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Decision

Matter of: Applied Research Solutions

File: B-414719

Date: August 28, 2017

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Kenneth Kilgour, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's price realism analysis is denied where the record shows the agency's analysis was reasonable.

DECISION

Applied Research Solutions (ARS), of Beavercreek, Ohio, protests the issuance of a task order to Oasis Systems, LLC, of Lexington, Massachusetts, under task order request for proposals (TORP) No. FA4890-16-R-0035, issued by the Department of the Air Force for Air Combat Command (ACC) Directorate of Strategic Plans, Programs, Requirements and Assessments (A5/8/9) staff support services. The protester challenges the agency's evaluation of ARS' prices as unrealistically low and the subsequent exclusion of ARS' proposal from consideration for award.

We deny the protest.

BACKGROUND

The purpose of this solicitation is to provide the Air Force with staff support in the areas of core function team, weapons systems team, and resource management. Agency Report (AR), Tab 4a, Revised Performance Work Statement (PWS), at 2. The current requirement is a combination of two existing task order (TO) requirements: FA4890-12-D-0014-0092 (TO 0092), and FA4890-12-D-0007-0060 (TO 0060). Both of these task

orders, and now this solicitation, require the services of experienced personnel, some of which are in high demand. Consequently, the agency has experienced retention issues with TO 0092. AR, Tab 11, Task Order Selection Document (TOSD), at 15. At the salaries offered, the contractor has been able to retain most of the workforce, with a small amount of turnover, but it has had “a hard time replacing [full-time equivalents (FTEs)] when they left the contract.” Id. Fourteen positions over the last 11 months have been vacant, and 5 critical positions went unfilled. See id. Similarly, the contractor on TO 0060 “had difficulty filling critical positions.” Id.

The agency issued the solicitation in accordance with the terms and conditions of the General Services Administration’s One Acquisition Solution for Integrated Services small business multiple award contract and Federal Acquisition Regulation (FAR) § 16.505.¹ AR, Attach. 4b, TORP Attach. 2, Evaluation Methodology and Criteria, at 1. The task order will have a 1-year base period and four 1-year options. AR, Tab 4a, Revised PWS, at 26.

The agency contemplated a fixed-price, level-of-effort task order would be issued to the offeror with the lowest-priced, technically-acceptable proposal that conforms to the solicitation’s requirements. AR, Tab 4b, TORP Attach. 2, Evaluation Methodology and Criteria, at 1-2. The solicitation contained a technical and a price evaluation factor. Id. at 4-5. Technical proposals would be evaluated as acceptable or unacceptable. Id. at 4. With respect to the price factor, the TORP stated that the agency would conduct a price analysis to ensure awarded prices are reasonable. Id. at 5. The TORP further stated that an “exceptionally or unrealistically low offer may pose an unacceptable risk to the Government and may be a reason to reject an offeror’s proposal.” Id.

For the price proposals, offerors were required to submit a pricing template spreadsheet. Id. at 3. The TORP instructions for completing the pricing template advised offerors that, “[i]f required, enter the proposed cost elements for each labor category or enter the Loaded Rate.”² AR, Tab 2d, TORP, attach. 4, Instruction 6. The spreadsheet contained a column for the “Loaded Rate.” Id. at 2. The total evaluated price included the sum of the base year and all the option years. Id. at 1.

The TORP advised offerors that “[c]ertified cost or pricing data is not required; however, supporting data/other than cost or pricing data is requested. Supporting data should explain the methodology used in developing the proposed price.” AR, Attach. 4b,

¹ The awarded value of the task order at issue is \$45,165,485. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery, indefinite-quantity contracts valued over \$10 million. 41 U.S.C. § 4106(f).

² As used by the Air Force, the term “loaded rate” is synonymous with the term “fully burdened rate.” Contracting Officer’s Statement of Facts and Memorandum of Law (COSF/MOL) at 4.

TORP Attach. 2, Evaluation Methodology and Criteria, at 3. Examples of supporting data included “any information reasonably required to explain the offeror’s estimating process, including but not limited to the judgmental factors applied.” Id. An offeror’s back-up pricing narrative was limited to five pages, not inclusive of the pricing template spreadsheet. Id. The TORP further advised offerors that in cases where an offeror’s proposed prices appear exceptionally low, the offeror may be required to provide evidence of its capability and/or experience providing similar services at similar prices. Id. at 5.

The government received proposals from the protester, the awardee, and one other firm. The Air Force evaluated only the proposals from the protester and the awardee as technically acceptable. AR, Tab 11, TOSD, at 4. The agency’s initial price realism analysis of proposed loaded labor rates found that ARS’ rates appeared to be unrealistically low, and the agency opened discussions with ARS.³ Id. at 10-11. The agency issued an evaluation notice (EN) which advised ARS that its proposed labor rates appear “unrealistically low to recruit, hire and retain qualified FTEs in accordance with the [knowledge, skills, and abilities] KSAs listed in the PWS.” AR, Tab 7, ARS EN, at 1. The Air Force further stated that ARS’ prices “pose[] an unacceptable risk to the government for recruiting and retention.” Id. The agency instructed ARS to “provide justification of their proposed labor rates or example(s) of successful contract performance including the ability to recruit and retain candidates with ARS’ proposed rates.” Id. Any contract citations provided should “be of the same scope and magnitude of this effort including the ability to meet service summary thresholds for turnover and lapse rate for personnel, where your company has provided similar services at similar prices within the past 3 years.” Id.

ARS’ response provided the agency with information relating to the attractiveness of its total compensation package and included ARS’ Professional Employee Compensation Plan (PECP). AR, Tab 9b, ARS EN Response, PECP. The protester also provided market research showing how its proposed labor rates compared with industry standards along with a revised price proposal that increased some proposed labor rates. AR, Tab 9a, ARS EN Response, at 6.

ARS also provided six past performance references for contracts which the protester claimed showed that it or a teaming partner had provided the government with similar services at similar wages. AR, Tab 9a, ARS EN Response, at 7-11. The contemporaneous agency record contains a detailed discussion of each of ARS’ past performance references. The agency reevaluation concluded that none of the six references included tasks that fall within the scope of the current requirement’s PWS. See AR, Tab 11, TOSD, at 12-13.

³ The agency’s price realism analysis sampled positions from TO 0060 and TO 0092 that had been particularly difficult for the current contractors to keep filled, and where vacancies impacted the mission or the positions had somewhat restrictive skills and abilities. AR, Tab 11, TOSD, at 9.

The agency then conducted an evaluation of ARS' revised price proposal. The evaluation stated that ARS' proposed pricing is 9.79 percent below the independent government estimate (IGE) and 15.81 percent below the awardee's price. Id. at 15. The price evaluation further noted that ARS' proposed labor rates were approximately 31 percent higher than the average labor rates on TO 0060, and approximately 10 percent above the average labor rates on TO 0092. AR, Tab 11, TOSD, at 15. For labor rates currently under TO 0060, more of ARS' proposed labor rates were higher than the IGE than were lower. See id. at Table 7. However, all of ARS' proposed rates were below the IGE for tasks currently under TO 0092. Id. The evaluation explained that the contracting officer for those two task orders has "inherent knowledge, through the administration of both [] TOs 0092 and TO 0060 that the pool of qualified candidates with rated experience is limited and that even the Air Force is experiencing issues with retaining rated pilots on active duty." AR, Tab 11, TOSD, at 15. In the agency's view, ARS' proposed fully burdened labor rates "are not sufficient to recruit, hire, and retain the required personnel for this requirement." Id. Although ARS' proposed labor rates were higher than the prevailing labor rates on TO 0060, the agency nevertheless considered ARS' rates "low, as the incumbent contractor had difficulty filling critical positions which is documented" in the TO 0060 file. Id.

Therefore, while ARS' proposal was found technically acceptable, the protester's price "remains exceptionally low, and after meaningful discussions and subsequent price realism analysis, it still presents an unacceptable risk to the Government." Id. The agency acknowledged that the protester had revised its price proposal, increasing some proposed labor rates. The agency also noted ARS' claim that it had retained and transitioned 100 percent of incumbent FTEs at contract start on a current contract for advisory and assistance services. Id. at 11. However, after an analysis of the protester's revised pricing, the agency concluded that "this does not present a pricing strategy that allows the offeror to recruit, hire and retain qualified personnel." Id. at 13. Moreover, the protester's proposal failed to provide "sufficient data to mitigate the risk of non-performance with their pricing proposal." Id.

Oasis offered the only other technically acceptable proposal, and the contracting officer recommended the task order be issued to Oasis; the task order selection authority concurred. Id. at 16. The task order was issued to Oasis at a total evaluated price of \$45,165,485. AR, Tab 13, Award Notice. This protest followed.

DISCUSSION

The protester alleges that the agency unreasonably evaluated ARS' proposed labor rates as unrealistically low, and that the agency's exclusion of ARS' proposal from further consideration was therefore unreasonable. Protest at 7-13, Comments on AR at 4-17. Specifically, ARS asserts that the agency should have reviewed the proposed labor and the fringe benefits, not just the fully burdened rates. ARS also argues that the agency never explained why the following information contained in the evaluation notice was insufficient to justify ARS' proposed labor rates: the 5 benchmarks and salary

survey information ARS relied on to perform its line-by-line detailed analysis of the position requirements and salary to be paid; ARS' 95 percent personnel retention rate; ARS' capture process; and ARS' total compensation package of salary and fringe benefits.⁴ Id. at 9. ARS asserts that the agency must have therefore failed to consider this information in its evaluation. The agency asserts that its price realism analysis considered all of the information in ARS' discussions response, and that the analysis, moreover, was reasonable and consistent with the terms of the solicitation. COSF/MOL 10-25. As explained below, we see no basis on which to object to the agency's conclusion that the protester's proposed labor hours were unrealistically low.

Where the award of a fixed-price labor hour task order is contemplated, price realism is not ordinarily considered, because a fixed-priced task order places the risk and responsibility for costs and resulting profit or loss on the contractor. Phacil, Inc., B-406628, July 5, 2012, 2012 CPD ¶ 202 at 4. However, an agency may, as it did here, provide in the solicitation for a price realism analysis for such purposes as measuring a firm's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide goods or services at little or no profit. Id. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Id. In reviewing protests challenging price realism evaluations, our focus is whether the agency acted reasonably and in a manner consistent with the terms of the solicitation. Id.

ARS argues that the agency should not have relied only on a review of the fully burdened labor rates, but should have focused on the direct labor rates along with the total compensation package information ARS provided in response to the agency's evaluation notice. Here, offerors were required to submit a pricing template spreadsheet that required the loaded rates for the various labor categories. While the agency requested "supporting data/other than cost and pricing data," the Air Force did not require offerors to provide information other than fully burdened labor rates. Thus, the allegation that the agency improperly failed to consider direct rates of compensation when conducting its price realism analysis is an untimely challenge to the terms of the solicitation. Protest at 11-12 (arguing that the protester "understood" the evaluation notice to request a justification for the actual labor rates, when the agency's analysis relied on loaded labor rates); see 4 C.F.R. § 21.2(a)(1).

ARS also argues that the agency failed to review all of the information contained in its response to the discussions question, which justified ARS' proposed labor rates, including the 5 benchmarks and salary survey information, ARS' 95 percent personnel retention rate, ARS' capture process, and ARS' total compensation package. ARS further contends that, because the agency requested supporting data, it was required to

⁴ ARS does not challenge the agency's evaluation that ARS' past performance references were not of the same size, scope or magnitude of this requirement. See Protest at 7-13; Comments at 5.

consider the requested and provided information in its evaluation of the realism of the protester's proposed prices. See Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 6 (noting that contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another).

The record is clear that the agency evaluated each past performance reference contained in ARS' evaluation notice response. See AR, Tab 11, TOSD, at 11-13. The agency reevaluation concluded that the references were not of the same size, scope or magnitude as the current requirement. The agency concluded that ARS' revised "proposed pricing" "does not support [the claim that ARS can recruit, hire, and retain qualified personnel] with sufficient data to mitigate the risk of non-performance with their proposed pricing." Id. at 13. As noted above, the agency relied on its ongoing experience with the problems encountered on TO 0060 and TO 0092 when assessing the realism of the protester's proposed labor rates. Id. at 15 (noting that the contracting officer's findings drew on "inherent knowledge" gained through the administration of the two task orders being combined under this requirement).

In a declaration submitted in response to our request that the agency clarify its price realism analysis, the CO states that the agency evaluated the past performance references in ARS' response, as well as other information, including ARS' market research and its PECP. Decl. of CO, ¶ 9. The agency's reevaluation of the realism of ARS' proposed labor rates found that the information provided supported the fully burdened labor rates ARS proposed, but the information did not alter the agency's view that those rates were unrealistically low. Id. In short, "[n]othing offered in the market research, nor the PECP, provided by ARS compelled the Government to alter that determination" that ARS' proposed rates were unrealistically low. Id. ARS' revised prices were still 15.81 percent below Oasis' proposed prices and 9.79 percent below the IGE and, therefore, evidence of similar services being performed at similar prices would have been more persuasive than market research and the PECP. Id. ¶¶ 10, 11.

We see no basis on which to question the reasonableness of the agency's evaluation. The solicitation advised that an offeror may be required to provide evidence of its capability and/or experience providing similar services at similar prices if its proposed prices appear too low. AR, Attach. 4b, TORP Attach. 2, Evaluation Methodology and Criteria, at 5. After comparison of ARS' proposed prices to historical prices (under which performance of both task orders had been problematic), the awardee's prices, the IGE, and information provided by ARS, and after considering the agency's first-hand knowledge of the requirement, the agency determined that ARS' revised proposed prices remained unrealistically low.⁵ Further, the CO's declaration fills in previously

⁵ The protester asserts that the TOSD contains an error, where it states that ARS' average proposed fully burdened labor rate was higher for TO 0092 than the current contractor's average rate, and that ARS' proposed rates are over 15 percent lower than the current contractor's rates. Comments at 15 (citing AR, Tab 11, TOSD). The agency does not address the allegation. See Suppl. COSF/MOL. The price realism analysis
(continued...)

unrecorded details; where post-protest explanations provide a more detailed rationale for contemporaneous conclusions, we will generally consider those explanations, as long as they are credible and consistent with the contemporaneous record. See Walden Security, B-407022, B-407022.2, Oct. 10, 2012, 2012 CPD ¶ 291 at 4-6 (considering declaration of program analyst explaining “yes” notations in contemporaneous evaluation record). Here, the CO’s declaration is both credible and consistent with the contemporaneous evaluation.⁶

The protest is denied.

Susan A. Poling
General Counsel

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was supported by numerous, meaningful, accurate figures and comparisons, such that there is no basis to assume that this error was prejudicial. See Johnson Controls World Servs., Inc., B-285144, July 6, 2000, 2000 CPD ¶ 108 at 3 (noting that prejudice is an essential element of any viable protest, and, even where the record establishes a procurement deficiency, we will sustain a protest only where it results in competitive prejudice to the protester).

⁶ In its supplemental comments on the agency report, the protester raises an untimely challenge to the agency’s IGE calculation. See Suppl. Comments on AR at 17 (filed July 21, 2017, more than 10 days after the agency report of June 22 provided a description of the agency’s calculation of the IGE). In any event, we find the allegation without merit. ARS objects to the fact that the labor rate is the same for every labor category, regardless of tasks, and the same for each of the possible 5 years of performance. See AR, Tab 11, TOSD at Table 7. Although the protester’s proposed labor rates varied across tasks, the awardee’s proposed rates, like the IGE, did not. See id. The agency IGE was based on the federal government salary scale equivalents, and those figures were then adjusted for historical pricing and escalated to account for poor performance of the existing task orders. Id. at 8. While the IGE was only one facet of the agency’s price realism analysis, we see nothing unreasonable about how it was prepared.