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Decision

Matter of: Dell Services Federal Government, Inc.

File: B-412340; B-412340.2; B-412340.3

Date: January 20, 2016

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Jose Otero, Esq., and Sara Falk, Esq., Department of Education, for the agency. Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably considered whether protester's proposal addressed cloud-related requirements under certain "sub-domain requirements" that did not specifically mention the cloud is denied where the record shows that the purpose of the procurement was to transition to a majority cloud-based facility, and the solicitation specifically instructed offerors to address how they would fulfill each of the sub-domain requirements while meeting the solicitation's "Statement of Objectives," which emphasized the importance of cloud-based computing.
2. Protest that awardee improperly shifted costs into unevaluated contract line item numbers (CLIN) for transition in order to artificially lower its evaluated price is denied where the protester failed to identify with specificity any particular operational costs that were improperly classified, and in any case, even if the unevaluated CLINS were included in the awardee's price, it would still be lower than the protester's price.
3. Protest that agency unreasonably failed to consider the impending corporate restructuring of the awardee's parent is denied where there is no indication that the awardee planned to rely on the resources of its corporate parent, and no indication that the restructuring would have any effect on the awardee's performance.

DECISION

Dell Services Federal Government, Inc., of Herndon, Virginia, protests the issuance of a task order to Hewlett Packard Enterprise Services, LLC, also of Herndon, Virginia, under request for proposal (RFP) No. ED-FSA-15-Q-0006, issued by the Department of Education, Federal Student Aid (FSA), for a Next Generation Data Center to provide hosting services for FSA's student loan-related data. Dell contends that the agency conducted a flawed evaluation and unreasonably failed to consider the reorganization of the awardee's corporate parent.

We deny the protest.

BACKGROUND

The solicitation, issued on May 12, 2015 under the National Institutes of Health's Information Acquisition and Assessment Center's (NITAAC) Chief Information Officer--Solutions and Partners 3 (CIO-SP3) government-wide acquisition contract,¹ sought proposals to provide a full range of information technology (IT) services necessary to host and operate the Department of Education's software applications used to manage the government's Higher Education Pell Grant Program and to manage student loan programs and ensure repayment of those loans. Agency Report (AR) at 2; Contracting Officer (CO) Statement at 1.

The Next Generation Data Center will replace the agency's current virtual data center, for which Dell is the incumbent contractor. AR at 2. The contracting officer describes the Next Generation Data Center procurement as "transformational." CO Statement at 2. The current virtual data center hosts software applications and IT infrastructure in a dedicated contractor-owned, contractor-operated data-center facility, which includes more than 600 computer servers in one location, and does not offer cloud-based computing. *Id.* at 2, 3. The solicitation here calls for development of a new managed hosting solution that is capable of supporting three service delivery models with the majority of software applications at the Next Generation Data Center hosted via a hybrid or private cloud. *Id.* at 3; RFP at 6.

In this regard, the RFP's "Statement of Objectives" provided that the agency envisioned realizing "significant operational, service delivery, and cost improvement benefits" by migrating to a hybrid hosting environment, and that "FSA has completed an initial cloud suitability analysis of its application stack and has

¹ The value of the task order at issue is in excess of \$10 million; therefore, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award, indefinite-delivery/indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

determined approximately 60% of the applications may be able to be transitioned to a hybrid or private Cloud.” RFP at 6, 8. Further, the solicitation’s Statement of Objectives listed seven key performance objectives, including availability and ability to improve service delivery performance; five of the seven key performance objectives specifically mentioned the cloud or the solicitation’s hybrid delivery model (which included the cloud). RFP at 7. Section L of the solicitation instructed offerors to address how they would fulfill each of 21 sub-domain requirements across 6 requirement domains² while meeting the RFP’s “Statement of Objectives.” RFP at 32.

Award was to be made on a best-value basis, considering the following evaluation factors: past performance, quality of offeror’s performance work statement (PWS), and price. RFP at 36. Past performance was significantly more important than all of the other factors, and past performance and PWS together were significantly more important than price. Id.

With regard to the PWS factor, section M of the solicitation advised offerors that their proposals would be evaluated to assess:

How well the offer’s Performance Work Statement demonstrates logical and feasible methods for fulfilling the 21 sub-domain Requirements, while meeting the Statement of Objectives and Requirements provided within the solicitation.

RFP at 38.

With regard to price, the RFP provided that contract line item numbers (CLINS) associated with transition would not be considered as part of the best-value tradeoff decision, but would be evaluated for reasonableness, realism, completeness, and accuracy. RFP at 37-38. Section M of the solicitation stated that reasonableness would be evaluated “by determining if competition exists, by comparing proposed price with established commercial prices, other contract vehicles, and/or by comparing proposed price with the Independent Government Cost Estimate (IGCE).” RFP at 39.

The agency received three proposals in response to the solicitation. CO Statement at 14. The proposals were evaluated as follows:

² The six requirements domains were: security; infrastructure; application, middleware, and databases; enterprise operations; service management; and managed services. AR, Tab E, Solicitation Attachment A, at 38.

	Past Performance	PWS	Evaluated Price
Dell	Unsatisfactory	Satisfactory	\$(DELETED)
Hewlett Packard	Outstanding	Excellent	\$(DELETED)
Offeror 3	Satisfactory	Satisfactory	\$(DELETED)

AR, Tab P, Technical Evaluation Report, at 3; Tab Q, Price Analysis Report, at 4-5.

Since Hewlett Packard's proposal was both the highest-rated and lowest-priced, the agency selected it for award on September 28. After receiving a debriefing, Dell filed this protest with our Office.

DISCUSSION

Dell challenges the agency's evaluation under each of the evaluation factors. Dell also contends that the agency's failure to consider the reorganization of the awardee's corporate parent was unreasonable.

In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. M&S Farms, Inc., B-290599, Sept. 5, 2002, 2002 CPD ¶ 174 at 6. Here, we have considered all of the protester's arguments and find that none provide a basis for questioning the award. We discuss several of the arguments below.

PWS Factor

Dell contends that the agency's evaluation under the PWS factor was unreasonable because it applied unstated evaluation criteria by requiring offerors to address their approach to each of the 21 sub-domains in the context of a cloud-based environment. Specifically, the protester complains that the agency "imposed cloud-related requirements under certain 'sub-domains' even though [solicitation] Attachment A did not mention the cloud with respect to these sub-domains." Protester's Comments and Second Supp. Protest at 22.

The agency's Technical Evaluation Consensus (TEC) Report does not specifically identify strengths or weaknesses under the PWS factor. Instead, it contains a table that lists each of the sub-domains with narrative regarding the offerors' proposals next to the sub-domain. An excerpt of the table related to Dell's proposal is reproduced below:

Security	The offeror meets FSA Security requirements.
Provisioning	The offeror meets FSA Provisioning requirements[;] however, the offeror has not provided sufficient details regarding Provisioning capability and Provisioning performance.
Infrastructure	The offeror meets FSA Infrastructure requirements[;] however, the offeror has not provided sufficient details regarding Cloud Infrastructure solutions and performance.

AR, Tab P, TEC Report, at 14.

For seven of the sub-domains, including the provisioning and infrastructure sub-domains listed above, the agency concluded that Dell’s proposal met the solicitation’s requirements, but noted that certain details were lacking. *Id.* at 14-15. In Dell’s debriefing, the agency identified these instances as weaknesses. AR, Tab T, Dell Debriefing, at 6. The debriefing also identified one “strength” assigned to Dell’s proposal under this factor: “The offeror met all of the requirements pertaining to the 21 sub-domains listed in the solicitation.” *Id.* Overall, the TEC concluded that Dell’s PWS proposal merited a rating of satisfactory, which was defined as a proposal that satisfies all of the solicitation’s requirements with adequate detail to indicate feasibility of the approach and shows an understanding of the problems and offers some strengths which are not offset by weaknesses. AR, Tab P, TEC Report, at 4, 15.

Dell challenges each of the weaknesses assigned to its proposal and contends that the agency unreasonably assigned weaknesses for failure to address cloud-related requirements under sub-domains for which Attachment A of the solicitation did not specifically mention the cloud.³ Dell contends that this constitutes the improper consideration of unstated evaluation criteria.

³ Dell also complains about weaknesses noted on individual evaluator worksheets that were not included in the TEC Report or the Selection Decision. Protester’s Comments & Second Supp. Protest at 23-25. Since there is no indication that the TEC adopted the challenged comments or weaknesses, and no indication that the source selection authority relied on, or was even aware of, these initial assessments, there is no indication that these weaknesses prejudiced Dell, and thus Dell’s complaints in this regard provide no basis to sustain the protest. *See Fintrac, Inc.*, B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 11 n.6 (our Office will not sustain a protest absent a showing of competitive prejudice, *i.e.*, where the protester demonstrates that, but for the agency’s actions, it would have a substantial chance of receiving award).

While procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they need not identify every aspect of each factor that might be taken into account; rather, agencies may take into account considerations that are reasonably related to, or encompassed by, the stated evaluation criteria. AT&T Government Solutions, Inc., B-406926, et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 10; Client Network Servs., Inc., B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 6. Here, we note that the purpose of this procurement was to transition from the current infrastructure, which involves a dedicated contractor-owned, contractor-operated data-center facility, to a hybrid hosting environment in which the majority of software applications will be hosted via a cloud. RFP at 6; CO Statement at 3.

Further, the solicitation's "Statement of Objectives" emphasizes the importance of a hosting solution involving cloud-based solutions. RFP at 6-8. In addition, the solicitation's Statement of Objectives listed seven key performance objectives, five of which specifically mentioned the cloud or the solicitation's hybrid delivery model (which included the cloud). RFP at 7. Significantly, section L of the solicitation instructed offerors to address how they would fulfill each of 21 sub-domain requirements across 6 requirement domains while meeting the RFP's "Statement of Objectives," which, as described above, emphasized the importance of a cloud-based solution. RFP at 32. Likewise, section M of the solicitation informed offerors that their proposals would be evaluated by assessing how well their PWS demonstrated logical and feasible methods for fulfilling the sub-domain requirements, while meeting the "Statement of Objectives." RFP at 38.

In this context we find that cloud-based considerations were reasonably related to, and inherent in, each of the evaluation factors such that it was reasonable for the agency to consider whether offerors addressed cloud-related requirements under each of the sub-domains, even where the solicitation description of the sub-domain did not specifically mention the cloud.⁴ Therefore, this protest ground is denied.

Price

Next, Dell notes that Hewlett Packard's transition prices were significantly higher than those proposed by Dell. In this regard, the agency provides the following allocation of prices:

⁴ For the same reason, we find no merit in Dell's complaint that the agency unreasonably credited the awardee's proposal with addressing cloud-related requirements and discussing prior cloud-related experience. See Protester's Comments & Second Supp. Protest at 32.

	Transition Price	Operational (Evaluated) Price	Total Price
IGCE⁵	\$(DELETED)	\$(DELETED)	\$(DELETED)
Hewlett Packard	\$(DELETED)	\$(DELETED)	\$225,049,970
Dell	\$(DELETED)	\$(DELETED)	\$230,048,678

CO Statement at 18. Dell asserts that given the discrepancy in transition costs, Hewlett Packard must have improperly shifted some of its operational costs into unevaluated transition costs in order to achieve a lower evaluated price. Protester's Comments & Second Supp. Protest at 36-37.

The record reflects that the awardee's proposed transition price, while significantly higher than Dell's, was less than [DELETED] of the IGCE transition price. Further, the protester has failed to identify with specificity any particular operational costs that were improperly misclassified, and the record includes no convincing evidence that misclassification occurred. See Protester's Comments & Second Supp. Protest at 37. Moreover, even if Dell were correct that Hewlett Packard improperly misclassified some of its operational costs as transition items in order to achieve a lower evaluated price, any misclassified costs could not have been of sufficient magnitude to alter the offerors' rankings in terms of price. That is, even if offerors' transition prices were added to their evaluated prices, Hewlett Packard nevertheless offered the lowest overall price, including transition. Indeed, even comparing the awardee's total price (including all transition prices) to Dell's operational price (including no transition costs), Hewlett Packard's proposal would still offer a price advantage of more than \$(DELETED). In these circumstances, we conclude that not only has Dell failed to establish any improper misclassification of costs, but in any case, there is no basis for finding that any such misclassification could have resulted in competitive prejudice to Dell.⁶

⁵ Independent Government Cost Estimate.

⁶ Dell also challenged the agency's assignment of an unsatisfactory rating for past performance. Protester's Comments & Second Supp. Protest at 14-19. However, given our conclusions above, we note that even if Dell had received the highest possible past performance score, Hewlett Packard's proposal would remain the highest-rated and lowest-priced proposal. Where, as here, the highest-rated, lowest-priced proposal is selected for award, a tradeoff is not required. See Alliance Tech. Servs., Inc., B-311329, B-311329.2, May 30, 2008 CPD ¶ 108 at 3. Since Dell has failed to demonstrate that any potential errors in the past performance evaluation could have resulted in prejudice, this argument does not provide a basis to sustain the protest.

Corporate Restructuring of Awardee's Parent

On November 1, 2015, approximately five weeks after the agency selected Hewlett Packard Enterprise Services for award, the awardee's corporate parent, Hewlett Packard Company, split into two companies: Hewlett Packard Enterprise Company, which will continue to focus on enterprise services; and Hewlett Packard Inc., which will focus on printer and personal systems business. Intervenor's Comments, Exh. 3, at 202; Intervenor's Supp. Comments at 4; Protest at 30; CO Statement at 29. Although the split was not finalized until the fall of 2015, Hewlett Packard Company announced its plans for this split in October 2014. Intervenor's Comments, Exh. 3, at 202.

The protester argues that the agency unreasonably failed to consider the corporate reorganization of the awardee's corporate parent when evaluating the awardee's proposal. Protest at 29-33; Protester's Comments & Second Supp. Protest at 5-14. In this regard, the protester claims that numerous references in the awardee's proposal to "HP" must refer to the Hewlett Packard Company, the former parent of the awardee, rather than to the awardee, Hewlett Packard Enterprise Services. Protester's Comments & Second Supp. Protest at 8. The protester also premises its argument on the incorrect belief that the awardee will become a subsidiary of Hewlett Packard, Inc.--the newly formed printer and personal devices company. Protester's Comments & Second Supp. Protest at 13-14; see Intervenor's Supp. Comments at 4 (citing Intervenor's Comments, exh. 3, Letter to CIO-SP3 Contracting Officer; Intervenor's Supp. Comments, exh. 8, Letter to Hewlett Packard Enterprise Form 10 at 184 (identifying HPES as "a wholly owned subsidiary of Hewlett Packard Enterprise"). The protester thus concludes that the agency unreasonably failed to consider how the corporate reorganization of Hewlett Packard Company would affect Hewlett Packard Enterprise Services' proposed performance of the contract.

We find no merit in this protest ground. As an initial matter, we do not agree with the protester's assumption that any references in the proposal to "HP" must refer to, and indicate reliance on, the Hewlett Packard Company, rather than to the awardee or to the awardee's new corporate parent, Hewlett Packard Enterprise Company. Although the protester contends that the awardee's proposal only used the acronym HPES to refer to itself, Protester's Comments & Second Supp. Protest at 8, we note that the awardee's proposal alternately referred to itself as Hewlett Packard Enterprise Services, HP Enterprise Services, and HPES, and contained a logo reading "HP" on each page of the proposal. See, e.g., AR, Tab M, Hewlett Packard Proposal, at 6, 10, 114.

Further, while the term "HP" read alone may have been ambiguous as to whether it referred to Hewlett Packard Enterprise Services, the proposal read as a whole demonstrates that references to "HP" referred to the awardee here. For example, the protester cites the following language from the awardee's proposal: "The MDC

[Mid-Atlantic Data Center] that will support FSA is an HP-owned facility.” Protester’s Comments & Second Supp. Protest at 7 (quoting AR, Tab M, Hewlett Packard Proposal, at 5). However, other language in the proposal makes clear that the MDC is owned by HPES, that is, the awardee Hewlett Packard Enterprise Services. See, e.g., AR, Tab M, Hewlett Packard Proposal, at 38. (referring to “the HPES MDC”). Thus, the proposal’s references to “HP” provide no basis to conclude that the awardee planned to rely on the resources of any corporate parent.⁷ In sum, we find that the protester has failed to establish that the awardee’s proposal relied, to any extent, upon the corporate resources of its parent. In these circumstances, we find that the agency reasonably did not consider the restructuring of the awardee’s parent when evaluating proposals. Cf. FCI Federal, Inc., B-408558.7; B-408558.8, Aug. 5, 2015, 2015 CPD ¶ 245 at 11-12 (protest sustained where 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 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).

The protest is denied.

Susan A. Poling
General Counsel

⁷ Moreover, to the extent the awardee would rely on any resources of a corporate parent, the protester has made no showing that the relevant corporate resources would be spun off to the printer and personal devices company, rather than to the Hewlett Packard Enterprise Company, which will focus on the types of enterprise solutions offered by the awardee, and which will be the new corporate parent of the awardee. See CO Statement at 29 (“after the reorganization, HPES’s parent will possess a unique portfolio and strong multi-year innovation across technology infrastructure, software and services allowing customers to take fuller advantage of the opportunity presented by cloud, big data, security, and mobility”).