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Decision

Matter of: Science Applications International Corporation

File: B-408307.2

Date: January 27, 2014

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Kerry Hotopp, Esq., Rizlane Riahi, Esq., and Wendy Iaci, Esq., Department of the Navy, Naval Sea Systems Command, for the agency.
Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to hold meaningful discussions concerning a pricing assumption is denied, where objectionable assumption was raised for the first time in final proposal revision; similarity of one aspect of the assumption to an earlier assumption does not provide a basis to sustain the protest.

DECISION

Science Applications International Corporation (SAIC), of McLean, Virginia, protests the award of a contract to Raytheon Network Centric Systems, of McKinney, Texas, under request for proposal (RFP) No. N00024-11-R-5207, issued by the Department of the Navy, for engineering, development, and manufacturing of common array block (CAB) antennas. SAIC asserts that the agency's discussions with the firm were not meaningful and that the agency's determination to eliminate its proposal from the competition was unreasonable.

We deny the protest.

BACKGROUND

The solicitation, which the agency issued on May 16, 2012 and amended 11 times,¹ contemplated the award of a single contract for the design, development, testing and production of CAB antennas.² RFP at 35. Award was to be made to the proposal representing the best value to the government, considering the following factors: antenna design, systems engineering, engineering support services, management, integrated logistics support, past performance, and cost/price.³ Id. at 162-65. The non-cost/price factors--as listed above--were stated to be in descending order of importance, and, when combined, were stated to be more important than cost/price. Id. at 165.

As initially issued, the solicitation included two base contract line item numbers (CLIN). The base CLINs were for the CAB antenna system requirements review/system functional review and associated data. RFP at 2-3. The solicitation also included numerous option CLINs. Id. at 4-11. Eight of the option CLINs were to be priced on a cost-plus-incentive-fee (CPIF) basis, including options for CAB antenna preliminary and critical design review tasking; long-lead-time material for construction of a CAB antenna engineering development model (EDM), as well as an option for construction of the EDM itself; and long-lead-time material for construction of CAB antenna pre-production units (PPU), as well as an option for construction of the PPUs themselves.⁴ Id. at 4-10. For each of the CPIF CLINs, offerors were to propose target costs and target fees. Id. at 21.

Regarding the exercise of options, the solicitation provided that “the Government has the right to unilaterally exercise any . . . option whether or not it has exercised other options.” RFP at 107. With regard to the schedule by which the agency could exercise the options, the solicitation included a table that provided a “latest option exercise date” for each option CLIN, ranging from 12 to 36 months after the date of

¹ Citations to the solicitation in this decision refer to the “conformed” version of the solicitation provided to our Office.

² The CAB antennas are to be used in “mobile data communications networks” as part of a “real-time sensor netting system that transmits high-quality situational awareness and integrated fire control capability to Navy ships and Marine ground units against air combat units.” Agency Report (AR) at 4. The CAB antennas are to be lighter than and have increased capability over the agency’s current antennas, which have become obsolete. Id.

³ The antenna design and management factors each included three subfactors. RFP at 162-64.

⁴ The base requirement for the system requirements review/system functional review also was to be priced on a CPIF basis. RFP at 2.

contract. RFP at 107-09. With regard to deliveries under each option CLIN, the solicitation provided that deliveries were to occur in a specified number of months (in most instances 12 months) after the exercise of the option. Id. at 90.

The solicitation instructed that offerors' technical and cost/price proposals were to include a basis of estimate (BOE) for each CLIN. RFP at 153, 156. The BOEs were to include "all underlying assumptions with respect to the technical aspects of the work to be performed." Id. As relevant to this protest, the solicitation also included the blanket warning that "[f]ailure to comply with the terms and conditions of the RFP may result in the Offeror being removed from consideration for award." Id. at 142.

The agency received five proposals by the solicitation's closing date of September 5, including proposals from SAIC and Raytheon. AR at 6. SAIC's cost proposal included a BOE and assumptions. AR, Tab 13, SAIC Final Proposal Revision (FPR), vol. IV, Cost, at 23-43, 78-79. As relevant to this protest, one of the assumptions--which was designated "Assumption S"--stated as follows:

CLIN Options. SAIC assumes that the CLIN options are exercised in a timely manner such that work stoppages are not incurred between CLINs.

Id. at 79.

Following an evaluation of the proposals, the agency established a competitive range. AR at 6. On April 17, 2013, the agency notified SAIC that its proposal was being excluded from the competitive range. Id. SAIC then filed a protest with our Office challenging the exclusion of its proposal from the competitive range. In response to this protest, the agency decided to take corrective action consisting of reevaluating SAIC's proposal. Id. Accordingly, our Office dismissed the protest as academic. B-408307, May 30, 2013.

On June 7, the agency sent SAIC a letter notifying the firm that its proposal was being included in the competitive range. AR, Tab 22, SAIC Discussions Ltr. (June 7, 2013). The letter included an attachment with numerous discussions questions. Id.; see also AR, Tab 17.1, SAIC Response to Discussions Ltr. (June 13, 2013). None of the questions pertained to SAIC's cost proposal or the assumptions therein. See AR, Tab 17.1, SAIC Response to Discussions Ltr. (June 13, 2013). On June 13, SAIC submitted detailed responses to the discussions questions. Id.

On July 12, the agency amended the solicitation by adding additional option CLINs for production units; i.e., the agency expanded the solicitation's options to include production of the end-state CAB units. RFP amend. 8 at 2; RFP at 12-18. The option CLINs for production were to be priced on a fixed-price-incentive (firm target)

(FPI) basis. RFP at 12-24; see Federal Acquisition Regulation (FAR) § 16.403-1. To allow offerors to propose fixed target prices for production units of a system not yet designed or developed, the solicitation provided that the first-year production unit fixed-target price was to be derived from the actual cost of the most recently produced PPU, plus an escalation factor (for manufacturing rate increases or inflation), minus an efficiency factor (for learning or productivity improvements). RFP at 19. A similar formula was to be used for the second- and third-year production unit fixed-target prices, except that for those prices, actual cost of the prior year's production units was to be used. Id. at 19-20.

In terms of quantities for the production units, the solicitation included a “stepladder” schedule, whereby offerors were to propose different pricing for different quantities of production units, with the highest total possible quantity under any option year being 18. RFP at 22-24. The solicitation stated that the agency was not committed to ordering any particular quantity of production units.⁵ In addition, in response to an offeror question, the agency cautioned that the stepladder quantities were “provided for information purposes only and do not constitute any promise or agreement on the part of the Government to purchase one or more of these units in any year.” RFP amend. 9, attach. Q&A, at 10. The solicitation also assigned “latest option exercise date[s]” to the production options, ranging from 48 months to 72 months after the date of contract; and delivery dates/performance periods of 12 months after the date each option was exercised for quantities that were (in most instances) to be determined. RFP at 90-91, 108.

On July 12--the same day the solicitation amendment that added option CLINs for production units was issued--the agency transmitted letters requesting FPRs from the competitive range offerors. AR at 7. The letters advised that offerors were to “adhere to the requirements” of the newly issued solicitation amendment; i.e., offerors’ were to include pricing for the newly-added production unit CLINs in their FPRs. See AR, Tab 8, Request for SAIC FPR Ltr. (July 12, 2013), at 1-2.

SAIC submitted an FPR. As required, the cost/price volume of SAIC’s FPR included pricing for the production unit CLINs. Additionally, the cost/price volume of SAIC’s FPR included a new assumption--designated “Assumption U”--which stated as follows:

Production CLINs. SAIC assumes that the production CLIN options are exercised in a timely manner to facilitate the delivery of antennas at a continuous rate of at least one unit per month and without any

⁵ In this regard, the solicitation stated: “[I]t is just as likely that any one of the stepladder quantities for each stepladder CLIN will be awarded/exercised.” RFP at 166.

break in the delivery schedule. Otherwise SAIC reserves the right to seek an equitable adjustment for increased costs, time or both.

AR, Tab 13, SAIC FPR, vol. IV, Cost, at 79.

After receiving SAIC's FPR, the agency concluded that this new assumption rendered SAIC's proposal materially non-compliant with the solicitation and ineligible for award. See AR at 11-12. Based on the determination that SAIC's proposal was ineligible for award, the agency did not evaluate SAIC's FPR or consider it in the best-value trade-off analysis. See id. at 13.

By letter dated September 27, the agency informed SAIC of its decision to eliminate the firm's proposal from the competition. See AR, Tab 14, Notice of Ineligibility, at 1. The letter explained that the assumption was inconsistent with the fixed-price nature of the production CLINs; that it placed restrictions on the agency's unilateral right to exercise options; and that it contradicted the solicitation provision that permitted the agency to order any of the stepladder quantities of production units. Id. at 2. The letter also informed SAIC that the agency had awarded the contract to Raytheon, with a value of \$7,307,299.⁶

After receiving a debriefing, SAIC filed a protest with our Office.

DISCUSSION

SAIC asserts that the agency's discussions with the firm were not meaningful and that the decision to eliminate the firm's proposal from the competition was unreasonable. We have considered all of SAIC's arguments, and, based on the record, we conclude that none furnish a basis on which to sustain the protest. Below we discuss SAIC's principal contentions.

SAIC asserts that the agency failed to conduct meaningful discussions because the assumption in its FPR that led to its elimination from the competition (i.e., "Assumption U") was "essentially the same" as an assumption that appeared in its initial proposal ("Assumption S"), yet the agency did not address Assumption S in its discussions with SAIC. Protest at 2; Comments at 6. In this regard, SAIC argues that: "The Agency failed to advise SAIC that it viewed SAIC's assumption that the Agency would timely exercise options as a deficiency, let alone a disqualifying feature of its proposal." Protest at 14.

⁶ This value represents only CLINs 0001 through 0006 (i.e., only the initial design-related work), and thus it is only a fraction of the potential value of the contract. See AR, Tab 14, Notice of Ineligibility, at 2.

When an agency engages in discussions, they must be meaningful; that is, they must lead the offeror into the areas of its proposal that require correction or amplification. Raytheon Co., B-403110.3, Apr. 26, 2011, 2011 CPD ¶ 96 at 7. However, an agency is not obligated to reopen negotiations to give an offeror the opportunity to remedy a defect that first appears in a revised proposal. Id.; American Sys. Corp., B-292755, B-292755.2, Dec. 3, 2003, 2003 CPD ¶ 225 at 8.

As stated above, “Assumption S” applied to primarily CPIF CLINs for various aspects of design, development, and pre-production work, and stated as follows:

CLIN Options. SAIC assumes that the CLIN options are exercised in a timely manner such that work stoppages are not incurred between CLINs.

AR, Tab 13, SAIC FPR, vol. IV, Cost, at 79.

In contrast, “Assumption U” applied to FPI CLINs for production units, and stated as follows:

Production CLINs. SAIC assumes that the production CLIN options are exercised in a timely manner to facilitate the delivery of antennas at a continuous rate of at least one unit per month and without any break in the delivery schedule. Otherwise SAIC reserves the right to seek an equitable adjustment for increased costs, time or both.

Id.

Arguably, both of these assumptions are inconsistent with the solicitation provision that grants the government a unilateral right to exercise any option, regardless of whether it exercised other options, at any time prior to the latest option exercise date. RFP at 107. The first assumption--Assumption S--deviated from this solicitation provision by assuming the timely exercise of options so there would be no work stoppages. The second assumption--Assumption U--deviated from this provision by anticipating the timely exercise of options so there would be no break in the delivery schedule. While the two assumptions are similar in this respect, they also differ in key respects.

As noted above, Assumption S applied to CPIF CLINs for design, development, and pre-production work. Assumption U applied to FPI CLINs for production work. We do not see how the agency’s failure to object to an assumption for one type of work priced on a CPIF basis requires it to accept a similar assumption for different work priced on a FPI basis. As a result, we do not view the agency’s failure to object to the initial assumption and its rejection of the subsequent assumption to reflect that misleading discussions occurred or that the agency acted unreasonably.

Additionally, Assumption U was more specific, which in our view could reasonably heighten concerns over issues--such as cost/price increases--that were raised, at best, in only a conceptual manner under Assumption S. See AR at 15-19, 21-25. Moreover, Assumption S reasonably raised fewer concerns given that it pertained to cost-type CLINs, under which the government is required to reimburse the contractor all incurred costs that are allowable, reasonable, and allocable, and consistent with the FAR's cost principles.⁷ See FAR subpart 31.2.

Finally, unlike Assumption S, Assumption U required the agency to structure its orders so at least one unit per month was delivered. Thus, Assumption U deviated from the schedule-related provisions of the solicitation--which advised that the agency was not obligated to purchase any particular quantity of production units within the 12 month delivery/performance period of the option--in a different manner than did Assumption S. RFP at 22-24, 90-91, 166.

In sum, the agency was not required to reopen discussions with SAIC to raise concerns based on issues that were raised for the first time in SAIC's FPR. See American Sys. Corp., supra; see also Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-1 CPD ¶ 76 at 5-9. Additionally, we find reasonable the agency's decision to reject SAIC's proposal based on Assumption U given the newly-introduced and material deviation to the solicitation's delivery and pricing provisions.⁸ See Sea Containers Am., Inc., B-243228, July 11, 1991, 91-2 CPD ¶ 45 at 6 n.3 (terms affecting delivery schedule and option quantities are material).

The protest is denied.

Susan A. Poling
General Counsel

⁷ While we agree with the agency's focus on the distinction between whether these assumptions were applied to cost-reimbursement or fixed-price CLINs, we also recognize that because the CLINs to which Assumption S pertained were CPIF, Assumption S may have conferred on SAIC a right to adjust its target cost and fee in a manner that may be in some ways analogous to the request for equitable adjustment process expressly contemplated in Assumption U. See SAIC Comments at 9-11. Nevertheless, this possibility does not lead us to conclude that the agency acted unreasonably.

⁸ Because we conclude that the agency could reasonably reject SAIC's proposal for award based on its proposal assumption, we need not address the protester's other bases of protest.