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Washington, DC 20548

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Decision

Matter of: FCI Federal, Inc.
File: B-408558.7; B-408558.8
Date: August 5, 2015

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DIGEST

Protest is sustained where the agency in undertaking corrective action approximately nine months after its initial award decision, and after the awardee had been sold to another company, failed to consider that the awardee's proposal no longer reflected the manner in which the contract will be performed and the resources, experience, and past performance to be relied upon in the performance of the contract.

DECISION

FCI Federal, Inc., of Leesburg, Virginia, protests the award of a contract to PAE Professional Services Inc. (PAE/USIS PSD) (formerly U.S. Investigative Services, Professional Services Division, Inc. (USIS PSD)), of Falls Church, Virginia, under request for proposals (RFP) No. HSSCCG-13-R-00002, issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), for field office support services. FCI argues that the agency acted unreasonably when, in response to our prior decision in FCI Federal, Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308, the agency considered only the awardee's responsibility and thereafter made award on the basis of a proposal that no longer reflects the manner in which the contract would be performed.

We sustain the protest.

BACKGROUND

The solicitation, issued on March 4, 2013, provided for the award of a fixed-price, time-and-materials contract to provide field office support services (FOSS), including correspondence management, file operations and maintenance, data reviews and updates, interview scheduling, production of certificates, ceremony support, and interview preparation, in support of 68 U.S. Citizenship and Immigration Services field offices and 10 asylum offices throughout the United States.

Award was to be made on a best-value basis considering the following evaluation factors (listed in descending order of importance): management capability, including subfactors for operational approach, staffing, management approach, and relevant corporate experience; small business contracting; past performance; and price. RFP at 118-26. Under the corporate experience subfactor, offerors were instructed that their proposals “shall address relevant corporate experience” in the following nine areas: (1) management of multiple sites/locations in a large geographically dispersed environment; (2) management of multi-functional services; (3) management of a workforce of this magnitude; (4) management of non-exempt employees covered by a wage determination or a collective bargaining agreement; (5) management of the types of tasks on the field office support services contract; (6) customer service; (7) transitioning a contract workforce of this magnitude; (8) management of significant workload volume with lulls and significant surge events; and (9) implementing a training program of this magnitude. RFP at 102-103.

Six offerors, including FCi and USIS PSD, submitted proposals by the April 1, 2013, closing date. After evaluating proposals, the agency established a competitive range consisting of USIS PSD and FCi, and conducted discussions.

After reviewing final proposal revisions, the Technical Evaluation Committee (TEC) and the Business Evaluation Committee (BEC) evaluated the proposals as follows:

Evaluation Factor and Subfactors	FCi Federal	USIS PSD
Management Capability	Good	Outstanding
Operational approach	Good	Outstanding
Staffing	Good	Outstanding
Management approach	Good	Outstanding
Corporate experience	Outstanding	Outstanding
Small Business Subcontracting	Outstanding	Outstanding
Maximization of small business	Outstanding	Outstanding
Participation in mentor-protégé program	Outstanding	Outstanding
Small disadvantaged participation targets	Acceptable	Acceptable
Past Performance	Low Risk	Low Risk
Price	\$227,304,116	\$209,757,145

AR1,¹ Tab 45, Briefing to SSA, Mar. 12, 2014, at 14.

Although the TEC assigned higher adjectival ratings to USIS PSD’s management capability proposal, the source selection advisory committee (SSAC) determined that the two proposals were essentially equal from a technical standpoint. AR1, Tab 46, SSAC Report, Mar. 25, 2014, at 3-8. The SSA also concluded that the two proposals were essentially equal, stating that “I agree with the SSAC that the proposals [were] comparable and the strengths assessed to USIS do not provide any particular additional value to [the agency].”² AR1, Tab 47, Source Selection

¹ In connection with the current protest, the agency provided an agency report that included relevant documents, as well as a copy of the agency report produced in response to the prior protest in this matter, FCi Federal, Inc., *supra*. For ease of reference, we refer to the agency report from the prior protest as AR1 and the agency report produced in response to the current protest as AR2.

² Under one of the small business subcontracting subfactors, the SSA noted the following:

both FCi and USIS were rated as Outstanding, although the SSAC found FCi’s proposal provided greater value to the Government because it proposed to significantly exceed the DHS subcontracting goals in all categories and provides a corrective action plan to ensure it meets its subcontracting

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Decision Document (SSDD), May 6, 2014, at 5; see also, id. at 6-7. Since the proposals submitted by FCI and USIS PSD were considered to be equal under each of the non-price factors, the SSA identified USIS PSD's lower-priced proposal as in line for award. AR1, Tab 47, SSDD, at 1-2, 7. On July 1, 2014, having determined USIS PSD to be responsible, the contracting officer made award to that firm.

On July 10, 2014, FCI protested to our Office. FCI's protest alleged, among other things, that the agency unreasonably failed to consider and document its consideration of allegations of fraud against the awardee's parent company in determining USIS PSD's responsibility. We sustained the protest, finding that the record showed that the contracting officer failed to obtain and consider the specific allegations of fraud alleged by the Department of Justice (DOJ) against the awardee's parent, relying instead on general media reports. FCi Federal, Inc., supra, at 11. We also found that the contracting officer failed to consider the close relationship between the awardee and its then parent company, USIS LLC, with respect to the contemplated approach to contract performance, mistakenly believed that the two companies were separate, and misunderstood the legal standards related to affirmative responsibility determinations. Id.

In sustaining the protest, our Office recommended that the agency "make a new determination about USIS PSD's responsibility . . . taking into account USIS PSD's own description of its relationship with USIS LLC, as well as the specific allegations of fraud raised by the DOJ against USIS LLC." FCi Federal, Inc., supra, at 11-12. In addition to its challenge to the agency's responsibility determination, FCI's protest also challenged the agency's evaluation of both offerors' proposals and the agency's award decision. See, e.g., Protest at 2, 11-18, 22-52; Supplemental Protest, Aug. 4, 2014, at 3-18; Second Supplemental Protest, Aug. 11, 2014, at 2-19, 21; Comments, Aug. 29, 2014, at 1-11, 16-24. However, since a responsibility determination is a prerequisite to award and our decision found the agency's responsibility determination to be flawed, the decision did not resolve FCI's challenges to the agency's evaluation and award decision. See generally, FCI Federal, Inc., supra, at 6-11.

After the issuance of our decision, USIS PSD was acquired by PAE Shield Acquisition Company, Inc. (PAE). AR2 at 3; AR2, Tab 24, PAE Letter to

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goals which were determined to provide greater value to the government. Nevertheless, both Offerors provided robust small business plans that meet or exceed DHS goals.

AR1, Tab 47, SSDD, at 6. Therefore, the SSA found the two offerors to be equal under the small business subfactor.

Application Support Centers (ASC) Contracting Officer, Jan. 22, 2015, at 1. Specifically, PAE acquired all of the stock of USIS PSD. Id. After this transaction, USIS PSD was renamed PAE Professional Services, Inc. AR2, Tab 24, PAE letter to ASC Contracting Officer, at 3; Tab 25, PAE Letter to FOSS (Field Office Support Services) Contracting Officer, Jan. 22, 2015, at 1. (For purposes of continuity and clarity, we will refer to the company from this point forward as PAE/USIS PSD). At this point, USIS “PSD no longer ha[d] any affiliation with Altegrity [USIS LLC’s parent] or USIS LLC.” AR2, Tab 25, PAE Letter to FOSS Contracting Officer, at 1. On April 23, the contracting officer made an affirmative determination of PAE/USIS PSD’s responsibility, AR2, Tab 10, Responsibility Determination, at 12, but did not reevaluate proposals or make a new award decision. Supp. AR at 10. On April 24, the agency informed FCI that it had conducted a new responsibility determination and found PAE/USIS PSD to be responsible. AR2, Tab 5, USCIS Letter to FCI and GAO, at 1. The agency also advised that it was “lifting the stop work order and proceeding with contract performance.” Id. This protest followed.

DISCUSSION

FCi contends that the agency was required to reevaluate proposals and make a new award decision, as well as make a new responsibility determination. FCI Comments at 2-3. The agency maintains that, in response to GAO’s decision sustaining the prior protest, the agency was required only to reconsider whether USIS PSD was responsible, and not to reevaluate or make a new award decision. Supp AR at 10; AR at 7, 9. Consequently, the agency found PAE/USIS PSD responsible, based, in part, on PAE’s financial resources that became available to the awardee in early 2015. AR at 12. In any case, according to the agency, “[t]he purchase of USIS PSD by PAE Shield had no impact on USIS PSD’s technical proposal, or how it would perform the contract.” AR at 3.

As set forth below, we find that, in the circumstances here, the agency was required to reevaluate proposals before proceeding with the contract. In this regard, the record shows that the sale materially and significantly altered the approach to contract performance as set forth in the originally submitted USIS PSD proposal, but the agency nevertheless generally confined its review to the effect on PAE/USIS PSD’s responsibility, with only limited consideration of the effect on the awardee’s past performance rating. In these circumstances, we find the agency’s implementation of our recommendation to be unreasonable and sustain the protest on this basis.

Requirement to Reevaluate after Sale of USIS PSD

As an initial matter, we note that Federal Acquisition Regulation (FAR) § 9.103(b) provides that “[n]o purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility.” It is axiomatic, therefore, that an affirmative determination of responsibility must occur before the award is made.

As our Office has previously stated, responsibility is a contract formation term that refers to the ability of a prospective contractor to perform the contract for which it has submitted an offer; thus by law, a contracting officer must determine that an offeror is responsible before awarding it a contract. Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 5. The concept of responsibility expressly applies to “prospective contractors”--not “current” or “existing” contractors--a limitation that is repeated throughout the applicable statutes and regulations, and that indicates that the requirement for a responsibility determination applies before award of a contract. Advanced Tech. Sys., Inc., supra; see, e.g., 41 U.S.C. § 113 (“the term ‘responsible source’ means a prospective contractor”); FAR § 9.100 (“This subpart prescribes policies, standards, and procedures for determining whether prospective contractors . . . are responsible”); FAR § 9.102(a) (“This subpart applies to all proposed contracts with any prospective contractor”); FAR § 9.103(c) (“A prospective contractor must affirmatively demonstrate its responsibility”). Further, not only must a contracting officer make an affirmative determination of an offeror’s responsibility “before making an award to that offeror,” see, e.g., Latvian Connection, LLC, B-410147, B-410149, Sept. 4, 2014, 2014 CPD ¶ 266 at 5; Asset Mgmt. Real Estate, LLC, et al., B-407214.5 et al., Jan. 24, 2014, 2014 CPD ¶ 57 at 14, the determination of responsibility should be made on the basis of information available as closely as practicable to contract award so that the determination is “as accurate and reliable as possible.” Dutra/AmClyde Joint Venture, B-249364.2, Dec. 30, 1992, 92-2 CPD ¶ 453 at 7.

Here, having made a new responsibility determination, a determination that, as discussed above, must be made prior to award, the agency necessarily was required to either reaffirm the prior award or make a new award. Further, to the extent that the agency asserts that our prior decision only recommended making a new responsibility determination, we conclude that the agency could not reasonably ignore the impact on this procurement of the sale of USIS PSD to PAE.³

³ As a general matter, the details of implementing our recommendations for corrective action are within the sound discretion and judgment of the contracting agency. See, e.g., C2C Solutions, Inc.; TrustSolutions, LLC, B-401106.6, B-401106.7, June 21, 2010, 2010 CPD ¶ 145 at 3; Lockheed Martin Sys. Integration-Owego; Sikorsky Aircraft Co., B-299145.5, B-299145.6, Aug. 30, 2007, 2007 CPD ¶ 155 at 5; NavCom Defense Elec., Inc., B-276163.3, Oct. 31, 1997, 97-2 CPD ¶ 126 at 2. Nonetheless, an agency cannot reasonably ignore matters that, in the interim, raise significant questions about its initially-reached conclusions. See G. Marine Diesel, B-232619.3, Aug. 3, 1989, 89-2 CPD ¶ 101 at 4-6 (challenge to agency’s reevaluation of an awardee’s prior experience and performance, undertaken after prior protest against award, was sustained as unreasonable where (continued...))

Here, we find that as a result of the sale of USIS PSD to PAE, the original proposal, upon which the award decision was based, no longer reflects the intended approach to performance. In this regard, it is a fundamental principle of federal procurement law that an agency's evaluation of proposals must reflect a reasonable assessment of each offeror's ability to successfully perform the contract requirements, and that the evaluation and the agency's source selection decision must be adequately documented. FAR §§ 15.305(a), 15.308; Savvee Consulting, Inc., B-408416, B-408416.2, Sept. 18, 2013, 2013 CPD ¶ 231 at 7-8. Where an offeror's proposal represents that it will perform the contract in a manner materially different from the offeror's actual intent, an award based on such a proposal cannot stand, since both the offeror's representations, and the agency's reliance on such, have an adverse impact on the integrity of the procurement process. Wyle Labs., Inc., B-408112.2, Dec. 27, 2013, 2014 CPD ¶ 16 at 8; see Greenleaf Constr. Co., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 8-10; AdapTech Gen. Scientific, LLC, B-293867, June 4, 2004, 2004 CPD ¶ 126 at 5; CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ 308 at 5.

In Wyle Laboratories, Inc., *supra*, after the submission of proposals, but before award, the offeror's resources and approach to performing the requirements of the solicitation changed as a result of corporate restructuring, such that its proposal no longer reflected the manner in which the contract would be performed, the level of costs likely associated with performance, and the corporate entity that would perform the contract. As a result, we sustained the protest against the award, holding that the awardee's proposal, and the agency's evaluation thereof, was based on a technical approach, resources, and costs that were not accurately reflected in the proposal upon which the award was based. Wyle Labs., Inc., *supra*, at 8-11.

The circumstances here require a similar conclusion. Specifically, the record indicates that USIS PSD's proposal relied, in material respects, on the resources and support of its former parent, USIS LLC, and of Altegrity, USIS LLC's parent. In this regard, as set forth below, USIS PSD's proposal relied on USIS LLC and Altegrity for management capability, corporate resources, corporate experience, past performance, and financial resources.⁴

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the agency ignored problems subsequently encountered by the awardee after the initial evaluation).

⁴ In addition, it is unclear whether the USIS PSD proposal's references to LABAT, formerly a USIS company, are still valid. Although PAE also acquired LABAT, it is unclear whether any of LABAT's resources or experience referenced in the awardee's proposal will remain available to the awardee. See AR2, Tab 24, PAE letter to ASC Contracting Officer, at 4 (organizational chart).

Although the agency argues that USIS LLC's role in the performance of this contract would have been "relatively small," AR at 5, the record reflects otherwise. First, as our Office noted in our prior decision, USIS PSD's proposal stated that USIS PSD would not operate independently of USIS LLC when performing the contract. Specifically, USIS PSD's proposal stated:

USIS LLC operating divisions [such as USIS PSD] do not operate independently or even semi-independently from each other or from the parent company, the LLC. The whole of USIS LLC is managed by . . . our President. We have one integrated command and control structure. We share a set of common policies and procedures across the corporation Our employees also move across the organization among operating Divisions and the LLC.

FCi Federal, Inc., supra, at 8; see AR1, Tab 27, Folder 1, USIS Response to Questions, at 11.

The agency's contemporaneous evaluation records similarly reflected that the agency considered USIS LLC's role in performance of the contract to be important. For example, the agency's technical evaluation report noted that:

The Offeror states that all wholly owned subsidiaries of USIS LLC, the parent company, utilize certain corporate "back office" resources and support services, and the Offeror on this contract will be substantially supported by the same infrastructure.

AR1, Tab 35, TEC Report, at 45 (noting that the agency planned to ask for greater detail regarding the support to be provided).

In addition, during the hearing conducted by our Office in connection with the prior protest, the contracting officer testified that the back office support to be provided by USIS LLC was "substantial, and that it would be provided throughout the life of the contract." Hearing Transcript (Tr.) at 19. In this regard, the contracting officer acknowledged that USIS LLC would provide "back office support," which the contracting officer interpreted to mean that USIS LLC would provide shared resources. Examples of the shared resources that USIS LLC would provide included human resources support, accounting services, and pricing support. Tr. at 18; see AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 43. USIS

LLC would also be relied upon to provide financial, legal, and security services.
Id.⁵

USIS PSD's proposal also relied on the corporate experience⁶ of USIS LLC, which the awardee's proposal described as "particularly relevant" to the offeror's ability to complete the solicitation's requirements. AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 49. As set forth above, the RFP stated that offerors "shall address relevant corporate experience" in nine areas. RFP at 102. The awardee's proposal referenced USIS LLC's corporate experience in addressing seven of these nine areas. Specifically, the awardee's proposal relied on USIS LLC's corporate experience in addressing the areas of management of multiple sites and locations in a large geographically dispersed environment; management of a workforce of this magnitude; management of non-exempt employees covered by a wage determination or a collective bargaining agreement; customer service; transitioning a contract workforce of this magnitude; management of significant workload volume with lulls and significant surge events; and implementing a training program of this magnitude.⁷ AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 46-48.

⁵ Also, with regard to staffing, the proposal emphasizes the "Team USIS' pool of over 9000 employees." AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 5, 38. It is unclear whether, and how many of, these employees were USIS LLC employees to whom the awardee would no longer have access. In this regard, the proposal stated that:

[p]ersonnel routinely move across the entire corporation. For example, our proposed . . . [DELETED] . . . is currently working on the OPM [Office of Personnel Management] Field contract, which falls under USIS LLC. As another example . . . a proposed member of our [DELETED], is a current [DELETED] on a LABAT contract . . . but has been assigned by [the CEO of USIS LLC] to support the FOSS program. These examples illustrate the types of benefit that our corporate experience and structure brings to FOSS.

AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 44.

⁶ As set forth above, corporate experience was a subfactor under the management capability evaluation factor. RFP at 97.

⁷ The awardee's proposal also relied on the corporate experience of LABAT, another subsidiary of USIS LLC, to demonstrate experience under four areas. AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 46-48. However, as set forth above, it is unclear whether the proposal's references to LABAT are still valid in
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In addition, USIS PSD's proposal contained numerous references to USIS LLC's corporate experience in performing an "OPM Field" contract, an "OPM Support Services" contract, and a National Reconnaissance Office (NRO) contract. With regard to the OPM Field contract, the awardee's proposal stressed the relevance of USIS LLC's corporate experience to the procurement in several areas. For example, with regard to managing a dispersed workforce, the proposal stated:

We currently leverage our financial and organizational resources to support a team of well over 3,000 individuals dedicated to the OPM program The relevance to FOSS of this corporate experience is that we have the management infrastructure in-place and business processes to manage a dispersed workforce in multiple locations, performing adjudicative work in support of national security goals.

AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 49.

By way of another example, the awardee's proposal stated that USIS LLC's corporate experience on the OPM support contract "clearly demonstrates our ability to manage complex inter-related tasks of direct relevance to [the procurement here], where quality and accuracy are key to contract performance and to national security." AR1, Tab 27, Folder 2, USIS Technical Proposal Changes, at 51; see also id. at 4, 6, 8, 43, 46, 47, 48, 51, 52, 57, 59 (referencing USIS LLC's work on the OPM Field contract); id. at 12, 43, 44, 46, 50, 51, 53, 58 (referencing USIS LLC's work on the OPM support services contract); id. at 43, 46, 47, 48, 49, 50, 51, 52, 55, 56, 59 (referencing USIS LLC's work on the NRO contract).

Further, the awardee's proposal relied on the financial resources of USIS LLC and Altegrity to meet the RFP's requirements. Specifically, as set forth above, the RFP here required that offerors include, as part of their price proposals, "a narrative discussion of financial resources available sufficient to compensate the prime's staff for a minimum of the first two months of contract performance." RFP at 110. To satisfy this requirement USIS PSD's February 17, 2014 final proposal revision stated the following:

US Investigations Services, LLC is a wholly owned subsidiary of Altegrity, Inc. Operating divisions (wholly owned

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light of its sale to PAE. See AR, Tab 24, PAE letter to ASC Contracting Officer, at 4 (organizational chart).

subsidiaries of US Investigations Services, LLC) include US Investigations Services Professional Services Division, Inc, hereafter referenced as USIS, the prime bidder on this contract, Labat-Anderson Incorporated (LABAT), and others. All financial statements are held at Altegrity Inc. . . .

* * * * *

Altegrity, Inc. possesses the financial resources and capability to support and satisfactorily perform the contract services as required under this RFP. . . . Altegrity, Inc. has demonstrated financial stability since inception, meeting all obligations including payroll, vendor payments, tax obligations and all other liabilities. Additionally, the company maintains lines of credit with several large financial institutions to ensure that any changes in our financial situation can be promptly addressed. These lines of credit and financial resources are available to operating divisions including US Investigations Services, PSD (USIS). . . . The combination of assets, cash flow and letters of credit are more than sufficient to cover costs for the initial sixty days of payroll plus all transition-in costs.

AR2, Tab 9, USIS PSD FPR 2, at 81-82.

Finally, we note that the past performance evaluation confirmed the substantial role USIS LLC was proposed to have in USIS PSD's performance. In our prior decision, we noted that the record clearly established that the agency accepted, for purposes of the past performance evaluation, USIS PSD's representation that USIS LLC would be substantially involved in performance of the contract. FCi Federal, Inc., supra, at 8. In this regard, the solicitation provided that the agency would consider the past performance of a parent only if an offeror showed that the parent would be "substantially involved" in performance of the field office support services effort." Id.; RFP at 102. Among USIS PSD's past performance references was a contract performed by its parent, USIS LLC, for investigative fieldwork for the National Reconnaissance Office. We noted that, in finding this reference relevant, the agency stated that "[f]or those references where USIS submitted past performance of their parent . . . they provided information regarding how they will be substantially involved in performance of the [field office support services] effort." FCi Federal, Inc., supra, at 8-9 (citing AR, Tab 44, Folder 5, BEC Consolidated Past Performance Report, at 21). Thus, it was clear from the contemporaneous record that the agency viewed USIS LLC as having substantial involvement in the performance of the contract here. FCi Federal, Inc., supra, at 9.

Overall, while the agency now attempts to characterize USIS LLC's role as "relatively small," AR at 5, USIS PSD's proposal itself and the agency's

contemporaneous evaluation documents indicate that the role of the awardee's parents (USIS LLC and Altegrity) was considered by both the offeror and the agency to be substantial and important. Since USIS PSD represented that it would perform the contract by relying on its former parents' back office support, corporate resources, corporate experience, past performance, and financial resources, and since the sale of USIS PSD to PAE eliminated any relationship between USIS PSD and its former parents, such that PAE/USIS PSD's performance will be materially different from its proposal, the agency could not simply proceed in 2015 on the basis of USIS PSD's outdated 2014 proposal. Wyle Labs., Inc., supra; AIU North America, Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39.

In these circumstances, where the record indicates that the sale of USIS PSD materially and significantly altered the approach to contract performance as set forth in USIS PSD's proposal, it was unreasonable for the agency to generally confine its review to PAE/USIS PSD's responsibility, and we sustain the protest on this basis.

Past Performance

Finally, we note that although the agency contends that it did not reevaluate proposals, including past performance, the contracting officer's responsibility determination includes the statement that:

The information that I gathered in my reconsideration of PSD's responsibility did not lead me to change my Past Performance rating. Given the data gathered, it is my judgment that USIS PSD (now PAE PSI) is rated as low risk for Past Performance.

See AR2, Tab 10, Responsibility Determination, at 1 n.1. FCi contends that the agency's conclusion that PAE/USIS PSD's past performance merited a rating of low risk is unreasonable and unsupported in the record.

The agency argues that it did not engage in a reevaluation of past performance and that its consideration of past performance related only to the responsibility determination. The contemporaneous record, however, demonstrates otherwise, since the contracting officer's own words indicate that she considered not only the impact of the additional information on the awardee's responsibility, but also the impact on the awardee's "Past Performance rating." Id. In this regard, the agency stated that it researched the Past Performance Information Retrieval System reports and Contractor Performance Assessment Reports System reports for USIS PSD, USIS LLC, LABAT, and Altegrity; received information from other USCIS employees about the performance of PAE/USIS PSD and USIS LLC on other contracts with USCIS; and considered information regarding USIS LLC's performance on a contract for background investigations for OPM, including the corrective actions taken by USIS LLC and Altegrity in response to allegations of

fraud in the performance of that contract. Supp. AR at 1-2; AR2, Tab 10, Responsibility Determination, at 5-7. As a result, the agency found that the awardee's rating under the past performance factor should not change from the originally assigned rating of low risk. AR2, Tab 10, Responsibility Determination, at 1 n.1.

This evaluation and the agency's conclusion regarding the awardee's past performance "rating" constituted a reevaluation (although limited) of PAE/USIS PSD's past performance, and not simply a consideration of past performance as it concerns the awardee's responsibility. In addition, given that USIS LLC and Altegrity will no longer have any role in the performance of the contract, we find that the agency's consideration of information relating to these companies in connection with the evaluation of past performance was unreasonable. Since PAE/USIS PSD's low risk rating was based upon a consideration of past performance of entities no longer involved in contract performance, we also find the agency's limited past performance reevaluation to be unreasonable.

RECOMMENDATION

As discussed, we find that the record indicates that the awardee's proposal, and the agency's evaluation thereof, no longer reflects the manner in which the contract will be performed and the resources, experience, and past performance to be relied upon in the performance of the contract. We recommend that the agency open discussions with all offerors remaining in the competition, request revised proposals, undertake a new evaluation of those revised proposals, and make a new selection decision. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel