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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: PMC Solutions, Inc.

File: B-310732

Date: January 22, 2008

Britain Harvey for the protester.

David P. Blackwood, Esq., U.S. Commission on Civil Rights, for the agency.

Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated protester's technical proposal with regard to employment status of proposed expert and protester's status as subcontractor under prior contracts is denied where record shows evaluation was reasonable and in accord with stated evaluation criteria.

2. Protest that agency, in "best value" procurement, improperly made award to offeror proposing significantly higher price than protester's is denied where record shows agency considered protester's and awardee's proposals' strengths and weaknesses in determining that technical superiority of awardee's proposal outweighed protester's lower price.

DECISION

PMC Solutions, Inc. protests the award of a contract to Booz Allen Hamilton, Inc. (BAH) under request for proposals (RFP) CR-07-0002, issued by the U.S. Commission on Civil Rights (USCCR), for Lean Six Sigma (LSS) support.

We deny the protest.

The RFP was issued under the streamlined procedures of Federal Acquisition Regulation (FAR) subpart 12.6 on July 17, 2007. It called for services related to the LSS methodology for process mapping and improvement. Initial work was to begin no later than September 2007, with a period of performance of not to exceed 45 days. RFP at 5. The RFP provided that proposals would be evaluated on a "best value" basis under three factors: contractor qualifications, past performance, and price. *Id.* at 6.

Ten proposals were received in response to the RFP. The proposals were reviewed by a technical evaluation panel, which rated BAH's and PMC's proposals outstanding. BAH's price was \$129,500 and PMC's was \$29,709. Agency Report at 1; Protest at 3.¹ The agency made award to BAH based on its finding that evaluated weaknesses in PMC's proposal and strengths in BAH's proposal made BAH's proposal the best value, despite its substantially higher price. PMC contends that its technical proposal was improperly evaluated in two respects and that the agency conducted an improper price/technical tradeoff.

SSL EXPERT

PMC contends that its proposal was unreasonably downgraded on the basis that one of its proposed LSS experts was a contract employee rather than a PMC employee. Protest at 1. PMC asserts that the downgrading was unreasonable because there was no requirement in the RFP that proposed personnel be in-house employees. *Id.* at 2.

In reviewing an agency's technical evaluation, we will not reevaluate proposals, but will examine the record to ensure that it was reasonable and in accordance with the stated evaluation criteria and applicable procurement statutes and regulations. Harris Corp., B-299864 et al., Sept. 14, 2007, 2007 CPD ¶ 180.

The evaluation here was unobjectionable. USCCR explains that the availability of PMC's expert was a concern in view of USCCR's requirement that the project be underway promptly after award. Agency Report, Statement of Contracting Officer (SCO), at 1-2. PMC's proposal included a resume indicating that the expert in question was not a PMC employee and was currently involved in a project for another company. Agency Report, Tab B, PMC Proposal, attach 1, at 4. USCCR determined that the expert's employment status raised doubts regarding his availability for a "quick turnaround project" that "needed to be performed on a very tight timeframe." SCO at 1-2. Although the RFP did not expressly require that proposed experts be employed directly by the contractor, and the evaluation factors did not specifically address employment status, in evaluating a proposal an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. Preferred Sys. Solutions, B-291750, Feb. 24, 2003, 2003 CPD ¶ 56 at 2. Here, under the contractor qualifications evaluation factor, resumes were required for all proposed personnel. RFP at 6. It is implicit, we think, that where an agency is evaluating proposed employees, the evaluation logically encompasses the employees' availability to perform under the contract. The fact that PMC's proposed expert was not a PMC employee and was involved with another company's project reasonably

¹ The record includes conflicting award amounts, including \$120,000, \$129,000, and \$120,500. For simplicity, we use \$129,500, the figure set forth in the agency report. Agency Report at 1. The amount of the award does not affect our decision.

was viewed by the agency as casting doubt on the expert's availability when needed and, as a result, on PMC's ability to perform quick turnaround work beginning promptly after award.

PAST PERFORMANCE

Consistent with the RFP, PMC submitted three past performance summaries, including projects for the National Reconnaissance Office (NRO), the U.S. Coast Guard, and the U.S. Army Corps of Engineers. Protest at 2. PMC contends that the agency improperly rated its proposal "higher risk" on the basis that it was the prime contractor on only one of the three submitted projects. Id. PMC notes that the RFP did not require or prefer a prime contractor status, and asserts that USCCR should have taken into account that it was the "lead and sole provider" of relevant services on the two projects on which it was a subcontractor (NRO and Coast Guard). Id. at 2.

This aspect of the evaluation was reasonable. USCCR explains that it was concerned with offerors' experience with "quick performance" projects and as the "lead" on relevant projects, which closely reflected the contractor's roles and responsibilities under the instant contract. SCO at 2. USCCR determined that, although the Coast Guard project on which PMC worked was a "quick turnaround," PMC was a member of a team of five firms and it was unclear what support PMC received from the other firms. Id. Additionally, USCCR determined that, although the NRO project was not a team effort, it was a 2-year project, which the evaluators did not consider to be probative of future performance on a contract that required "very short turnaround." Id.

Although the RFP did not express a specific preference or requirement for past performance as a prime or "lead" contractor, USCCR properly could take into account in its past performance evaluation relevant information reasonably predictive of the quality of contract performance. Preferred Sys. Solutions, Inc., supra, at 2. Since the awardee here would be a prime contractor, the agency reasonably could consider offerors' performance of prior contracts as a prime contractor. Likewise, since the agency's requirement entailed quick turnaround work, it reasonably could consider offerors' performance of prior contracts under which quick turnaround work was required. Both considerations clearly would be predictive of future performance and, therefore, reasonably were encompassed by the past performance evaluation. See Nicholson/Soletanche Joint Venture, B-297011.3, B-297011.4, Apr. 20, 2006, 2006 CPD ¶ 71 at 8.²

² PMC seems to argue that USCCR should have entered into "clarifications" with it following receipt of proposals. Protest at 3; Protester's Comments, Nov. 30, 2007. An agency, however, has broad discretion to decide whether to engage in

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PRICE/TECHICAL TRADEOFF

PMC asserts that, given that its and BAH's proposals received the same outstanding rating, award to BAH at a four times higher price could not be the "best value" to the government, consistent with the solicitation.

Where, as here, a solicitation provides for a price/technical tradeoff, the agency retains discretion to make award to an offeror with a higher technical rating, despite a higher price, so long as the tradeoff decision is properly justified and otherwise consistent with the stated evaluation and source selection scheme. Midwest Metals, Inc., B-299805, July 17, 2007, 2007 CPD ¶ 131; University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6.

Ratings, be they numerical, color, or adjectival, are merely guides for intelligent decision making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Here, as discussed, while USCCR assigned the proposals adjectival ratings, it did not limit its evaluation or its tradeoff decision to these ratings. Rather, the agency fully considered the actual qualitative differences in the technical proposals. See, e.g., Bernard Cap Co., Inc., B-297168, Nov. 8, 2005, 2005 CPD ¶ 204 at 6. The price/technical tradeoff reflected these qualitative differences. As discussed, USCCR determined that timely performance was "critical" and that it had "little time for delays." SCO at 3. USCCR's evaluated concerns regarding PMC's technical capabilities (i.e., the availability of its proposed expert) and past performance (i.e., PMC's relative lack of "lead" responsibility on prior projects) reasonably reflected the need for timely performance, without delays; these concerns could lead to PMC's being unable to perform in a timely manner. Further, the agency was fully aware of PMC's substantially lower price, but considered it relevant that PMC proposed substantially fewer hours than BAH; the agency thus viewed BAH as "more likely to provide a better quality deliverable." Id. We conclude that the agency's tradeoff determination was reasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel

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clarifications with an offeror. INDUS Tech., Inc., B-297800.13, June 25, 2007, 2007 CPD ¶ 116. There was no requirement for clarifications here.