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Decision

Matter of: Northrop Grumman Systems Corporation

File: B-405647

Date: December 9, 2011

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Kevin P. Mullen, Esq., Leslie H. Lepow, Esq., and Daniel E. Chudd, Esq., Jenner & Block LLP, for ICF International, Inc., an intervenor.

Scott C. Briles, Esq., Department of Health and Human Services, Centers for Disease Control and Prevention, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation of the awardee's experience is not supported by the record where the agency credited the awardee with the experience of a corporate affiliate, even though the affiliate had not been proposed to meaningfully participate in the performance of the task order.

2. Protest is sustained where the agency unreasonably evaluated the protester's proposal under several evaluation criteria.

DECISION

Northrop Grumman Systems Corporation, of McLean, Virginia, protests the issuance of a task order to ICF Incorporated, LLC, of Fairfax, Virginia, under request for task order proposals (RFTOP) No. 2011-IM-0009, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), for surveillance and electronics laboratory exchange support. Northrop argues that the agency's evaluation of the offerors' proposals was unreasonable.¹

¹ Although the solicitation sought award of a task order, the term proposal is utilized throughout the solicitation and record. Since the evaluation and source selection scheme were similar to a negotiated procurement, whether the vendor's

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We sustain the protest.

BACKGROUND

The RFTOP was issued on April 13, 2011, to firms that hold contracts under the CDC's multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contract for information management services (CIMS). The solicitation anticipated issuance of a task order to support the agency's Division of Informatics Services and Operations (DISO) surveillance programs and electronic laboratory exchange initiatives under a time and materials contract, for a 12-month base period, and three 1-year options.² The solicitation includes core and optional tasks for the base and option periods. The task order requires the contractor to provide operation and maintenance (O&M) support for IT (information technology) systems; provide enhancement, development and re-engineering of IT systems; develop specifications for electronic messages and vocabulary standards; and establish and maintain data exchanges with external and internal partner systems. RFTOP amend. 1 at 5-6.

Offerors were advised that proposals would be evaluated based on price and the following non-price factors: technical approach (30 points); management plan (20 points); staffing plan (25 points); similar experience (25 points); and transition/startup plan (0 points). Id. at 37. For purposes of award, the solicitation stated that the non-price factors were "more important" than price. Id.

Six offerors, including ICF and Northrop, the incumbent contractor, responded to the RFTOP by the May 2 closing date. A technical evaluation panel (TEP) evaluated the proposals, and established a competitive range consisting of the most highly rated proposals: Northrop, ICF, and a third offeror. Agency Report (AR), Tab 4a, Evaluation Report at 2. Because the agency had concerns with the offerors'

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submissions are referred to as proposals or quotations has no effect on the issues raised. See MASAI Techs. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 1 n.1. For the sake of consistency with the underlying materials, we will refer to the firms as "offerors" and their submissions as "proposals" throughout this decision.

² DISO provides services that address the needs of multiple programs across CDC and external partner organizations. These services further the informatics capabilities of public health organizations and their immediate "trading partners" (e.g., state and local health departments, public and clinical laboratories, and hospitals). RFTOP amend. 1 at 5.

proposals, the CDC presented clarification questions to each offeror tailored to their individual proposals. As relevant here, the agency presented Northrop with four clarification questions, which related primarily to staffing.

CDC received the offerors responses, including revised technical and price proposals, on May 25. The final evaluation results were as follows:

	ICF	NORTHROP	OFFEROR 3
TOTAL SCORE	SUPERIOR / 72	SUPERIOR / 69	ACCEPTABLE / 64
Technical Approach	23	23	22
Management Plan	15	12	15
Staffing Plan	17	15	12
Similar Experience	18	19	15
PROPOSED PRICE	\$70,660,345	\$70,994,449	\$59,941,691

See AR, Tab 4b, TEP Consensus Evaluation at 4-16.

The contracting officer (CO), who was also the source selection official, selected ICF's proposal for award. The CO noted that ICF's proposal was rated three points higher than Northrop's proposal and 8 points higher than the proposal submitted by Offeror 3. AR, Tab 5b, Award Decision, at 2. The CO also noted that ICF's proposed price was 0.47 percent lower than Northrop's proposed price. Id. Regarding Offeror 3, the CO found that although Offeror 3 proposed the lowest price, the agency was concerned that it could not realistically perform the requirements with the staffing it proposed, which was substantially lower than the staffing in the government estimate provided in the solicitation. Id. The CO concluded that ICF's higher technical merit and lower risk outweighed Offeror 3's price advantage. See AR, Tab 5b, Award Decision at 2-3. The task order was awarded to ICF on August 11. Northrop was provided a debriefing on August 26 and this protest followed.

DISCUSSION

Northrop argues that the CDC unreasonably evaluated ICF's proposal under the similar experience factor. The protester also argues that the agency's evaluation of its proposal was unreasonable under the technical approach, management plan, and staffing plan factors, asserting that the CDC unreasonably interpreted the information in its proposal, as well as Northrop's responses to the agency's clarification questions. For the reasons discussed below, we sustain the protest.³

³ Northrop has raised other contentions challenging the reasonableness of the CDC's evaluation of the offerors' proposal. We have considered all of the

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The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

Similar Experience Evaluation

Northrop first argues that the CDC improperly attributed the experience of a [Deleted] to ICF. Northrop asserts that without the experience attributed to ICF from [Deleted] contract, ICF's proposal would not have met the RFTOP requirement to identify three projects that demonstrate similar experience. Moreover, Northrop argues that because the record reflects that the TEP identified several strengths in ICF's proposal based on the experience of [Deleted], and because this was the only [Deleted], ICF's similar experience score should have been much lower. We agree with the protester.

ICF and [Deleted] are both subsidiaries of ICF International, Inc.⁴ Neither CDC, nor the intervenor, disputes that [Deleted] is a separate corporate entity from the awardee, ICF.

An agency may properly attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance. Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 14.

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protester's arguments and, except as discussed below, find that none of the other arguments provide a basis to sustain the protest.

⁴ ICF International, Inc., is the corporate parent of both ICF Incorporated LLC (the awardee) and [Deleted]. For purposes of clarity, we continue to refer to the awardee as "ICF." We refer to ICF International, Inc. (the corporate parent) as "ICF International."

CDC maintains that the experience of [Deleted] was properly attributed to ICF for the task order here because ICF's proposal for the underlying CIMS ID/IQ contract committed [Deleted] to the performance of task orders issued under that contract. In this regard, ICF's proposal for the CIMS ID/IQ contract stated that "[t]he full [Deleted]." Supp. AR, ICF CIMS Technical Proposal, Cover Letter. The agency further notes that ICF listed an [Deleted] as the point of contact on the cover letter for the ICF CIMS contract proposal that resulted in the underlying ID/IQ contract. Supp. AR, ICF CIMS Technical Proposal, Cover Letter. Finally, the agency also notes that ICF's task order proposal stated that ICF International--the parent company--offers "[Deleted]." AR, Tab 7a, ICF Technical Proposal, at 3. The agency argues that these references show that the resources of ICF International and [Deleted] could properly be considered for any task order issued under the CIMS contract.

In addition to the information cited by the agency, ICF argues that the agency could have considered two pieces of information which show that [Deleted] is supporting the task order effort. Intervenor's Supp. Comments at 5-6. First, the ICF task order proposal listed an [Deleted] as one of the [Deleted] sample personnel identified in the proposal (out of the [Deleted] total full-time equivalent personnel proposed). AR, Tab 7a, ICF Technical Proposal, Appendix 1, at 4; Appendix 2, at 78. Second, ICF's response to a clarification question indicated that an [Deleted], could be used as one of a number of potential alternates to ICF's intended place of performance. AR, Tab 7b, ICF Clarification Responses, at 4.

We cannot conclude that the CDC had a reasonable basis to attribute the experience of [Deleted] to ICF in evaluating the firm's similar experience. While the underlying CIMS contract indicated that [Deleted]'s resources would be available to ICF in the performance of task orders, nothing in the task order proposal here specifically stated that [Deleted] resources or personnel would play a meaningful role in the performance of the task order. Moreover, the record does not show that the CDC evaluators considered any of the information cited by the agency in its response to the protest.

With regard to the information cited by the intervenor, we do not think that the identification of [Deleted] employee, out of more than [Deleted] FTEs proposed for the contract effort, or the possible use of a [Deleted] as a potential alternative facility, demonstrates meaningful participation on the part of [Deleted] for the purposes of attributing that entity's experience to ICF. Additionally, neither the evaluation record, nor CDC's response to the protest cites this information as support for the agency's decision to attribute the experience of [Deleted] to ICF.

Because ICF's proposal does not demonstrate that [Deleted] would be meaningfully involved in the performance of the RFTOP, and because the TEP assigned several strengths to the ICF proposal on the basis of the [Deleted] contract identified to demonstrate similar experience, we find that the record does not reasonably

support the similar experience score assigned by the agency to ICF's proposal. See Health Net Fed. Servs., LLC, supra, at 15. Accordingly, we sustain the protest on this basis.

Unreasonable Technical Approach Evaluation

Next, Northrop contends that the TEP improperly assigned a weakness to its proposal under the technical approach factor. The technical approach factor required offerors to describe their technical capabilities and innovative approaches to providing these services, as well as plans and solutions for overcoming difficulties involved with performing the work requirements. See RFTOP amend. 1 at 37. Northrop argues that the TEP improperly evaluated its technical approach on the basis of its past performance, rather than its technical approach.

The TEP assigned the following weakness to Northrop's proposal under the technical approach factor:

[Northrop] indicates strong ideas on [Deleted] however some of these improvements should have been delivered as current state.

AR, Tab 4b, TEP Consensus Evaluation at 9. The individual TEP evaluators' notes elaborate on the basis for this weakness. For example, one evaluator stated as follows:

[Northrop] indicates strong ideas on [Deleted]. It can only be questioned why none of these recommendations have been implemented in previous years of service.

AR, Tab 4c, Evaluator 1 Assessment, at 1. Another evaluator stated as follows:

Although understanding [Deleted] is clearly identified in word, curious as to why new approaches, architecture, and solutions have not already been offered.

Id., Evaluator 2 Assessment, at 1.

Northrop argues that the agency improperly evaluated its proposal because the evaluators considered the protester's past performance in a manner inconsistent with the technical approach factor. Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. Intercon Assocs., Inc., B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. While agencies properly may apply evaluation considerations that are not expressly outlined in the RFP, where those considerations are reasonably and logically encompassed within

the stated evaluation factors, there must be a clear nexus between the stated factors and the unstated consideration. Global Analytic Info. Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 4.

In response to the protest, CDC argued that the assignment of a weakness under the technical approach evaluation factor was reasonable because Northrop never offered these proposed improvements during its performance of the previous task order. CO Statement at 24. The record, however, does not show that the evaluators disputed the quality of Northrop's proposed approach to improving services--in fact, the evaluators specifically noted that the protester had proposed a strong approach. See AR, Tab 4c, Evaluator 1 Assessment, at 1; id., Evaluator 2 Assessment, at 1. Moreover, the evaluations do not, on their face, show that the agency was concerned with Northrop's ability or willingness to implement the proposed improvements. Instead, the evaluators' concerns addressed an issue outside the scope of the evaluation factor, that is, the quality of Northrop's performance of the incumbent task order and the agency's apparent conclusion that it should have offered these improvements under that task order.

An offeror's prior performance generally is a matter to be considered under a past performance factor, not a technical approach factor. See Apptis, Inc., B-299457, et al., May 23, 2007, 2008 CPD ¶ 49 at 12-13. Here, the RFTOP did not provide for the evaluation of offerors' past performance. We find that the evaluators' assignment of a weakness in their evaluation of the company's technical approach was not justified because the technical approach factor did not anticipate considering the extent to which improvements were offered under Northrop's earlier contract. Accordingly, we sustain the protest on this basis.⁵

Unreasonable Staffing Evaluation

Finally, Northrop contends that the TEP unreasonably assigned weaknesses to its proposal under the staffing factor. Under the staffing factor, the RFTOP stated that the offeror must propose qualified technical labor resources in numbers adequate to address the technical and administrative requirements; to describe their approach to rapidly obtain and/or replace qualified staff to support existing and new task order work; and to identify the tasks that will be performed by subcontractors. RFTOP amend. 2 at 38-39. Northrop contends that the TEP misinterpreted its proposal with regard to [Deleted] and its response to clarification question No. 4.

⁵ To the extent that the CDC applied a past performance evaluation solely to Northrop, because it was the incumbent contractor, the agency's actions reflect disparate treatment, which is inconsistent with the overriding requirement that agencies evaluate proposals on a common basis. See Global Analytic Info. Tech. Servs., Inc., supra.

The record indicates that the TEP assigned the following two weaknesses to Northrop's proposal related to staffing:

- (1) Offeror articulates conflicting information in their response [Deleted] in the execution of this task, then lists subcontractor and companies they work for.
- (2) Offeror does not indicate which positions would be reduced or eliminated. However, offeror indicates there would be an approximate [Deleted]% efficiency across labor categories, yet the actual numbers presented are closer to [Deleted]%.

AR, Tab 4b, TEP Consensus Evaluation at 10-11.

With regard to the first weakness, the CDC states that the evaluators perceived a "contradiction" within the following portion of Northrop's revised proposal:

[Deleted]

AR, Tab 7b, Northrop Revised Proposal, at 34.

The CDC contends that Northrop's proposal shows a contradiction between the protester's statement that it would [Deleted] and its statement that it was also using "subcontractors." SAR at 13. In this regard, the agency notes that the table cited above in the protester's proposal lists numerous personnel and the subcontractors for whom they work--evidence, the agency implies, that Northrop will use [Deleted]. Id.

Northrop argues, however, that there was no contradiction in its proposal. In this regard, the protester contends that its proposal, on its face, distinguishes between [Deleted] and resources that are not "outside," e.g., Northrop employees, employees of Northrop's [Deleted] partner, or employees of its [Deleted] subcontractors.

Based on our review, we find that the agency's evaluation is not supported by the record. The CDC does not explain how the agency concluded that an [Deleted] was the same as a subcontractor, in light of the distinctions drawn in Northrop's proposal between these categories. Specifically, Northrop's proposal states "[Deleted]" and identifies the subcontractors, partner, and businesses available under its CIMS contract that it planned to use under the RFTOP--the information that the RFTOP requested. See AR, Tab 6b, Northrop Proposal at 34-35.

Next, Northrop challenges the CDC's assignment of a weakness because the agency concluded that the protester could not achieve a proposed [Deleted] percent

efficiency goal across labor categories during performance. In response to a clarification question regarding Northrop's proposed cost savings, the protester cited its "proven ability" to achieve efficiencies. The proposal cited as evidence data concerning its performance of the incumbent task order, which showed a [Deleted] percent reduction in the number of labor hours required as compared to the estimated requirements. Id. As discussed above, however, the agency identified a weakness, concluding that the "actual numbers presented are closer to [Deleted]%. AR, Tab 4b, TEP Consensus Evaluation at 10-11.

Northrop argues that the TEP used incorrect information to arrive at its assumption of a [Deleted] percent efficiency. Northrop further contends that the agency incorrectly assumed that a [Deleted] percent efficiency was a proposed figure, instead of a historical figure indicating the ability to achieve savings. The protester also argues that the agency overlooked the information cited in its proposal, upon which its calculation was based.

The CDC does not explain how it concluded that the "actual numbers" in Northrop's proposal set forth a [Deleted] percent efficiency rate. Instead, the agency contends that the protester's proposal does not address the basis for the anticipated [Deleted] percent efficiency.

Northrop's proposal, however, specifically addresses this information, as follows:

The first principle underlying the cost savings projected in Volume 2 is our proven ability to gain an approximate [Deleted] % efficiency by [Deleted].

AR, Tab 6b, Northrop Proposal at 6. In volume 2 of its proposal, Northrop identified its specific projected cost savings and explained that the savings were derived from historical data under its incumbent task order. Id. at 4-6, 8. As the protester notes, the actual historical savings cited in its proposal (i.e., the labor hours required as compared to the government estimate) were higher-- approximately [Deleted] percent in the base year and up to [Deleted] percent in the option periods. See id.; Protester's Comments at 15. On this record, we find no basis to support the agency's conclusion that the protester did not substantiate its historical efficiency savings of [Deleted] percent; we also find no basis for the agency's reliance on a different efficiency figure.

In sum, we find the agency's evaluation and the assignment of these two weaknesses under the staffing factor to be unreasonable and we sustain the protest on this basis.

RECOMMENDATION

We recommend that the agency reevaluate the proposals consistent with this decision, conduct discussions and obtain revised proposals if appropriate, and make a new source selection decision. If ICF is not selected, the agency should terminate its award, and make award to the successful offeror. We also recommend that Northrop be reimbursed the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2011). The protester should submit its certified claim for such costs incurred, directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Lynn H. Gibson
General Counsel