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# Decision

**Matter of:** BAE Systems Technology Solutions & Services, Inc.

**File:** B-414931.2; B-414931.3

**Date:** December 20, 2017

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Sharon L. Larkin, Esq., Elizabeth A. Ferrell, Esq., and James M. Larkin, Esq., Larkin Ferrell LLP, for CACI Technologies, Inc., the intervenor.

Major Christopher M. Coy, and Scott N. Flesch, Esq., Department of the Army, for the agency.

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

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## DIGEST

Protest challenging agency's evaluation of proposals is sustained where record shows that agency's evaluation of awardee's proposed personnel was not consistent with the terms of the solicitation.

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## DECISION

BAE Systems Technology Solutions & Services, Inc., of Rockville, Maryland, protests the issuance of a task order to CACI Technologies Inc., of Chantilly, Virginia, under request for task order proposals (RTOP) No. W911W4-16-R-0028, issued by the Department of the Army for intelligence support services in Afghanistan. The protester challenges the agency's evaluation of proposals.

We sustain the protest.

## BACKGROUND

The RTOP sought proposals for the issuance of a fixed-price, level of effort and cost-type task order to the firm that represented the best value to the government, considering two factors--technical and price--with the technical factor significantly more important than price. Agency Report (AR), Tab 10, RTOP, at 47. The technical factor contained the following three subfactors, in descending order of importance: staffing

plan, transition plan, and management plan. Id. at 48. Under the task order, the contractor is to provide a multi-faceted intelligence operations support program that provides US forces in Afghanistan with counterintelligence support, collection requirements management, analytic and target support, and other intelligence related support services. AR, Tab 23, Performance Work Statement (PWS) § 1.4.

With respect to the staffing plan subfactor, offerors were to provide a narrative describing how qualified personnel would be provided in accordance with, and the vetting process to ensure candidates meet, PWS sections 7.3 (detailed personnel qualifications) and 7.4 (spreadsheet of labor categories, the number of contract manpower equivalents per category, and the contract's total labor hours). RTOP at 43. PWS section 7.3 listed the required labor categories and both the minimum required qualifications and the highly desired qualifications for each category. AR, Tab 23, PWS § 7.3. For many of the labor categories, the PWS required the contractor to provide personnel with experience in one of several military occupational specialties (MOS) or equivalent. Id. § 7.3.

In addition, as part of their proposals, offerors were required to complete attachment L-1, staffing matrix, to include a detailed list of labor categories to be utilized in task order performance. RTOP at 43. In the matrix, offerors were required to “[i]dentify the employee’s experience level for the labor category/position.” AR, Tab 31, Staffing Matrix Instructions, Column M. The RTOP informed offerors that the government would evaluate “[t]he offeror’s proposed staffing of personnel and process to ensure they possess the minimum qualifications (experience level, education, background, and clearance) to successfully meet the PWS requirements for all labor categories described in PWS sections 7.3 and 4.3.” RTOP at 48.

The RTOP further advised offerors that the “Government will not assume the offeror possesses any capability, understanding, or commitment not specified in its proposal.” Id. at 41. Moreover, a proposal that “merely offers to perform work according to the RTOP terms or fails to present more than a statement indicating its capability to comply with the RTOP terms,” without providing support and detail as specified in section L of the RTOP, will be deemed to have failed to meaningfully respond to the proposal preparation instructions. Id. at 46.

Several offerors, including the protester and the awardee, submitted proposals. After the initial proposal evaluation, the agency conducted discussions with BAE to address a deficiency in BAE’s proposed staffing matrix due to the “Offeror’s failure to reflect requisite information in the staffing matrix” for 314 personnel, or more than half of the task order full-time equivalent (FTE) requirement. AR, Tab 11, BAE Evaluation Notice at 2. BAE’s proposal identified a specific MOS for each proposed personnel, some of which were considered “equivalent” by BAE. CACI’s proposal, in contrast, repeated the language of the solicitation requirement, without identifying a specific MOS for proposed personnel. The chart below includes a comparison of the offerors’ proposals for three representative proposed employees:

Labor Category	PWS MOS Experience Description	BAE Proposed Personnel and Specified MOS	CACI Proposed Personnel and MOS
Reachback Mid-level Counter Intelligence (CI) Analyst	“former MOS 1N, 35F, 350F, 18F, 35D, 34A or equivalent” <sup>1</sup>	“[DELETED] US Army [Human Intelligence (HUMINT)] Collector (35M) [DELETED]” <sup>2</sup>	“[DELETED] former MOS 1N, 35F, 350F, 18F, 35D, 34A or equivalent” <sup>3</sup>
Mid-level CI Analyst	“former MOS 1N, 35F, 350F, 18F, 35D, 34A or equivalent” <sup>4</sup>	“[DELETED] US Army HUMINT Collector (35M) [DELETED]” <sup>5</sup>	“[DELETED] former MOS 1N, 35F, 350F, 18F, 35D, 34A or equivalent” <sup>6</sup>
Senior All-Source Intelligence Analyst	“former MOS 35F, 350F, 18F, 35D, 34A or equivalent” <sup>7</sup>	“[DELETED] US Army HUMINT Collector (35M) [DELETED]” <sup>8</sup>	“[DELETED] former MOS 35F, 350F, 18F, 35D, 34A, or equivalent” <sup>9</sup>

In the final evaluation, BAE’s proposal was assessed a weakness for its “failure to reflect requisite information in the staffing matrix” for 17 personnel. AR, Tab 16, Consensus Evaluation Form, at 3. Many of those 17 personnel failed to meet the minimum solicitation requirements because the agency concluded that BAE’s proposed equivalent military occupational specialties did not meet the minimum requirements set forth in the PWS. See AR, Tab 2, Contracting Officer’s Statement (COS), Attch. 1. The three proposed BAE employees in the chart above were among the employees who, in the agency’s view, failed to meet the RTOP’s minimum requirements. Id. BAE’s proposal identified the specific MOS that it deemed equivalent, and, in some instances, the agency determined that the offered MOS was not equivalent. Because CACI’s

<sup>1</sup> AR, Tab 23, PWS § 7.3.2.7. MOS categories can be found at <http://army.com/info/mos/all> (last visited December 12, 2017). For example, MOS 35F is an intelligence analyst that “[s]upervises, performs, or coordinates, collection management, analysis, processing, and dissemination of strategic and tactical intelligence.” Id.

<sup>2</sup> AR, Tab 14, BAE Staffing Matrix.

<sup>3</sup> AR, Tab 15, CACI Staffing Matrix.

<sup>4</sup> AR, Tab 23, PWS § 7.3.2.9.

<sup>5</sup> AR, Tab 14, BAE Staffing Matrix.

<sup>6</sup> AR, Tab 15, CACI Staffing Matrix.

<sup>7</sup> AR, Tab 23, PWS § 7.3.2.12.

<sup>8</sup> AR, Tab 14, BAE Staffing Matrix.

<sup>9</sup> AR, Tab 15, CACI Staffing Matrix.

proposal did not specify the MOS under which a proposed employee had gained the minimum experience required, the agency's evaluation did not subject CACI's proposal to similar scrutiny.

Under subfactor 1, staffing plan, the source selection authority noted a weakness in BAE's proposed staffing mix, which failed to reflect the education and/or credentialing required under the PWS for 17 out of the 603 FTEs. AR, Tab 19, Source Selection Decision, at 5. In contrast, the source selection authority noted that CACI's proposed labor mix exceeded the experience requirements outlined in the PWS. Id. at 5, 19. Notwithstanding the weakness in BAE's proposal, the agency evaluated the protester's proposal and the awardee's proposal as outstanding under each of the three technical subfactors and outstanding overall. Id. at 5. However, in the agency's view, CACI's plan was slightly more advantageous than BAE's, because BAE's proposal failed to reflect the education and/or credentialing required under the PWS for 17 of the FTEs. Id.; see id. at 20 (noting a second time that CACI's technical approach is slightly more advantageous to the government, compared to BAE's, where BAE's proposed staffing plan has a slight increased risk of unsuccessful contract performance due to the small number of FTEs not meeting the education or experience requirements). BAE's total evaluated price of \$292,220,524 was higher than CACI's total evaluated price of \$281,709,574. Id.

The agency issued the task order to CACI, as the offeror with the technically-superior, lower-priced proposal, and this protest followed.<sup>10</sup>

## DISCUSSION

The protester challenges the agency's evaluation of the awardee's proposal, asserting that the agency could not have known whether the personnel proposed by CACI meet the minimum experience requirements. Therefore, BAE asserts, the agency's evaluation of the awardee's proposal as outstanding under the technical factor was unreasonable. Comments on AR and Supplemental Protest at 2-9; Response to Agency Reply to Comments at 1-7. The agency argues that its evaluation was reasonable and in accordance with the requirements of the RTOP. Specifically, the agency argues that since CACI used the solicitation's language, it conveyed no deviation from the qualification requirements. Supp. Memorandum of Law at 5; COS at 2. As explained below, we agree with the protester.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion

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<sup>10</sup> The task order was competed among firms holding contracts under the Army's United States Forces-Afghanistan Resolute Support Combined Joint Intelligence Afghanistan Intelligence Services multiple award indefinite-delivery, indefinite-quantity contract program. The task order is valued in excess of \$25 million. Accordingly, our Office has jurisdiction to consider this protest. 10 U.S.C. § 2304c(e)(1)(B).

because the agency is responsible for defining its needs and the best method of accommodating them. See Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 10. An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine 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. Technology Concepts & Design, Inc., B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD P 78 at 8.

The RTOP informed offerors that the government would evaluate proposed staffing of personnel to ensure they possess the minimum qualifications--experience level, education, background, and clearance--to successfully meet the PWS requirements. RTOP at 48. Offerors were on notice that the agency would not assume the offeror possesses any capability, understanding, or commitment not specified in its proposal. Id. at 41. A proposal that merely offered to perform work according to the RTOP terms but failed to provide support and detail as specified in section L of the RTOP would be deemed to have failed to meaningfully respond to the proposal preparation instructions. Id. at 46. Specifically, with respect to the staffing matrix, offerors were required to identify a proposed employee's experience level for a particular labor category or position. AR, Tab 31, Staffing Matrix Instructions, Column M. As noted above, the PWS listed the required labor categories and both the minimum required qualifications and the highly desired qualifications for each category. AR, Tab 23, PWS § 7.3. The PWS required the contractor to provide personnel with experience in one of several military occupational specialties "or equivalent." Id. at 111-125.

Here, the awardee's proposed staffing matrix stated the length of experience of the awardee's proposed personnel, but the staffing matrix did not specify the particular military occupational specialty under which the proposed employee had gained experience.<sup>11</sup> See AR, Tab 15, CACI Final Proposal, Staffing Matrix. Instead, CACI's proposal restated the requirement that the employee had experience under a listed MOS "or equivalent," without specifying whether the personnel had experience in an

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<sup>11</sup> Both the agency and intervenor assert that an agency may reasonably accept an offeror's proposal representations where there is no reason to indicate they are inaccurate. Supp. Memorandum of Law at 5 (citing Kipper Tool Co., B-409585.2, B-409585.3, June 19, 2014, 2014 CPD ¶ 184 at 5 (noting that an agency may properly rely on an offeror's representation of Trade Agreements Act compliance)); Intervenor's Comments on Supp. AR at 4. With certain exceptions, in evaluating proposals an agency may reasonably consider information provided by an offeror in its proposal to be accurate. Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5. Here, the issue is not the validity of CACI's representations. Rather, the awardee's proposal failed to include the information necessary for the agency to evaluate the qualifications of the offered personnel.

MOS specified in the PWS, or whether CACI was substituting experience in an MOS that, in the awardee's view, was equivalent.<sup>12</sup> Id.

Based on the content of the awardee's proposal, the agency had no way to assess whether the proposed employees met the minimum requirements, because the agency had no knowledge of whether the awardee was relying on experience in an "equivalent" MOS, and, if so, whether the agency viewed that experience as equivalent to the solicitation requirements. As noted above, agency scrutiny of BAE's proposed equivalent MOS contributed to the agency's assessment of the one weakness in BAE's proposal. Because the awardee's proposal lacked critical information regarding the qualifications of proposed personnel, we sustain the allegation that the agency's evaluation of the awardee's proposal was unreasonable.<sup>13</sup>

BAE also challenges the agency's assessment of a weakness in its proposal for offering 17 employees who do not meet the solicitation's minimum requirements. For one such employee, the minimum education/experience requirement is: "Associates degree and four years relevant DoD specialized training and two years [] intelligence analysis experience OR 8 years analytical experience within DoD or equivalent Government agencies; experience requires former MOS 1N, 35F, 350F, 18F, 35D, 34A or equivalent." AR, Tab 23, PWS at § 7.3.2.9.1. The protester argues that the "OR" means that the PWS provided two separate avenues for meeting the minimum qualifications for this labor category: the candidate could have either an associate's degree and four years' experience, or he or she could have eight years' experience working for DoD or another agency in one of the specified MOSs. Supp. Protest at 17. The agency disputes the protester's interpretation of this requirement, arguing that the placement of the semicolon prior to "experience requires" makes the MOS experience a minimum requirement, regardless of whether the candidate has a degree or eight years' experience. Supp. MOL at 19-20. This alleged evaluation error, without more, would not be prejudicial since BAE was rated overall outstanding and this was not the sole basis for the source selection authority's determination. In as much as we sustain the protest on another ground, the agency may wish to revise or clarify the minimum experience requirements.

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<sup>12</sup> The agency argues that the requirement that offerors document that personnel meet the PWS' minimum requirements could also be fulfilled through the proposal narrative, not just in the staffing matrix. Agency Response to Protester's Comments on AR at 4. The agency points to no language in CACI's proposal narrative, however, that specifies the MOS experience for the hundreds of FTEs whose experience is at issue. See id.

<sup>13</sup> Our decision considers in detail only the assertion that CACI's proposal failed to provide necessary information regarding personnel experience, and the agency's evaluation of CACI's proposal was thus unreasonable. The sustain on that basis, however, has implications for the reasonableness of, for example, one or more of the strengths assigned to CACI's technical proposal relating to staffing, and for the best-value tradeoff.

The protester also asserts that the agency unreasonably failed to assess a weakness in the awardee's proposal for failure to ensure that proposed personnel meet the specialized training requirements in the PWS. Comments and Supp. Protest at 11-16; Comments on Agency Response at 7-11. For example, the solicitation states that new hire senior signals analysts will require certain training prior to deployment. AR, Tab 23, PWS § 7.3.2.22.1. The protester argues that the awardee's proposal contains no evidence that the proposed personnel have received or will receive the required training before deployment. Comments and Supp. Protest at 12. However, the Army explains that CACI's proposal stated that it would comply with the requirement to send its personnel to the training. See AR, Tab 15, CACI Final Proposal, at 14. In the absence of a solicitation requirement that offerors provide proof of qualifications or certifications prior to award, such requirements contained in a solicitation's PWS constitute performance provisions rather than preconditions for award. Bode Aviation, Inc., B-411265, June 26, 2015, 2015 CPD ¶ 191 at 3. Whether an offeror complies with such qualification and certification requirements is a matter of contract administration, which we do not review as part of our bid protest function. Id. This protest allegation is dismissed.

#### RECOMMENDATION

We recommend that the Army conduct discussions, reevaluate the proposals consistent with this decision, and conduct a new best-value tradeoff analysis. In the event CACI's proposal is found not to represent the best value to the government, the agency should terminate CACI's task order and issue an award to the successful offeror in accordance with the terms of the solicitation. We also recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong  
General Counsel