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Decision

Matter of: IT Enterprise Solutions JV, LLC.

File: B-412036.3

Date: January 31, 2017

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DIGEST

Agency's best-value award decision was proper where the solicitation provided for a competitive source selection decision and permitted the agency to elect to trade present/past performance for price.

DECISION

IT Enterprise Solutions JV, LLC (ITES),¹ of Oak Ridge, Tennessee, protests the award of a contract to Valdez International Corporation (Valdez), of Colorado Springs, Colorado, by the Department of the Air Force (AF) under request for proposals (RFP) No. FA8773-15-R-8007, for Integrated Air Force Network Operations Services (IAFNOS). The protester argues that the Air Force misevaluated its past performance and performed an improper best-value tradeoff analysis.

We deny the protest.

¹ ITES is a joint venture comprised of Information International Associates, Inc. (IIa) and Telos Corporation (Telos).

BACKGROUND

The RFP, which was issued on March 13, 2015, as a women-owned small business (WOSB) set-aside, seeks services supporting Air Force Information Network (AFIN) operations. These services include defensive cyberspace operations; network management; information assurance; and fault resolution activities to maintain the operational capabilities of the network, establish the domain for AF cyberspace operations, and ensure Air Force Cyberspace superiority. Contracting Officer's Statement (COS) at 2. The solicitation contemplates the award of a fixed-price contract (with a few cost-reimbursable line items for travel and other direct costs) for a 12-month base period, four one-year option periods, and one six-month extension. Id. at 4.

The solicitation provided for award on a best-value basis, considering technical, past performance, and price factors. RFP at 97. Under the technical factor, proposals were to be rated as acceptable or unacceptable under each of five subfactors, with only technically acceptable proposals considered for award.² RFP at 97-98. Past performance and price were then to be evaluated on an "approximately equal" basis, with "present/past performance [traded] for price if warranted." RFP at 97. The solicitation further provided in this connection that:

IAW [in accordance with] FAR [Federal Acquisition Regulation] 15.101-1(c), the government reserves the right to award a contract to other than the lowest priced offer if the lowest priced offeror is judged to have a performance confidence assessment of "Satisfactory Confidence" or lower. In that event, the Source Selection Authority shall make an integrated assessment best value award decision.

Id.

In connection with the evaluation of past performance, the RFP instructed offerors to submit past performance information on no more than eight recent relevant contracts performed by the offeror, its subcontractors, teaming partners, and/or joint venture partners. RFP at 89. The information submitted was to include "a cross-reference matrix identifying the PWS [Performance Work Statement] reference and the team member(s) proposed to perform that function." Id. Offerors were cautioned that the agency would use both the information provided by the offeror and information obtained from other sources in its evaluation of past performance. Id. at 89-90, 99. Of relevance to this protest, the solicitation instructed that "[p]ast

² The five technical subfactors, which are not at issue in this protest, were staffing/management, transition plan, AFIN Mission Assurance Center (AMAC) support, network operations and core services, and operations support.

performance of either party in a joint venture counts for the past performance of the entity.” RFP at 90.

The RFP provided that the past performance information would be assessed for recency and relevancy. To be considered recent, the effort had to “be ongoing or must have been performed during the past three years from the date of issuance of this solicitation.” On-going efforts were considered recent “so long as the effort has been performed for at least six months.” RFP at 99. Relevancy was to be evaluated by mission area.³ In this connection, the RFP included a matrix setting forth the criteria for a prior/ongoing contract to be considered relevant or somewhat relevant in each of the five areas. Offerors were advised that “[i]n determining relevancy for each mission area identified, consideration [was to] be given to the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract is being reviewed and evaluated.” Id.

The solicitation provided that each recent relevant contract was to be assigned a performance quality rating, and, based on the relevancy and performance quality ratings, each offeror was to receive an integrated performance confidence rating of substantial, satisfactory, limited, or no confidence. RFP at 100. Relevant here, a substantial confidence rating was assigned when the government has a “high expectation that the offeror will successfully perform the required effort.” Id. A satisfactory confidence rating was assigned when the government has a “reasonable expectation that the offeror will successfully perform the required effort.” Id.

Eleven offerors submitted proposals in response to the RFP. After evaluating the proposals, the agency established a competitive range, which included the protester and the awardee, and conducted discussions. As provided in the solicitation, the evaluation included a detailed assessment of each offeror’s past performance by mission area. The evaluation also included a breakdown of the percentage of effort in each mission area to be performed by each prime contractor, subcontractor, and joint venture partner. After receipt of final proposal revisions, the proposals included in the competitive range were rated as follows:

Offeror	Technical Subfactors					Past Performance	Total Evaluated Price
	1	2	3	4	5		

³ Mission Areas included: Integrated Network Operations and Security Center (I-NOSC), Enterprise Services Unit (ESU), AFIN Mission Assurance Center (AMAC), Area Processing Center (APC), and Operations and Mission Support (O&M).

Offeror A	A	A	A	A	A	Satisfactory	\$175,250,047
ITES	A	A	A	A	A	Substantial	\$202,020,240
Valdez	A	A	A	A	A	Substantial	\$203,254,989
Offeror B	A	A	A	A	A	Satisfactory	\$210,023,524
Offeror C	A	A	A	A	A	Satisfactory	\$213,989,540
Offeror D	A	A	A	A	A	Substantial	\$220,342,866
Offeror E	A	A	A	A	A	Satisfactory	\$259,032,686

A= "Acceptable"

Source Selection Decision Document (SSDD) at 3.

After performing a tradeoff analysis, the source selection authority (SSA) selected the proposal of Valdez as representing the best value to the government. SSDD at 1. The SSA noted that performance of the IAFNOS contract was "critical to AF Cyberspace Operations" and that:

Performance confidence is very important for this mission and a trade-off with price to obtain a superior performer may be warranted. Performance risk is lessened by awarding to a team that demonstrates breadth and depth of past performance experience across the entire team--breadth in terms of Relevant experience in managing an enterprise of the magnitude of IAFNOS across the range of mission areas required, and depth in terms of Relevant experience demonstrated directly in each mission area by the teaming partner proposed to accomplish the work.

Id. at 13-14. The SSA explained as follows the basis for his conclusion that Valdez's proposal represented a better value than the protester's:

Valdez demonstrated past performance for three of the four individual members [of its team] in the areas where they are proposed to work. Valdez itself demonstrated relevant experience in all mission areas. Valdez demonstrated experience as a prime contractor with management responsibility for an entire effort with magnitude similar to IAFNOS spanning multiple operational locations. Valdez is proposed to directly accomplish 55% of the IAFNOS effort and demonstrated experience across all areas. ITES' Substantial confidence assessment was largely based on Telos' past performance information, but they are proposed to only accomplish 32% of the effort. Ila, the managing JV member, demonstrated past performance only in O&M, and it was only Somewhat Relevant. Telos, the other JV member, demonstrated past performance in all mission areas. Telos demonstrated experience as a prime contractor with management responsibility for an entire effort with

magnitude similar to IAFNOS, but only at a single operational location. Telos is proposed to accomplish 32% of the IAFNOS effort. ITES subcontractors with no demonstrated Relevant past experience are proposed to accomplish large portions of the work (29% of the INOSC and 50% of the APC). While the price differential of 0.6% (\$1,234,748.11) is in favor of ITES, I assess that the price premium is acceptable in order to award to an offeror with the demonstrated experience of Valdez.

Id. at 15-16.

On October 13, 2016, the Air Force notified all offerors in the competitive range that Valdez had been awarded the contract. COS at 11. This protest followed.

DISCUSSION

ITES argues that the agency's evaluation of its past performance was unreasonable. More specifically, the protester contends that it was contrary to the terms of the solicitation for the SSA to have distinguished between the past performance of the two joint venture partners. The protester also disputes the agency's finding that Ila, the managing JV member, demonstrated past performance only in the mission area of O&M, and the agency's determination that a contract performed by one of its subcontractors, Northrop Grumman, was not recent. ITES further argues that in determining that Valdez represented the best value, the SSA failed to follow the methodology set forth in the solicitation.⁴ As explained below, we find the protester's arguments to be without merit.

Past Performance Evaluation

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation's evaluation criteria. Davis Strategic Innovations, Inc., B-413305, Sept. 26, 2016, 2016 CPD ¶ 267 at 3.

As noted above, ITES argues that it was inconsistent with the terms of the RFP, which explicitly provided that the past performance of either party in a joint venture

⁴ The protester also argued in its initial protest that the AF overlooked information in its proposal that would have resulted in a lower evaluated price. Protest at 16-18. The agency responded to this argument in its report, and the protester did not address the agency's response in its comments. Accordingly, we consider it to have abandoned this argument. TPMC-Energy Solutions Env'tl. Servs. 2009, LLC, B-408343.2 et al., Aug. 23, 2013, 2013 CPD ¶ 215 at 8.

counts for the past performance of the entity, for the agency to have distinguished between the past performance of the two JV partners in its evaluation. The protester maintains that under the terms of the solicitation, the JV's past performance "was equivalent to the past performance record of a member," and thus, "[b]ecause Telos had experience in all mission areas, ITES should have been deemed to have experience in all mission areas." Comments at 4.

We disagree. The RFP's reference to the past performance of a JV partner counting for the past performance of the JV does not mean the agency could not consider which JV partner was responsible for particular performance. In this connection, the agency points out that the solicitation provided for consideration of the "effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract is being reviewed and evaluated," citing RFP at 99, and that in its proposal, the protester "voluntarily identified the percentage of efforts to be performed by members of the joint venture[.]" Memorandum of Law (MOL) at 7.

Next, ITES disputes the agency's finding that Ila, the managing JV member, demonstrated past performance in the mission area of O&M only. The protester contends in this regard that the contract that it provided as a reference for Ila, which was performed for the Department of Energy (DOE), demonstrated past performance in the mission areas of ESU and AMAC, as well.

In its report, the agency explains that while performance on the contract in question had initially been rated as somewhat relevant in the areas of ESU and AMAC, as well as O&M, the assessment was changed based on an email conversation with the DoE contracting officer, who indicated that while support for a Metropolitan Area Network (MAN) was provided through the contract, "the entirety of functions associated with implementation and maintenance of the MAN was not." MOL at 9. In this connection, the agency explains that per the terms of the RFP's relevancy matrix, performance in the mission area of ESU was considered somewhat relevant if the offeror showed "experience in any two of the criteria listed [in the matrix] in a contract with at least an annual amount of \$2 million and addressing at least one MAN environment." Id.

Similarly, the relevancy matrix provided that for performance in the mission area of AMAC to be considered somewhat relevant, the offeror had to show "experience in at least one . . . criterion listed [in the matrix] in a contract with at least an annual amount of \$1 million and at least one MAN environment." COS at 14. According to the agency, the DOE contract could not be considered to have addressed or shown experience with at least one MAN environment since Ila had not been responsible for full implementation and maintenance of the MAN under it. Id. In response, the protester argues the relevancy matrix did not provide that for performance in either ESU or AMAC to be considered somewhat relevant, an offeror had to show

experience with all of the functions associated with implementation and maintenance of the MAN.

We find the agency's evaluation to be unobjectionable. The RFP does not explain what constitutes addressing "at least one MAN environment," and the agency's interpretation of the requirement as referring to "the entirety of functions associated with implementation and maintenance of the MAN" was reasonable. See MOL at 9. While the protester takes the position that because its DOE contract supported a MAN, it should be considered to have "addressed" a MAN, the agency points out that such an interpretation could have resulted in credit being given for a partial MAN environment, in contravention of the terms of the relevancy matrix. See id.

ITES further argues that the agency erroneously concluded that a contract performed by its subcontractor, Northrop Grumman (Northrop), was not recent. In this regard (and as previously noted), the solicitation provided that to be considered recent, an effort had to be ongoing or have been performed during the past three years from the date of issuance of the solicitation, with on-going efforts considered recent "so long as the effort has been performed for at least six months." RFP at 99.

The protester asserts that the Northrop contract should be considered recent because:

Northrop began performing the contract on September 20, 2014 – within the three-year lookback period. When ITES submitted its proposal, the contract was ongoing, and it had been performed for at least six months. As stated in the past performance response, Northrop has performed the work since 2008 on an earlier contract and the current contract was a continuation of the previous effort. As such, Northrop's effort on the past performance met the criteria to be considered recent.

Protest at 15.

In response, the contracting officer explains as follows:

The RFP was issued on March 13, 2015, AR [Agency Report], Tab 4, at 1. So any past performance information submitted for evaluation must have started no later than September 13, 2014. However, the start date for the contract submitted for Northrop Grumman was September 20, 2014. AR, Tab 5, ITES FPR 2.0, at 266. Accordingly, Northrop Grumman had been performing the contract just short of six months. As defined by the solicitation, that is not considered a recent ongoing action.

COS at 16. The agency also noted as follows:

ITES claims that the effort at issue was performed from March 13, 2012, onward, however it failed to provide the relevant contract as a PPI [Past Performance Information] or to provide any information during the source selection process to support its claim. The only information available to the PPET [Past Performance Evaluation Team] about these efforts was the quoted reference, which indicates that the efforts had been performed for less than the required six month period.

MOL at 6.

In response to the agency's argument that Northrop had not been performing under the contract in question for six months as of the date the solicitation was issued, the protester contends that the RFP did not specify that for ongoing performance to be considered recent, it had to have been performed for six months as of the date of solicitation issuance. Further, in response to the agency's argument that the protester did not provide information regarding Northrop's performance on the predecessor contract, the protester maintains that its proposal contained multiple references to Northrop's performance on the preceding effort.

As the protester correctly notes, the RFP here did not indicate that a contract had to have been performed for six months before issuance of the solicitation for performance to be considered recent. That is, it did not indicate whether the six-month period extended back from the date of solicitation issuance, or, consistent with the protester's position, the six months extended back from the date of proposal submission. In our view, this absence of information constituted a patent solicitation ambiguity. Where a patent ambiguity is not challenged prior to submission of solicitation responses, we will not consider subsequent arguments that only the protester's interpretation of the ambiguous provisions can prevail. FFLPro, LLC, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10. An offeror who chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a manner inconsistent with one of the possible interpretations. Id. at 10-11. Accordingly, the protester's argument pertaining to the recency of the NG contract does not provide a basis to sustain the protest.

With regard to the protester's argument that its proposal included references to Northrop's predecessor contract, the contracting officer points out that not only did ITES not submit the predecessor contract for consideration, but moreover, the past performance evaluation team did not find an entry in the Contract Performance Assessment Reporting System (CPARs) for the contract. Under these circumstances, we see no basis to conclude that the agency acted unreasonably in failing to take into account Northrop's performance on the preceding contract.

Best-Value Tradeoff

Finally, the protester argues that the price/past performance tradeoff between Valdez's proposal and its own was inconsistent with the solicitation because both proposals received performance confidence ratings of substantial confidence. According to the protester, once the agency decided not to select the lowest-price proposal submitted by Offeror A, it should have "compared the prices of the remaining, equally rated offerors that received ratings of Substantial Confidence, and made award to the lowest priced offeror amongst them--ITES." Comments at 10.

The protester's argument is, in essence, that the solicitation did not provide for past performance/price tradeoffs among offerors receiving the same performance confidence ratings. We disagree. The RFP provided for "a competitive best value source selection," and permitted the Air Force to "elect to trade present/past performance for price if warranted." RFP, § M, at 97. While the RFP explained that one circumstance in which the agency would make a best-value tradeoff was where the lowest-priced offeror had a performance confidence rating of satisfactory confidence or lower, the solicitation did not limit the circumstances in which a past performance/price tradeoff could be performed. In this connection, we have repeatedly recognized that proposals with the same adjectival ratings are not necessarily of equal quality, and that an agency may properly consider--and, in fact, should consider--specific advantages that make one proposal of higher quality than another. ERC, Inc., B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6-7. In sum, we see nothing in the terms of the solicitation that would have precluded the agency from determining that distinctions between Valdez's and the protester's past performance merited the payment of a price premium to Valdez, even though both offerors received overall performance confidence ratings of substantial confidence.

The protest is denied.

Susan A. Poling
General Counsel