



Decision

Matter of: Piton Science and Technology, LLC

File: B-421473.5

Date: February 28, 2024

William S. Murphy, Jr., for the protester.

William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for Parker Tide Corporation, the intervenor.

Nicholas A. Richardi, Esq., Justin M. Wakefield, Esq., and Richard L. Hatfield, Esq., Department of the Treasury, for the agency.

Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated protester's proposal is denied where the evaluation is consistent with the solicitation and procurement law and regulation.

DECISION

Piton Science and Technology, LLC, a service-disabled veteran-owned small business of Oakton, Virginia, protests the issuance of a task order to Parker Tide Corporation, of Washington, D.C., under request for proposals (RFP) No. 5000153993, issued by the Department of the Treasury, Internal Revenue Service (IRS), to provide program support services for the IRS. Piton alleges that the agency unreasonably evaluated the protester's proposal and failed to conduct a valid price realism analysis.

We deny the protest.

BACKGROUND

On June 6, 2023, the IRS issued the RFP under the fair opportunity procedures of Federal Acquisition Regulation (FAR) subpart 16.5, seeking proposals from contractors holding General Services Administration Human Capital and Training Solutions (HCaTS) small business pool 2 indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab D.1, Conformed RFP at 1. The IRS sought to issue a single fixed-price task order to a contractor that would support program management tasks and perform federal background investigation support services. *Id.*; AR, Tab D.5, RFP

amend. 0004, attach. B, Performance Work Statement (PWS) at 2-4. The task order would have a 1-year period of performance with four 1-year option periods. RFP at 2. Award would be made to the offeror whose proposal represented the best value to the agency, considering the following factors: technical capability, prior demonstrated experience, management approach, and price. RFP at 58-60. The solicitation advised offerors that “technical and price are equally important.” *Id.* at 58.

Under the technical capabilities factor, offerors were to describe their “proposed methodology and personnel assumptions,” showing “a direct relationship between the approach and meeting the identified requirements listed in the PWS.” RFP at 58. The evaluation of proposals under the technical capabilities factor is not at issue in this protest.

Under the prior demonstrated experience factor, offerors were required to identify three previous or current contracts that were most similar in size, scope, and complexity to the current requirement. *Id.* The RFP defined “similar” as “contracts comparable in terms of such factors as duration, staffing of at least 150 contractor personnel cumulatively and simultaneously, and PWS requirements.” *Id.* Proposals were to include a cross reference between the contract references and the PWS requirements. *Id.* Specifically, the RFP required offerors to demonstrate experience conducting prescreening and adjudication tasks similar to those in the PWS. *Id.* The agency would “assess the degree to which the Offeror’s demonstrated experience (within the last five (5) years) is relevant to the requirements of the solicitation based on similarity in size, complexity and scope.” *Id.* Proposals that did not include three contract references and that did not illustrate how those three references were “similar and relevant to the requirements of this RFP” would be evaluated as not meeting the requirement. *Id.*

Under the management approach factor, offerors were required to identify how they would provide adequate, suitable, and qualified personnel with the skills necessary to perform the requirements of the PWS. *Id.* Key personnel were a component of this factor. *Id.* at 59. The offeror was to demonstrate the ability to offer qualified personnel by providing resumes for the key personnel, and those resumes were to include the proposed employee’s educational background and a work history demonstrating that the employee possessed the minimum years of experience. *Id.* The solicitation specified that “the resumes submitted must demonstrate key personnel possess the minimum years of experience.” *Id.* The RFP advised offerors that the agency would “evaluate the extent to which the submitted resumes for key personnel clearly demonstrate the ability to meet and achieve the requirements of the PWS as reflected by their experience with contracts/projects similar in size, scope, and complexity.” *Id.* As relevant to this protest, the PWS identified the contractor project manager as a key employee who “must have a minimum of 8 years of managerial experience related to Federal Personnel Security background investigation adjudication task and PWS Section 14.0 [Personnel Security Qualifications].” PWS at 12.

The resumes for key personnel were to be no longer than two pages. The technical proposal, excluding resumes and cover page, was limited to 45 pages. RFP at 57.

The RFP advised offerors that price proposals would be evaluated in accordance with FAR section 15.404-1(b)(2) to verify that the overall prices were fair and reasonable. *Id.* at 59. The agency advised that it might, at its discretion, conduct a price realism analysis for the limited purpose of assessing whether prices are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. *Id.* Lastly, the RFP advised offerors that the IRS would not assign factors adjectival ratings. *Id.* at 58. Rather, the agency would conduct a comparative analysis of proposals to select the offeror "that is best suited and provides the best value." *Id.*

The agency received three proposals from HCaTS small business pool 2 contract holders, including Piton and Parker Tide. AR, Tab E.2, Source Selection Decision (SSD) at 2. Under the prior demonstrated experience factor, the agency found that Piton's proposal did not demonstrate that the protester had simultaneously employed 150 employees in requirements of similar scope. *Id.* at 5. The agency found that the protester's proposal failed to cross reference its contract references to the appropriate sections of the PWS to identify how the prior contracts were similar in scope, complexity, and size to the current requirement. *Id.* Lastly, the IRS found that Piton's proposal did not demonstrate experience with the automated background investigation system (ABIS).¹ *Id.* Under the management approach factor, the agency found that Piton's proposal lacked sufficient information to determine the proposed project manager had the required experience managing the adjudication of similar federal personnel security background investigations. *Id.*

The table below summarizes the evaluation of the proposals from Piton and Parker Tide:

¹ As discussed in greater detail in footnote 7, the solicitation required the contractor to perform multiple tasks using information from, or entering information into, the ABIS.

Factors	Offerors	
	Piton	Parker Tide
Technical Capabilities	N/A	X ^[2]
Demonstrated Prior Experience	N/A	X
Management Approach	N/A	X
Proposed Price	\$111,566,678	\$95,401,891
Total Price ^[3]	\$122,723,345	\$105,367,965

Id.

Because Parker Tide’s proposal met all technical requirements at a lower price than Piton’s, the awardee’s proposal was determined to offer the best value. *Id.* at 10. The task order was issued to Parker Tide, and this protest followed.⁴

DISCUSSION

Piton challenges the reasonableness of the agency’s evaluation of its proposal under the prior demonstrated experience and management approach factors. The protester also contends that the agency failed to conduct a valid price realism analysis. As explained below, we deny the first two allegations and dismiss the third.⁵

² An “X” indicates that the proposal was found to be “best suited” in a comparison among the three proposals. *Id.* at 2.

³ Total price was defined as including FAR clause 52.217-8, Option to Extend Services. *Id.* at 1.

⁴ Our Office has jurisdiction to review Piton’s protest pursuant to our authority to hear protests related to task and delivery orders valued more than \$10 million placed under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

⁵ In comments filed more than 10 days after receipt of the agency report, Piton raised new allegations of agency misconduct, including that the solicitation was wrongly issued as a small business set-aside under the applicable North American Industry Classification System (NAICS) code; the agency amended the solicitation language to favor the incumbent; the agency failed to properly implement its corrective action in response to an earlier protest; and the agency misrepresented facts pertaining to its evaluation of the protester’s proposal. Comments at 2-12.

Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials based on inference or supposition. *Phoenix Envtl. Design, Inc.*, B-411044, Apr. 27, 2015, 2015 CPD ¶ 137 at 3 n.2 (noting that a protester’s contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof). Piton’s assertions lack the convincing proof required to support an allegation that agency officials here acted in bad faith or committed fraud.

(continued...)

Evaluation of Piton's Proposal Under the Management Approach Factor

As noted above, the project manager was a key employee, and the PWS required that proposed employee to have a minimum of 8 years of managerial experience "related to Federal Personnel Security background investigation adjudication task and PWS Section 14.0." PWS at 12. The agency evaluation determined that Piton's proposed project manager did not meet this requirement. AR, Tab E.1, Technical Evaluation Report at 14. Piton contends that its proposed project manager's resume indicates that the employee met the requirement, because the proposed employee has 8 years of relevant managerial experience--from 2003-2011. See Protest at 14. The IRS argues that it reasonably evaluated the proposed project manager's background as failing to satisfy the RFP's requirement. Memorandum of Law (MOL) at 8-9.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *BAE Sys. Tech. Solutions & Servs., Inc.*, B-414931.2, B-414931.3, Dec. 20, 2017, 2018 CPD ¶ 54 at 4-5. Our Office will not reevaluate task order proposals, but we will review the record to determine whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria as well as applicable procurement laws and regulations. *Ekagra Software Techs., Ltd.*, B-415978.3, B-415978.4, Oct. 25, 2018, 2018 CPD ¶ 377 at 2-3.

Piton's proposal claims that the following experience of its proposed project manager satisfies the RFP's experience requirement:

Accordingly, we dismiss these allegations because they fail to state a valid basis of protest. 4 C.F.R. § 21.5(f). In addition, Piton conceded that the argument pertaining to the NAICS code size standard was untimely. Resp. to Req. for Dismissal at 9 ("The allegation of the potential NAICS Si[z]e standard is untimely."). This provides an additional basis for dismissing the allegation. See 4 C.F.R. § 21.2(a)(2) (protests other than challenges to the terms of a solicitation must be filed within 10 days of then the protester knew or should have known the basis of protest).

Time Period	Experience
2010-2011	Adjudicated special high-risk applicant background investigations to determine eligibility to be granted access to National Security Information and Sensitive Compartmented Information.
2005-2010	Designed, implemented, and managed a corporate background investigation program to include the scope, adjudicative guidelines , and appeals process for all background investigations conducted on applicants, current employees, contractors, vendors, and clients. Provided consultation to Board members pertaining to adjudicative regulations.
2004-2005	Prepared final Case Action Summaries for the Navy Personnel Security Appeals Board based on government adjudicative guidelines to review and make a final security clearance determination.
2003-2004	Drafted final Reports of Investigation based on government adjudicative guidelines.

AR, Tab F.2, Protester’s Vol. II Technical Proposal at 50-51 (blue highlights rendered in bold); see Protest at 14 (identifying the blue highlights in the project manager’s resume as containing the experience that meets the RFP requirement).

The agency argues that the proposed project manager’s resume demonstrates no relevant managerial experience from 2003 to 2005. MOL at 8. The IRS contends that, during that time, the proposed employee prepared case action summaries and drafted final reports of investigation, and neither of those functions were managerial in nature. See *id.* While the agency considered the experience from 2005 to 2011 relevant, that was 6 years of experience, not the required eight. See *id.* n.4. Because the resume did not demonstrate 8 years of managerial experience related to the background investigation adjudication tasks, the IRS argues that it reasonably found Piton’s proposal did not meet the RFP’s experience requirement for the project manager.

The IRS contends that, while the protester argues that the proposed project manager’s resume met the prior experience requirement through the work highlighted in the resume--for the years 2003 through 2011, Piton did not respond to the agency’s contention that the resume demonstrated no managerial experience from 2003 to 2005.⁶ Req. for Dismissal at 4; see Comments at 22-31. Instead, Piton argues that the experience of its proposed project manager in a position at the Federal Bureau of Investigation (FBI)--from 2011 to the present--was also relevant and should have been considered by the agency. Comments at 30-31. The IRS responds that Piton “never claimed” in its proposal that the proposed project manager’s “FBI experience could be

⁶ As explained previously, the resume described the proposed project manager’s experience for those years as preparing active case summaries and drafting final reports of investigation. AR, Tab F.2, Protester’s Vol. II Technical Proposal at 50-51.

used to meet the solicitation requirements” for the key employee experience.⁷ *Id.* at 3-4.

As noted above, the RFP required that “the resumes submitted must demonstrate key personnel possess the minimum years of experience.” RFP at 59. The protester argues that it did not initially identify the FBI experience in its proposal because the agency should have recognized the resume standing on its own already comprised 8 years of managerial experience. Protest at 13-14. In this regard, the protester states that, “[i]f Piton had in fact claimed the FBI work as qualifying then Piton would have included in its proposal a simple illustration of the relatedness of the FBI [] experience of Piton’s Project Manager to the Federal Personnel Security background investigation adjudication task and PWS Section 14.0.” Comments at 30. The protester argues that the proposed project manager’s “resume experiences are just a small subset of the full pallet of responsibilities” the proposed employee had at the FBI. *Id.*

We conclude, however, that the protester did not clearly identify the relevance of the proposed project manager’s FBI additional experience in its proposal. Stated differently, Piton’s assertion that it could have included a statement of the relevance of the FBI experience in its proposal suggests that, in fact, the proposal did not contain that relevancy statement.⁸ Indeed, the only mention in Piton’s proposal of the project manager’s FBI experience is in the resume, and that resume does not clearly articulate the similarities between the FBI experience and the requirements under the current PWS for background investigation adjudication tasks. Because the proposed project manager’s resume does not “clearly demonstrate the [employee’s] ability to meet and achieve the requirements of the PWS,” RFP at 59, the resume fails to satisfy the RFP’s requirement.

⁷ The IRS also asserts that the protester’s argument about the individual’s FBI experience is an untimely supplemental protest allegation. Req. for Dismissal at 3. The agency contends that Piton did not argue in its initial protest submission that the proposed project manager’s FBI experience could be used to meet the key employee experience requirements. We, however, find that the protester raised this argument in its initial protest filing. See Protest at 13-14 (noting that the project manager’s FBI experience was “actually qualifying” even when considered against the agency’s “related to’ evaluation criterion”).

⁸ In any event, as noted above, the resumes and the technical proposal were subject to a limit of two pages. RFP at 57. As written, the proposed project manager’s resume was already two pages, without the information that the protester contends it could have added. See AR, Tab F.2, Protester’s Vol. II Technical Proposal at 50-51. An offeror is required to demonstrate that it has satisfied experience requirements within a solicitation’s page limits. *Outreach Process Partners, LLC*, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 4. An agency’s evaluation is dependent on the information furnished within those page limits. *Id.*

In summary, Piton did not refute the agency's contention that the experience claimed by the protester for the years 2003 to 2005 did not meet the RFP's requirement because, in that time period, the proposed project manager had no relevant managerial responsibilities. Nor did the resume explain how the proposed project manager's experience with the FBI was relevant to the current requirement. The allegation that the agency unreasonably found that the protester's proposal did not meet the solicitation's requirements under the management approach factor is denied.

Evaluation of Piton's Proposal Under the Prior Demonstrated Experience Factor

Piton also challenges the agency's evaluation of its proposal as not meeting the solicitation's requirements under the prior demonstrated experience factor. The protester argues that the agency failed to follow an announced evaluation criterion, namely, that the requirement for 150 personnel could be met cumulatively across all three contract references. Protest at 6. Piton argues that its three contract references involved a total of 179 personnel, and, thus, the protester's proposal met the total personnel criterion under the prior demonstrated experience factor. *Id.* at 7. The agency argues that, while, cumulatively, the three prior experience references exceed the 150 personnel requirement, the three references did not also simultaneously exceed the requirement. MOL at 5; see RFP at 58 (noting that, to be similar, the three references must demonstrate "staffing of at least 150 contractor personnel cumulatively and simultaneously").

Piton's first reference, with 105 personnel, ran from February 2014 through August 2018. AR, Tab F.2, Protester's Vol. II Technical Proposal at 17. Piton's second reference, with 72 personnel, ran from September 2020 through August 2023. *Id.* at 22. Performance of those two requirements did not overlap. Piton's third reference, with 2 employees, ran from March 2019 to March 2023. *Id.* at 25. Performance of references two and three overlapped, so that the protester simultaneously engaged 74 personnel in the performance of those requirements. At no time did Piton simultaneously deploy at least 150 personnel in the performance of these three requirements.

Piton states that it "was operating under the belief that the word simultaneous was not binding when that requirement hadn't even existed for the original solicitation." Comments at 21. The protester "acknowledge[s] its three past performances were not simultaneously performed." *Id.* Piton also concedes that the agency correctly argues that the 150 personnel requirement could be met by combining contract performance under the three references, but that the performance was also required to be simultaneous. See *id.* The protester does not dispute that its proposal failed to meet this requirement. See *id.* at 20-22. The record supports the reasonableness of the agency's finding that the protester's proposal failed to meet the RFP's requirements

under the prior demonstrated experience factor, and consequently, this allegation is denied.⁹

Failure of Agency to Conduct Price Realism Analysis

As noted above, the RFP advised offerors that the agency may conduct a price realism analysis. RFP at 59.

In a fixed-price competition, agencies are not required to consider price realism when evaluating proposals because fixed-price solicitations place the risk of loss on the contractor rather than on the government. *Leidos Inc.; Booz Allen Hamilton Inc.*, B-421524 *et. al.*, June 20, 2023, 2023 CPD ¶ 157 at 5. However, an agency may include in a solicitation a provision allowing for a price realism evaluation when the agency is concerned that its requirements may not be fully understood by offerors. FAR 15.404-1(d)(3); *Leidos Inc.; Booz Allen Hamilton Inc.*, *supra*. Where a solicitation merely reserves the agency's right to conduct a price realism evaluation, the agency is not obligated to conduct one. *Leidos Inc.; Booz Allen Hamilton Inc.*, *supra*.

The agency argues that it was not required to conduct a price realism analysis, because the solicitation provided only that the agency "may" perform such an analysis. MOL at 9, *citing Leidos Inc.; Booz Allen Hamilton Inc.*, *supra* (additional citations omitted); *see also* RFP at 59 ("The Government may, at its discretion, conduct a price realism analysis"). Piton did not respond to the IRS's substantive defense of the reasonableness of its decision not to conduct a price realism analysis. Comments at 31 (noting that, "Piton for this protest ground does not provide any additional comments"). Because the agency provided a substantive response to this allegation, to which the protester's comments did not respond, we dismiss this allegation as abandoned. *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2-3.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁹ As noted above, under the prior demonstrated experience factor, the agency found that Piton's proposal did not demonstrate experience with the ABIS. AR, Tab E.2, SSD at 2. The PWS makes numerous references to the contractor's use of the ABIS. *See, e.g.*, PWS at 2 (contractor shall maximize background reinvestigation status analysis and reporting using data from ABIS), 3 (contractor shall properly update and correct investigative data in information systems and databases, including ABIS), and 4 (contractor shall create contractor records in ABIS). The protester did not challenge the reasonableness of this evaluation finding. *See* Protest. This provides an independent basis on which to find that the agency reasonably evaluated Piton's proposal as not meeting the requirements of the RFP under the prior demonstrated experience factor.