratings under the technical and small business factors. Agency Report (AR), exh. 30, Source Selection Decision Document (SSDD) at 4-9. The record also shows that Ausley proposed a total price of \$222,313,217, while CACI proposed a total price of \$197,195,790. *Id.* at 10. Based on these evaluation results, the agency determined that, as between Ausley and CACI, CACI offered the best value to the government; the agency ultimately selected CACI for award. *Id.* at 19, 25. After being advised of the agency's selection decision and requesting and receiving a debriefing, Ausley filed the instant protest.⁴

PROTEST

Ausley challenges various aspects of the agency's evaluation of proposals under the corporate experience, technical, and price evaluation factors. We have reviewed all of Ausley's allegations and find none of them meritorious. We discuss Ausley's principal

¹ The solicitation includes fixed-price contract line items numbers (CLINs), fixed-price level-of-effort CLINs for surge requirements, and cost-reimbursement CLINs for travel and other direct costs.

² The RFP provided that the technical factor had three areas of consideration, program management, comprehensive transition-in, and solutions to two scenarios included in the RFP. RFP at 20.

³ The RFP advised that the technical and small business participation factors would be rated using adjectival ratings of excellent, acceptable or unacceptable. RFP at 22-23.

⁴ The awarded value of the task order at issue exceeds \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority of Title 10 of the U.S. Code. 10 U.S.C. § 2304c(e)(1)(B).

allegations below. We note at the outset that, in reviewing protests challenging an agency's evaluation of 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 criteria, and applicable statutes and regulations. Technica LLC, B-417177 et al., Mar. 21, 2019, 2019 CPD ¶ 125 at 3. On this record, we have no basis to object to the agency's actions.

Corporate Experience

Ausley argues that the agency erred in finding the CACI proposal acceptable under the corporate experience evaluation factor. As noted, that factor was evaluated on a pass/fail basis, and the solicitation provided that the acceptability of a firm's proposal in this area was to be assessed based on affirmative responses to a list of five questions.⁵ Ausley's protest does not challenge whether, facially, the CACI proposal met this requirement, because the record shows that CACI performed what essentially was the identical requirement being solicited here from August, 2014 to March, 2016. AR, exh. 25, CACI Technical Proposal, at 8. Rather, Ausley argues that CACI's performance during that time was deficient from a qualitative standpoint, and the agency erred in crediting CACI with this corporate experience under the circumstances.

We find no merit to this aspect of Ausley's protest because it seeks to impose a requirement that the agency perform a qualitative assessment of CACI's corporate experience, even though the solicitation did not provide for such an evaluation. A corporate experience evaluation is distinct from an evaluation of past performance. Specifically, a corporate experience evaluation focuses on whether an offeror has actually performed similar work, while a past performance evaluation concerns the quality of the work. IBM Corporation, B-415798, Mar. 27, 2018, 2018 CPD ¶ 130 at 5.

⁵ The five questions were as follows:

1. Does the contractor have experience with contracts involving OCONUS ISR [outside the continental United States intelligence, surveillance and reconnaissance] pilot and flight operations support . . . ?
2. Was this experience in support of DoD [Department of Defense] military operations?
3. Did this experience consist of a similar size and scope of this requirement?
4. Did this experience include at least 1 year of experience over the past 5 years?
5. Was this experience gained as a corporate "entity" as defined in paragraph 2.3.2.1 [of the solicitation]?

RFP at 20.

As noted, Ausley argues only that the agency should have found the CACI proposal unacceptable because of its claim that there were qualitative issues concerning CACI's performance of the predecessor contract. However, the RFP did not require such an evaluation, and Ausley has not submitted any evidence to show that CACI did not, in fact, perform the predecessor contract, or that performance of that contract did not satisfy the requirements of the RFP for purposes of assigning CACI an acceptable rating under the corporate experience factor. We therefore deny this aspect of Ausley's protest.

Evaluation of CACI's Proposed Daily Rates

Ausley argues that the agency erred in failing to evaluate the adequacy of CACI's proposed compensation for pilots and flight operations managers (FOMs). According to Ausley, CACI proposed daily rates of compensation for its pilots and FOMs that are so low that they introduce an element of risk in connection with CACI's ability to recruit and retain personnel. Ausley therefore argues that the agency should have assigned a risk to the CACI proposal, which, in turn, should have negatively impacted its excellent rating under the technical factor, and more specifically, under the program management element of that factor.

We find no merit to this aspect of Ausley's protest. Although Ausley has couched this argument in terms of an alleged failure of the agency to perform an adequate technical evaluation, in point of fact, this allegation amounts to an argument that the agency failed to perform a price realism evaluation when assessing the awardee's proposed daily rates for pilots and FOMs. As noted, Ausley argues that CACI's daily rates for pilots and FOMs are too low to attract or retain qualified personnel; the very essence of a price realism evaluation amounts to an agency's review of the offerors' prices to determine whether they are too low.

As we have noted, in the context of a fixed-price contract, agencies may only conduct a price realism evaluation where the RFP calls for such an evaluation, that is, where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and also provides that a proposal may be rejected for offering prices that are too low. Lowe Campbell Ewald, B-411614, B-411614.2, Sept. 11, 2015, 2015 CPD ¶ 296 at 5-6. Here, again, the RFP expressly advised offerors that the agency would not evaluate prices for realism. RFP at 23. Accordingly, the agency was prohibited from conducting a price realism evaluation, as urged by Ausley. GlobalOpal, LLC, B-408414.7, B-408414.8, Mar. 19, 2014 2014 CPD ¶ 140 at 4. Simply stated, the fact that CACI's daily rates are low--or even below cost--does not provide a basis for our Office to object to the agency's evaluation here in light of the terms of the RFP, and the fixed-price nature of the contemplated task order. Lowe Campbell Ewald, supra, at 6. We therefore deny this aspect of Ausley's protest.

Evaluation of Staffing Approach

Ausley argues that the agency miscalculated CACI's staffing approach and unreasonably concluded that it was broadly equivalent to its staffing approach. In this connection, the record shows that both the protester and the awardee proposed similar staffing approaches. Both firms offered to use 42 pilot positions (which was in excess of the minimum of 39 pilot positions), and both firms also offered to rotate their pilots on a 60-day-on, 60-day-off schedule, thereby effectively requiring 84 total pilots to perform the requirement. Ausley argues that CACI did not have a full complement of pilots to ensure that it could achieve its proposed approach of using 84 pilots to fill the 42 pilot slots at the time it submitted its proposal, and that this should have negatively impacted the agency's evaluation of its proposal.

We find no merit to this aspect of Ausley's protest. The record shows that Ausley, the incumbent contractor for this requirement, identified a list of 84 pilots currently in its employ which it intended to use during performance of the contract. AR, exh 22, Ausley Final List of Pilots and FOMs. CACI identified a list of 8 pilots currently in its employ, and included signed letters of intent for an additional 52 pilots,⁶ for a total of 60 pilots.⁷ AR, exh. 26, CACI Staffing Plan. In addition, CACI represented in its proposal that it intended to recruit no less than 75 percent of the incumbent pilot staff to arrive at a sufficient number of pilots to perform the requirement, assuming a complement of 84 pilots. AR, exh. 25, CACI Technical Proposal, at 23.

⁶ There appears to be a discrepancy between the narrative portion of the CACI technical proposal and the staffing plan portion of the CACI proposal. The narrative in the technical proposal states that "to date" the firm has 7 pilots and 35 letters of intent, while the staffing plan identifies 8 CACI pilots and includes 52 letters of intent. Compare, AR, exh. 25, CACI Technical Proposal, at 24 with AR, exh. 26, CACI Staffing Plan. We infer that the narrative portion of the proposal was not updated when CACI submitted its final proposal revision, but in any case, the record shows that the CACI proposal, in fact, identified 8 CACI pilots and included 52 letters of intent.

⁷ Ausley takes issue with a number of the individuals submitting letters of intent, maintaining that some do not have appropriate current security clearances or, alternatively, that they are not qualified on the aircraft to be flown. According to the protester, these individuals should not have been considered by the agency as fulfilling the requirements of the solicitation.

The record shows that eight of the individuals submitting letters of intent are designated as "eligible" to be rated as approved to fly the aircraft in question, and an additional 5 individuals are designated as "secret eligible" for purposes of obtaining a security clearance. AR, exh. 26, CACI Staffing Plan. Even if these individuals were not eligible to perform as of the date the task order is issued, CACI would still have 47 pilots that are eligible to perform as of the date the task order is issued, more than would be necessary for it to meet its proposed obligation to use 42 pilots for its initial 60-day rotation.

In support of its ability to recruit the incumbent staff, CACI pointed out in its proposal that it had successfully recruited approximately 80 percent of the incumbent staff when it performed this same requirement in 2014-2016. AR, exh. 25, CACI Technical Proposal, at 23. CACI therefore represented that it would have 100 percent of the staff necessary to perform the requirement by day 30 of the contemplated 60-day transition period, id. at 24, so that it would be ready to commence performance on day 61, which the RFP identified as the point in time for full performance of the contract. RFP at 10.

Ausley's protest essentially amounts to an argument that it was unreasonable for the agency to have considered the two firms' proposed staffing approaches broadly comparable, given that Ausley actually has all the necessary pilots in its employ, whereas CACI will have to hire at least some of the pilots it requires in light of its technical approach. However, the record shows that the agency recognized this difference between the two firms' proposals--and identified the Ausley proposal as slightly superior--but ultimately concluded that the slight superiority of the Ausley proposal did not merit the added cost associated with issuing the task order to the firm. The agency's SSDD specifically found as follows:

Both offerors proposed the same level of support in the number of pilots and site leads, though I consider Offeror C's [Ausley's] very low transition-in risk to be slightly lower than that of Offeror E [CACI]. Offeror E has sufficient personnel committed to this effort for the near-term and a reasonable hiring plan to meet the requirements of hiring to become fully staffed in the long-term. The benefit of a very low-risk Transition-In is limited to the base period, primarily to the Transition-In period and a few months beyond. Although Technical, Section 2, is significantly more important than price, I do not deem there to be sufficient benefit to Offeror C's proposal over Offeror E's proposal to deem paying a price premium of 12.74%, as in the Government's best interest.

AR, exh. 30, SSDD, at 19. The record therefore shows that the agency clearly understood the difference between the proposals, but resolved that the cost premium associated with Ausley's proposal was not worth the slight technical superiority associated with its proposal.⁸ On this record, we have no basis to object to the agency's actions. We therefore deny this aspect of Ausley's protest.⁹

⁸ Ausley also suggests that the agency failed to consider the risk associated with the possibility that CACI will not succeed in hiring the incumbent pilots. Whether CACI, in fact, is successful in hiring the incumbent pilots relates to CACI's actual performance of the task order, and thus is a matter of contract administration, not properly for our consideration. 4 C.F.R. § 21.5(a); Nolij Consulting, LLC, B-417328.3, June 25, 2019, 2019 CPD ¶ 233 at 4-5.

⁹ In a related argument, Ausley maintains that the agency erred in assigning both CACI's proposal and its proposal a significant strength for having pilots serve as

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Surge Staffing

Finally, Ausley argues that the agency failed reasonably to evaluate CACI's approach to meeting the solicitation's requirement for surge staffing. In this connection, the RFP required offerors to propose a method for meeting possible surge requirements that go beyond the anticipated requirements included in the base requirements (essentially services that would require using more than the anticipated 42 pilot positions discussed above). Ausley makes two arguments in this connection. Ausley's first argument largely is derivative of its other arguments, namely, that because CACI needs to hire some of the pilots necessary to meet the base requirement, its proposed use of off-rotation pilots to meet immediate surge requirements is risky because these pilots may not even be available.

Second, Ausley argues that the agency treated the offerors disparately because both firms offered to meet surge requirements, in part, by using third-party contractors. Ausley notes that, during discussions, the agency criticized it for proposing to meet surge requirements using a subcontractor without explaining in its proposal whether the subcontractor pilots would be paid the same daily rates as the rates being paid to Ausley's own pilots, or how Ausley would integrate the subcontractor pilots into its organization. Ausley argues that CACI also proposed to use a third-party vendor to provide surge capability, but did not show that those pilots would be paid the same rate as CACI's own pilots, or explain how they would be integrated into the CACI organization.¹⁰

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proposed site leads. According to Ausley, CACI's proposal identified two site leads that are not qualified as pilots.

This aspect of Ausley's protest is without merit. The portion of the CACI proposal relied on by Ausley in support of this argument is a chart detailing CACI's core planning cell (essentially a group dedicated to planning for surge requirements), not its operational groups. AR, exh. 25, CACI Technical Proposal, at 27. The site leads in this group are not the site leads for the operational groups to be deployed. Elsewhere in CACI's proposal, the firm identifies its site leads for its operational groups as pilots included in the total number of pilots deployed at each location. *Id.* at 12, 19.

¹⁰ As noted, the RFP also contemplated that offerors would provide responses to two scenarios. AR, exh. 17, RFP Attachment 11, Scenarios. Ausley largely rehashed its arguments relating to CACI's ability to respond to surge requirements in its challenge to CACI's response to the two scenarios in a supplemental protest allegation. The agency provided a response to this allegation, and in its final comments, Ausley did not provide a substantive response to the agency's position. We find this aspect of Ausley's protest abandoned. Yang Enterprises, Inc., B-415923, Mar. 12, 2018, 2018 CPD ¶ 109.

We deny this aspect of Ausley's protest. First, as discussed at length above, the record shows that CACI's approach to staffing all 84 pilot positions was reasonably evaluated by the agency, and while the agency concluded that there was more risk inherent in CACI's approach compared to Ausley's approach (because Ausley already had all 84 pilots in its employ, whereas CACI would need to hire some of the incumbent pilots), Ausley's approach did not merit the cost premium associated with its proposal. Whether, in fact, CACI succeeds in hiring the incumbent pilots is a matter of contract administration, which is not for review by our Office. 4 C.F.R. § 21.5(a).

Second, there is no basis for our Office to find that the agency treated the firms disparately in connection with their respective proposals to use third-party concerns as part of their response to the surge requirements. Ausley proposed to use a subcontractor as part of its response to meeting the surge requirement. In contrast, CACI proposed to use a corporate-wide vendor agreement it has available for not just this contract, but potentially other CACI contracts as well. CACI's proposal provides as follows:

Finally, Team CACI-USS has a formal corporate-wide vendor agreement for other contracts with industry partner [deleted], which currently employs at least 75 [deleted] type rated pilots, to serve as an auxiliary source for aviation staffing requirements. Should staffing shortages arise during the OCONUS surge staffing, following the implementation of approaches detailed above, then this vendor agreement will be exercised on SEMA ISR [the task order being solicited] to resolve the staffing shortages and further reduce risk.

AR, exh. 25, CACI Technical Proposal, at 18. In effect, the record shows that CACI has an agreement with [deleted] to provide what amounts to [deleted] pilot services based on this preexisting contractual arrangement, rather than using a subcontractor. Accordingly, the concerns identified by the agency during discussions with Ausley were not pertinent to the technical approach taken by CACI. We therefore have no basis to object to the agency's evaluation of CACI's approach to staffing the surge requirement.

The protest is denied.

Thomas H. Armstrong
General Counsel