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Decision

Matter of: Pinnacle Solutions, Inc.

File: B-406998; B-406998.2

Date: October 16, 2012

Robert J. Symon, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Anand V. Ramana, Esq., Amanda W. Abshire, Esq., McGuireWoods LLP, for Logistic Services International, Inc., an intervenor.

Tina Marie Pixler, Esq., and Jonathan A. Hardage, Esq., Department of the Army, Army Materiel Command, for the agency.

Paul N. Wengert, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency held defective discussions is denied where agency did not hold discussions with either offeror, did not invite either offeror to revise its proposal, and limited the scope of its communications to clarifying and confirming what the offerors had already committed to do.
 2. Protest that agency misevaluated protester's and awardee's proposals is denied where the contemporaneous record shows that agency's technical and past performance evaluations were reasonable and consistent with the terms of the solicitation.
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DECISION

Pinnacle Solutions, Inc. (PSI), of Huntsville, Alabama, a small business, protests the Department of the Army's award of a contract to Logistic Services International, Inc. (LSI), of Jacksonville, Florida, pursuant to request for proposals (RFP) No. W5RGZ-12-R-015, for the production of Black Hawk Maintenance Trainers, UH-60M (BHMT-M) to be used by United States Army Aviation Logistics School (USAALS) at Fort Eustis, Virginia. PSI argues that the Army misevaluated both PSI's and LSI's proposals, failed to hold meaningful discussions, and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The Army issued the RFP on March 16, 2012, seeking proposals to provide two BHMT-M units, as well as options for the Army to purchase four additional units. RFP at 1, 3. The BHMT-M is used for training of helicopter repair personnel to maintain a particular model of the Black Hawk helicopter, the UH-60M. The RFP provided that the Army would award a fixed-price contract¹ to the offeror whose proposal provided the best value, based on the following evaluation factors, listed in descending order of importance: technical, program management, price, small business participation, and past performance.² RFP at 3, 62.

The RFP included a statement of work (SOW), which described the major elements of the BHMT-M as a student station (essentially a replica of the helicopter and its maintenance platform) and an instructor operator station (IOS) where the behavior of the student station could be controlled. SOW at 4. To facilitate fabrication of the BHMT-M, the RFP provided that the Army would provide, as government-furnished equipment, one crash-damaged UH-60A/L helicopter (one front half and one back half) for the first unit, followed later by one UH-60A/L/M “Category B” helicopter, for the second BHMT-M unit. SOW at 6. The RFP provided that the Army could exercise the four individual options, each for one additional BHMT-M unit, at any time within 5 years of award. RFP amend. 1 at 6. For each of the optional units, the Army explained that it would provide to the contractor either another crash-damaged aircraft, or another Category B aircraft, whichever the Army deemed to be available. AR, Tab 7, Answers to Offeror Questions, at 4 (Question/Answer No. 20).

The RFP also provided performance specifications, which identified faults and repair procedures, along with the corresponding steps that the BHMT-M was required to permit repair crews to perform. In this regard, for each step of each repair procedure, the RFP specified whether the BHMT-M had to replicate the UH-60M with parts and systems that were functionally identical, physically identical, or both, or could instead use non-functional or similar systems or parts. For example, with regard to the BHMT-M refuel/defuel system, the RFP provided:

¹ The RFP provided that the contractor’s approved travel cost would be paid on a cost-reimbursement basis. RFP at 6.

² The RFP also identified subfactors under each of the four non-price factors. RFP at 61-62. As relevant to the protest, the three equally-weighted technical subfactors were technical design, system approach, and technology insertion, while the two equally-weighted program management subfactors were schedule, and integrated product teams. RFP at 61. Under the past performance factor, the RFP identified three subfactors: relevance, confidence, and hardware/software reuse. RFP at 62.

3.2.5.36 Pressure Refuel/Defuel System

The pressure refuel/defuel system components shall be installed on the [student station] replicating the actual aircraft systems.

RFP attach. 5, BHMT-M Performance Specifications, at 24.

The RFP provided that the first BHMT-M system would be delivered within 24 months of award; production of the second unit would begin 1 year after award, for delivery within 18 months thereafter; and delivery of each optional unit would be due within 12 months of the Army exercising the option. RFP at 5; RFP amend. 1 at 2. Under the performance management factor, offerors were required to provide a detailed development schedule. RFP at 57.

On April 16, the Army received two proposals; one from PSI and one from LSI. In its proposal, PSI explained its approach to producing the BHMT-M units, stating that, for many of the required functions, PSI would rely on the reuse of “existing” or “legacy” software from another trainer--the Black Hawk Electrical Trainer UH-60M (BHET-M). For example, in describing the simulator systems and network architecture of its proposed design, PSI asserted that its design for the BHMT-M computer architecture “is almost identical to the system utilized by the BHET-M.” AR, Tab 12, PSI Technical Proposal, at 22. PSI’s proposal also indicated that the firm would reuse BHET-M elements to meet various other RFP requirements. For example, the proposal stated:

[DELETED]

[DELETED]

[DELETED]

[DELETED]

Id. at 23, 24, 25, 27.

With respect to the refuel/defuel system, PSI’s proposal stated that “[a]ccording to the Performance Specification, the Pressure Refuel/De-fuel System does not require modeling.” AR, Tab 12, PSI Proposal, at 38 (¶ 4.4.28.4).

As an appendix to PSI’s program management proposal, the firm provided a master schedule. Among other things, PSI scheduled the simultaneous manufacture of the third and fourth (optional) units and similarly scheduled the simultaneous manufacture of the fifth and sixth (optional) units. AR, Tab 22, PSI Program Management Proposal, appx. A (BHMT-M Integrated Master Schedule Final), at 3.

For its part, LSI’s proposal addressed each of the evaluation factors, including a description of the firm’s technical approach, and included past performance

information. LSI's technical approach also contemplated the reuse of existing software for various BHMT-M elements. Specifically, LSI proposed to reuse software from several already-fielded trainers, principally three Chinook helicopter trainer systems and two Longbow helicopter trainer systems. Supplemental AR, attach. 1, LSI Technical Proposal, at 44-45; Supplemental AR at 10-11. LSI's proposal further explained that its approach [DELETED]. Id., attach. 2, LSI Technical Proposal, at 10-11.

The Army evaluated both proposals and thereafter prepared evaluation notices (EN) for each offeror. On April 25 and 26, the Army sent 27 ENs to PSI, and three ENs to LSI; each of the ENs was labeled as either an "error, omission and clarification report form," or an "evaluation notice form-clarification." See generally, AR, Tabs 13, ENs to PSI; AR, Tab 14, ENs to LSI. A significant portion of the ENs sent to PSI reflected the agency's concern regarding the stage of development of the "existing" software on which PSI's proposal relied, questioning PSI as to the platform on which the software was being used, and referring to particular relevant paragraphs of PSI's proposal. AR, Tab 13, ENs to PSI, at 1-2. For example, the Army asked that PSI identify the critical development dates of the computer system architecture on which it relied, further asking "What platform is the 'existing' UH-60M software model currently used on?" and "What platform is the 'UH-60M host simulation model' currently used on?" Id. at Technical EN-01; Technical EN-07 & -08.

Both offerors submitted responses to the evaluation notices. PSI's responses addressed the source of various elements of its system, and the state of completion of the systems from which it proposed to reuse elements, frequently referring to the BHET-M (UH-60M Black Hawk Electrical Trainer), and occasionally referring to the UH-60L CEPT (UH-60L Cockpit Emergency Procedures Trainer). For example, in response to Technical EN-01, PSI stated:

The BHET-M computer system architecture was designed to replicate UH-60M aircraft systems The BHET-M computer system architecture design was approved . . . at the BHET-M Critical Design Review (CDR) on March 15, 2012, is scheduled to complete production in September 2012, and be accredited and fielded in May 2013.

AR, Tab 15, PSI Response Spreadsheet, at 1.

In response to Technical EN-07, PSI further explained that some source code was in use on UH-60L CEPT training devices, and that other BHET-M source code was "in the Implementation Phase," or running "in the Pinnacle test bed." Id. For Technical EN-08,³ PSI's response mentioned only its use of BHET-M software, but did not

³ EN-08 asked: "What platform is the 'UH-60M host simulation model' currently used on?"

mention use of UH-60L CEPT software. Id. Responses to the other software development inquiries identified use of software being developed for the BHET-M, and occasionally referred to the UH-60L CEPT. Id. at 1-2.

The Army evaluated both offerors' responses to the ENs, assessing significant weaknesses under the technical and program management factors for PSI's proposal. Under the technical evaluation, the significant weaknesses for PSI included the following:

Throughout the entire proposal, [PSI] relied heavily on the reuse of software from the BHET-M, a device that it has not yet contracted, produced, accredited, or fielded. The technical review team assigned a risk of moderate to each element of the proposal that pointed to the BHET-M software reuse.

AR, Tab 17, Source Selection Decision, at 7; AR, Tab 23, PSI Technical Evaluation, at 4-5.

Additionally, the Army evaluators assigned weaknesses because PSI's proposal did not demonstrate an adequate understanding of the "pressures refuel and systems training task (Performance Specification 3.2.5.36)," and because PSI assumed that two items (external supports and a power cart) would be provided as government-furnished equipment (GFE), even though neither item was on the RFP's list of GFE. AR, Tab 17, Source Selection Decision, at 7; AR, Tab 23, PSI Technical Evaluation, at 27.

Under the program management factor, the evaluators identified two significant weaknesses in PSI's proposal. First, the evaluators noted that PSI's approach relied on successful, on-time production of the BHET-M; yet as a subcontractor for that trainer, PSI bore risks of delays that it could not control. Second, PSI's schedule relied on assumptions that were inconsistent with the RFP--specifically that the Army would deliver two Category B aircraft simultaneously to accommodate PSI's proposed simultaneous production of the third and fourth BHMT-M units, as well as the similar simultaneous production of the fifth and sixth units. AR, Tab 17, Source Selection Decision, at 11.

For LSI, the evaluators identified various strengths associated with the firm's approach to software reuse, noting that LSI's proposal relied on software from multiple systems that had already been successfully fielded. AR, Tab 17, Source Selection Decision, at 5-6. Under the past performance evaluation, the evaluators noted that LSI had demonstrated success through reusing software code to decrease development time, and that the firm had shown technical expertise and successful past performance that was relevant to all areas of the SOW, including support of an Army maintenance trainer system and other complex training systems. AR, Tab 20, LSI Past Performance Evaluation, at 1; AR, Tab 17, Source Selection Decision, at 17-18.

The evaluation of the proposals and responses to the ENs resulted in the following ratings:

	PSI	LSI
Technical	Acceptable	Good
Program Management	Acceptable	Good
Small Business	Good	Good
Past Performance	Very Relevant/ Substantial Confidence	Very Relevant/ Substantial Confidence
Price	\$32.1 million	\$30.8 million

AR, Tab 10, Contracting Officer's Memorandum for Record, May 7, 2012, at 2.

The contracting officer prepared a source selection decision, which concluded that LSI's proposal was significantly superior to PSI's, particularly under the two most important factors, and that it also offered a lower price. AR, Tab 17, Source Selection Decision, at 2. The source selection decision reflected the contracting officer's review of each offeror's evaluation and ratings, the evaluated strengths and weaknesses of each proposal, and then concluded that LSI's proposal offered the best value for the government. Id. at 19.

On June 27, the Army awarded the contract to LSI. After a debriefing, PSI filed this protest.

DISCUSSION

PSI argues that the Army held inadequate discussions, rather than clarifications; that the agency evaluated PSI's and LSI's proposals unreasonably and unequally; and that the Army evaluated LSI's past performance unreasonably. As discussed below, we find no merit in PSI's arguments.

Clarifications Were Properly Conducted

PSI first asserts that the Army conducted discussions with PSI, and that those discussions were inadequate.⁴ Its argument is based on PSI's claim that, despite being labeled as clarifications, the questions posed by the Army through ENs were essential to determining the acceptability of PSI's proposal, that PSI's responses materially affected the evaluation of its proposal, and, therefore, that its responses should be considered proposal revisions. Protester's Comments at 2. Accordingly, PSI maintains that the Army was required to hold comprehensive discussions with PSI to advise it of all the significant weaknesses in its proposal, which the firm argues it could have corrected.

⁴ PSI has not argued that the agency's communications with LSI constituted discussions.

The Army responds that it did not hold discussions but, rather, limited its communications with both offerors to clarifications. Thus, the agency argues that it properly did not communicate with PSI regarding aspects of its proposal that would have required proposal revisions to correct. In short, the agency maintains that it conducted only clarifications because it was proceeding to make award without discussions.

Federal Acquisition Regulation (FAR) § 15.306 describes a range of exchanges that may take place during negotiated procurements. In short, an agency is not required to hold discussions, and thus to allow offerors to submit proposal revisions; rather, it may properly limit its communications with offerors to clarifications. Id. Clarifications are defined as "limited exchanges" between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR § 15.306(a)(2). Clarifications are not to be used to cure proposal deficiencies or material omissions, or materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. Discussions, on the other hand, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. FAR § 15.306(d). Accordingly, our Office has confirmed that where communications do not permit an offeror to revise or modify its proposal, but rather request that the offeror clarify and confirm what the offeror has already committed to do, those communications are clarifications and not discussions. ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4-5.

The record here supports the Army's position that it sought only clarifications from the offerors, and then made award based on the initial proposals as clarified. Notwithstanding PSI's arguments, our review of the record shows that the questions posed to PSI and LSI were indeed clarifications--requests for each offeror to supply information clarifying the basis for statements in its proposal, or confirming what the offeror intended by a statement within its proposal. Thus, for example, where PSI's proposal indicated reuse of software code without making clear from which system the code was being reused or the status of the development of that code, the Army properly sought a clarification from PSI.⁵ None of the Army's ENs invited either firm

⁵ Although, as noted above, most of the clarifications to PSI sought specific information about the reuse of software, others asked PSI to specifically identify a reference to a quality management system; to confirm its understanding that the first two aircraft would be delivered to Huntsville, Alabama on particular dates; and to advise that PSI understood that the Army would supply limited quantities of transmissions and rotor blades. See AR, Tab 13, ENs to PSI, at Program Management EN-01, Technical EN-02, -04 & -06. Although PSI maintains, nonspecifically, that its clarification responses were essential to determining the acceptability of its proposal, it also maintains, somewhat contrarily, that "none of the

(continued...)

to revise its proposal. Accordingly, we agree with the Army that it did not conduct discussions, and we deny PSI's assertion that the Army held defective discussions by failing to identify other weaknesses in PSI's proposal that could have been addressed only through proposal revisions.

Evaluation of PSI was Reasonable

Next, PSI argues that the Army misevaluated the firm's proposal with respect to each of six significant weaknesses, and that the offerors were evaluated unequally with respect to software reuse. We discuss the most significant of these, relating to PSI's reuse of software and its proposed schedule.⁶

PSI argues that it proposed to use not only software code from its BHET-M design, but also software code from the UH-60L CEPT, which it asserts is a fully developed, completed trainer. PSI also argues that its BHET-M software is actually derived from the UH-60L CEPT software, and thus its proposal should have been evaluated more favorable because the "baseline source code" has been fully developed, and put "in use on three training units." Protester's Comments at 14-15. In a supplemental protest, PSI further argues that the evaluation reflects unequal treatment because LSI also proposed software reuse from the firm's Chinook and Longbow helicopter trainers, and was evaluated favorably, in contrast to the evaluation of what PSI asserts was its own equivalent approach. Protester's Comments at 24-25.

PSI also argues that the Army unreasonably assigned additional significant weaknesses under the performance management factor because, as a subcontractor for the BHET-M, PSI's proposed reliance on continued progress on the BHET-M, PSI could not control the pace of progress on the BHET-M. PSI argues that timely completion of BHET-M software was not an element of its proposed critical path; rather PSI argues that its schedule allowed significant "float"

(...continued)

ENs led [PSI] to believe that a problem existed with the substance of its proposal." Protester's Supplemental Comments at 2-3. Our review of the entire record leads us to agree with the Army that the agency did not invite proposal revisions, and that PSI's responses did not alter its proposed approach. AR, Tab 15, PSI Response to ENs at 1-3.

⁶ Nevertheless, we have considered and rejected all of PSI's arguments. Briefly, PSI argues that its proposal was misevaluated with respect to the approach to replicating the BHMT-M refuel/defuel system and with respect to the presence of external supports on the GFE helicopters. PSI also argues that these issues should have been raised in discussions. We find the evaluation was reasonable and, as noted above, that the Army did not hold discussions and therefore properly did not invite PSI to revise its proposal.

between the expected completion of aspects of the BHET-M and PSI's use of them in the BHMT-M. Therefore, PSI argues, any delays in progress on the BHET-M would not be likely to affect the firm's development of the BHMT-M.

With respect to PSI's argument that the firm was treated unequally in comparison to LSI's proposed software reuse, the Army explains that the firms' proposals were evaluated differently regarding software reuse because of valid material differences. Specifically, LSI proposed to reuse fully developed software from a number of completed trainers, while PSI proposed to reuse software primarily from the BHET-M--a trainer that has not been finalized nor delivered. Supplemental AR at 4-6. The Army further explains that PSI's proposal and clarifications emphasized the firm's plan to reuse BHET-M software, not the UH-60L CEPT.⁷ Finally, the Army explains that its evaluators reasonably discounted as self-serving, PSI's prediction of how readily the firm could reuse BHET-M software, and instead concluded, again reasonably, that the incomplete development of the BHET-M would make PSI's reliance on reuse of its software a moderate risk. AR at 23-27.

The evaluation of an offeror's proposal is a matter within the agency's discretion, and this Office will not reevaluate proposals; rather, we will review an agency's evaluation to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria. Thus, a protester's disagreement with an agency's judgments does not render the evaluation unreasonable. A² Group, Inc., B-402829.2, B-402829.3, Dec. 8, 2010, 2011 CPD ¶ 33 at 7. Here, we find no merit in PSI's complaints.

First, our review of PSI's proposal and its responses to the ENs supports the Army's conclusion that the approach described by PSI appeared to primarily depend on the successful completion of software and other aspects of the BHET-M--a trainer that has not yet been completed or delivered. While PSI's clarified proposal does contain limited references to the UH-60L CEPT as a software source, in comparison to PSI's references to the BHET-M, it does so only rarely. Additionally, the Army's explanation of differences between the UH-60L CEPT as a training simulator for particular helicopter cockpit functions, and the BHMT-M as a full-aircraft repair trainer, are consistent with and support the Army's evaluation judgment that PSI's proposal relied significantly on completion of BHET-M software. Since the record

⁷ The Army acknowledges that PSI's proposal and (to a greater extent) its responses to the ENs made some reference to reuse of UH-60L CEPT software. However, in addition to the limited references to this trainer, the Army maintains that PSI's role in the UH-60L CEPT was a comparatively small upgrade to an existing system, and that the unit is a pilot training simulator that has significant differences from the BHMT-M system, thus effectively preventing the UH-60L CEPT from being a source of significant software reuse for the BHMT-M. Supplemental AR at 8.

demonstrates the reasonableness of the Army's evaluation judgments, we deny these grounds of protest.

Likewise, we view the Army's assessment of a significant weakness to PSI's proposal due to the firm's reliance on completion (or at least continued progress) of the BHET-M system, to provide fully developed software for reuse in the BHMT-M posed a risk in connection with PSI's ability to manage the contract. Indeed, the Army points out that the BHET-M schedule has already slipped, and PSI's proposal left concern that the firm was overly optimistic about the ease of reuse, even considering the "float" that PSI argues was built into its schedule. AR at 30-31. The record provides reasonable support for the evaluation of PSI's proposal as presenting weaknesses in these areas. Accordingly we deny all of PSI's challenges to the technical and performance management evaluations.⁸

Further, PSI argues that the Army unreasonably assigned a significant weakness in connection with its proposed schedule, due to PSI's assumption that the Army would supply two Category B aircraft at the same time in order to accommodate PSI's intent to produce optional units 3 and 4 simultaneously and, similarly, with regard to production of optional units 5 and 6. PSI argues that the Army never informed the offerors that two Category B aircraft would not be provided at the same time. Protester's Comments at 22.

The Army responds that, while it did not state that two "Category B" aircraft would not be provided at the same time for the optional BHMT-M units, the RFP did not commit the agency to do so. More specifically, the RFP made clear that the optional units could be ordered, on an individual basis, at any time within 5 years of award, and further, that the Army would determine whether to provide the contractor with a crash-damaged aircraft, or a Category B aircraft. AR at 32-33; see AR, Tab 7, Army Response to Offeror Questions, at 3 (Question/Answer 20). The Army argues that PSI's schedule was based on assumptions of Army actions to which the Army was not committed. Accordingly, the Army maintains that the evaluators properly assigned a significant weakness based on PSI's unwarranted assumptions. AR at 32-33.

In our view, the Army's evaluation in this respect was reasonable. We agree with the Army that PSI's master schedule depicted an unwarranted assumption that the Army would provide for PSI's simultaneous production of the two pairs of option

⁸ As noted above, our discussion addresses the most significant themes of PSI's protest of the evaluation of its proposal. Additionally, to the extent that PSI learned of other weaknesses in its debriefing, but only provided a substantive challenge to them in its comments, see Protester's Comments at 20, we dismiss those challenges as untimely because those challenges were raised more than 10 days after the debriefing.

units. In contrast to PSI's assumptions, the RFP made exercise of the option for each unit independent of any others. Accordingly, the Army's assessment of a significant weakness was reasonable.

Evaluations of LSI Past Performance was Reasonable

Finally, PSI argues that Army unreasonably rated both PSI and LSI as very relevant/substantial confidence under the past performance factor because LSI has had no prior experience with Black Hawk trainers. Protest at 10-11; Protester's Comments at 23. The Army responds that the RFP did not limit relevance of prior performance to performance on the BHMT-M (which neither firm had), nor to Black Hawk trainers (which differ as to their complexity and functionality). The Army maintains that the record supports the evaluators' judgment that LSI's successful experience, particularly with fully-fielded trainers for the CH-47F Chinook and Longbow helicopters, was properly evaluated at the same rating as PSI received--that is, very relevant/substantial confidence. AR at 19-20; 33-34.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

Here, the record reasonably supports the Army's evaluation of LSI's past performance as very relevant/substantial confidence. The record shows that the Army evaluators considered LSI's successful past performance with maintenance trainer systems and other complex systems, and that the firm had demonstrated its expertise to all areas of the SOW. By contrast, the basis of PSI's challenge--that an offeror lacking past performance on a Black Hawk trainer could not reasonably have received a very relevant/substantial confidence past performance rating--has no basis in the terms of the solicitation. As the agency notes, the solicitation did not limit relevance of past performance to Black Hawk trainers.

The protest is denied.

Lynn H. Gibson
General Counsel