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Decision

Matter of: Information Systems and Networks Corporation

File: B-415720.3; B-415720.4

Date: April 30, 2018

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DIGEST

Protest that agency misevaluated protester’s and awardee’s proposals is denied where evaluation reasonably identified multiple significant weaknesses in protester’s proposal, where differences in evaluation of protester and awardee did not reflect unequal treatment, and where aspects of the evaluation that were unreasonable did not result in competitive prejudice to the protester.

DECISION

Information Systems and Networks Corporation (ISN), of Bethesda, Maryland, a small business, protests the award of a contract to Colliers International Greater Los Angeles, Inc., of Los Angeles, California, under request for proposals (RFP) No. USMS0061-17, issued by the Department of Justice, United States Marshals Service (USMS),¹ for services to plan for, manage, and dispose of real property assets seized by or forfeited to agencies of the Department of Justice. ISN primarily argues that the agency misevaluated the proposals and, as a result, made an unreasonable source selection decision.

We deny the protest.

¹ The RFP identified the contracting agency as “Federal Prison Industries, UNICOR,” and the parties identify the agency as both Federal Prison Industries and USMS. RFP at 1. We refer to the agency as USMS for the sake of simplicity.

BACKGROUND

The RFP, issued on August 30, 2017, sought a contractor to provide nationwide support for the storage, management, maintenance, and disposal of seized, restrained, or forfeited real property for the Department of Justice Assets Forfeiture Fund. RFP Statement of Work (SOW), § C.1. The RFP anticipated the award of one or more indefinite-quantity contracts to provide the services under a combination of fixed-price, and fixed-rate contract line items, under which the contracting officer will issue task orders for services. RFP at 2, 9; RFP amend. 3 at 3.

Award was to be made to the offeror whose proposal provided the best value based on an assessment of four factors,² listed in descending order of importance: past performance, management approach, technical approach, and price. RFP at 57. ISN has challenged neither the past performance nor the price evaluation.

Under the management approach factor, the RFP set forth two subfactors (resumes and subcontractor management) and six detailed criteria under which proposals would be evaluated. RFP at 57-58. One criterion required the agency to evaluate the offeror's proposed key personnel resumes and position descriptions to determine if they had the experience, qualifications, and competencies for the contractor to successfully perform. RFP at 58. A second required the agency to evaluate the offeror's capability and proficiency to successfully implement operations and perform in each management and functional area defined in the SOW. Id. A third required the agency to evaluate the offeror's capability and proficiency to successfully implement and support the requirements relating to subcontracting and real property sales and marketing. Id. Where expertise was to be provided by a subcontractor or vendor, such subcontractor or vendor corporate information, experience, and capabilities were to be included with and integrated into the offeror's overall approach. Id.

Under the technical approach factor, the RFP set forth three subfactors (title/appraisal services, property management, and sales and marketing) and four detailed criteria under which proposals would be evaluated. RFP at 57-59. Under one criterion, the agency would evaluate the technical capability of the offeror to perform the real property management requirements in the SOW based on its technical approach, and its experience and competency in the area of asset management, including pre-seizure, title services, custody, receipt and transfer, maintenance, sales and marketing, disposition, and other areas. Id.

USMS received proposals from six offerors. Contracting Officer's Statement at 3. Four were invited to provide oral presentations, including Chronos Solutions, LLC, Colliers,

² The prerequisite for evaluation under these criteria was to be found acceptable under gate criteria. Offerors passing the gate criteria would be invited to give an oral presentation focused on their technical and management approaches. RFP amend. 3 at 4-5.

and ISN.³ Id. On November 8, USMS announced that a single contract would be awarded to Colliers. Following debriefings, Chronos and ISN filed protests with our Office. On November 30, USMS announced that it would take corrective action by reevaluating the proposals and making a new source selection decision and, as a result, our Office dismissed the two protests as academic. The reevaluation produced the following relevant adjectival rating and price results:

	Past Performance	Management Approach	Technical Approach	Evaluated Price⁴
Offeror A	Marginal	Marginal	Marginal	\$36.9 million
Colliers	Good	Excellent	Excellent	\$57.7 million
ISN	Good	Marginal	Marginal	\$45.8 million

AR, Tab 4, Award Decision Memo, at 29, 31.

The contracting officer’s source selection decision began with a detailed discussion of the evaluation findings with respect to each offeror under each evaluation factor. Id. at 5-26. She noted that ISN’s past performance was rated good, and that its proposal was evaluated as having several strengths but numerous weaknesses and significant weaknesses under the management approach and technical approach factors. Id. at 14-15, 23-24. Colliers’ past performance was also rated good, but its proposal was evaluated as having no weaknesses and numerous strengths and significant strengths under the management approach and technical approach factors. Id. at 13-14, 22-23.

In her best-value tradeoff determination, the contracting officer found that after reviewing the proposals and oral presentations, and considering the evaluation results for the non-price factors, the proposal from Colliers offered the best value. Id. at 33. She stated that while both ISN and Colliers were rated good under the most important factor, past performance, Colliers was evaluated as having better past performance based on the nature of its past contracts, and ISN’s proposal was “not at all close” under the management and technical approach factors. Id. at 28, 33.

The contracting officer also emphasized the importance of the requirement to the agency. Id. at 36-38. She explained that Colliers’ past performance was viewed as highly relevant, its management approach included key personnel who had the needed experience and capabilities, and its technical approach would efficiently keep track of

³ USMS explains that under the incumbent contracts, Colliers has provided appraisal services, Chronos has provided title, marketing, and sales services, and ISN has provided management services. Agency Report (AR) at 6. All services under those three separate contracts were consolidated under the RFP here. Id.

⁴ USMS explains that \$2.9 million of the evaluated price represents the agency’s estimate for several contract line item numbers (CLIN) for which it used “Not to Exceed (NTE) amounts.” AR at 32 n.2.

assets, and would minimize and cure title issues. Id. at 37. She noted that Colliers' price was below the government estimate, and compared ISN's and Colliers' evaluated prices for the base year to the value of the assets seized and forfeited in a year. That comparison showed that Colliers' evaluated price was "approximately 7% of the value" of those assets while ISN's was "approximately 6% of the value." Id. at 34. The contracting officer determined that the advantages of Colliers' proposal justified paying this differential because she believed Colliers would obtain a one percent higher sales price for seized and forfeited assets, and would decrease poor intake selections and title issues that needed to be cured. Id. at 34-35. She expressed her view that Colliers would significantly decrease the time that properties were held, and would thereby reduce the monthly management administrative fees that USMS would pay the firm. Id. On December 22, USMS again announced that Colliers' proposal had been selected for award. AR at 4. After receiving a debriefing, ISN filed this protest.

PROTEST

ISN primarily argues that the agency improperly evaluated its proposal under the management approach and technical approach factors. We have reviewed all of ISN's allegations and find that, while certain aspects of the evaluation are unreasonable, upon considering the source selection as a whole, ISN was not prejudiced by those aspects, so we have no basis to sustain the protest. We discuss the principal allegations below.

In reviewing a protest challenging the evaluation of proposals, our Office does not reevaluate proposals; rather, we examine the record to ensure that the evaluation was reasonable and in accordance with the solicitation's evaluation criteria and applicable statutes and regulations. Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 3.

To begin, we address ISN's overarching allegation that the agency improperly double- or triple-counted weaknesses and significant weaknesses in evaluating its proposal while similarly repeating strengths in Collier's proposal, thereby distorting the evaluation findings to ISN's detriment. The structure of the solicitation underpins this allegation.

As noted above, for both the management approach and technical approach factors, the RFP stated that the agency would evaluate proposals under both a set of subfactors and a set of criteria. There was evident overlap between the subfactors and the criteria, but they were described separately in the RFP and kept separate in the evaluation. As a result, the agency's consensus evaluation document evaluated each proposal under each criterion and then again under each subfactor. In light of the overlap, the same or similar weaknesses, significant weaknesses, and strengths often appear more than once under the relevant evaluation factor such as in both a criterion and a subfactor.

An agency may not double- or triple-count aspects of an offeror's proposal in a way that effectively distorts the evaluation scheme by repeatedly considering the same issue in conjunction with the other major factors. Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 4. However, the record shows that no

such distortion ultimately occurred here because the contracting officer's source selection decision does not carry forward the duplicative findings. She neither relies solely on the adjectival ratings nor counts the number of strengths and weaknesses. Instead, her decision appropriately looks behind the adjectival ratings, strengths, and weaknesses--often aggregating them (as our discussion below does)--to analyze the evaluated merits of the proposals. Thus, to the extent that the duplicative findings in the consensus technical evaluation might have so distorted the evaluation as to render it unreasonable, the contracting officer's source selection decision removed the distortion. See edCount, LLC--Protest & Costs, B-407556.3 et al., Aug. 15, 2013, 2013 CPD ¶195 at 6. As discussed below, with few exceptions, ISN has not shown that the agency's substantive findings regarding the merits of its proposal were unreasonable.

ISN's proposal explained that it utilized a team approach that incorporated three subcontractors to provide expertise in the two aspects of the consolidated requirement under the RFP for which ISN was not the incumbent. Specifically, subcontractor **[DELETED]** would license and customize its asset management information system; subcontractor **[DELETED]** would provide valuation management and sales and marketing; and subcontractor **[DELETED]** would provide title and title curative services. Protest exh. B, ISN Management/Technical Proposal, at 2. Most of the evaluated weaknesses and significant weaknesses in its proposal challenged by ISN are in the area of its key personnel and its use of subcontractors.⁵

Key Personnel Resumes

Offerors were required to provide resumes for each of five specified key personnel, and the RFP set forth the duties and minimum qualifications for each position. RFP amend. 3 at 8-10. ISN challenges the agency's assessment of significant weaknesses in its proposal with respect to the resumes of three key personnel. The protester argues that the agency's findings are unreasonable and evidence the application of unstated evaluation criteria. For the reasons discussed below we find no basis to question the agency's evaluation of ISN's key personnel.

First, the RFP specified that the program manager is to be responsible for managing the overall program including planning, execution, and reporting of all activities to ensure the government's requirements are met, delivered on schedule, and performed within budget. The program manager was to oversee personnel management, organizational management, risk management, cost control, and quality assurance of the program. RFP amend. 3 at 9. One minimum qualification for the program manager was to have "10 years of real property management experience in a comparable role." Id.

ISN's proposal was assigned a significant weakness for its proposed program manager because her prior experience included overseeing all title and disposal elements for

⁵ ISN does not challenge several significant weaknesses, primarily under the technical approach factor.

[DELETED] at a time when USMS [DELETED]; her experience appeared to be in the area of the management of systems and oversight of people rather than the actual “personal management of real estate;” and her resume did not demonstrate she had the required 10 years of experience in real property management in a comparable role. AR, Tab 2, Consensus Technical Evaluation of ISN, at 6, 10. There was also an apparent error on her resume indicating she worked for [DELETED] from 2013 to the present when other information available to USMS indicated she was working for the [DELETED] in 2016. *Id.* at 10.

ISN acknowledges that the candidate’s resume contained an error regarding her dates of employment, but contends that she has over 25 years of experience in real estate management. ISN also argues that the agency’s reference to her lack of “personal” management of real estate is an unstated evaluation criterion. ISN finally argues that it is improper to attribute the problems USMS may have experienced with another incumbent contractor to this candidate. Protest at 17-18; Protester’s Comments at 2-5.

Our review of the record provides a reasonable basis for the agency’s finding that the candidate’s resume did not show that she met the specific requirement for 10 years of real property management experience in a comparable role. The agency’s concern that her experience appeared to be in the management of systems and oversight of people rather than the “actual personal management of real estate” reflects this specific requirement. AR, Tab 2, Consensus Technical Evaluation of ISN, at 6. The program manager must have had experience in the management of real property, not in the management of systems that, or persons who, manage real property. For example, the agency explains that it did not find the candidate’s experience as a sales and asset manager at a realty firm, during which she managed a team of real estate agents, to be comparable experience. This evaluation judgment was reasonable and consistent with the RFP criteria, and ISN has given us no basis to question the agency’s evaluation.⁶

Regarding a second key personnel candidate, the RFP specified that the title clearance coordinator is to be responsible for reviewing the title work and survey for any issues that might adversely affect the marketability of and ability to convey title to the property. The RFP also required the coordinator to initiate any work necessary to clear title issues that would render title to a property unmarketable. RFP amend. 3 at 9. The person with this role was to have two to five years of experience in closing coordinating/processing and to have experience in federal seizure and forfeiture. *Id.* ISN’s proposal was assigned a significant weakness for its proposed title clearance coordinator because, among other things, the candidate did not address the type of title issues he worked on and nothing in his resume showed he had any experience or understanding of the job of

⁶ Since we find that the agency reasonably assessed a significant weakness for this reason, we need not address any other bases for its findings. We note that we have found that errors concerning dates of employment in resumes may justify concern among evaluators regarding the offeror’s ability to perform. Advanced Commc’n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5.

clearing title issues related to government-owned property. AR, Tab 2, Consensus Evaluation for ISN, at 6-7.

ISN argues that the agency improperly conflated the two minimum requirements. ISN asserts that the candidate's resume showed the requisite years of experience and the proposal elsewhere stated that he had professional experience in federal seizure and forfeiture. Protest at 19; Protester's Comments at 5. However, the solicitation required that the resume itself evidence experience related to federal seizure and forfeiture (the processes leading to the government-owned property at issue), and the resume does not do so. The statement elsewhere in the proposal that the candidate had federal experience is not supported by the resume so we have no basis to find the agency's evaluation unreasonable.⁷

The third key personnel candidate at issue, the marketing/sales manager, was to be responsible for organizing and leading marketing and sales teams in specific geographic areas. RFP amend. 3 at 9. The person with this role was to have a minimum of eight years relevant real estate experience and experience in federal seizure and forfeiture. Id. at 10. ISN's proposal was assigned a significant weakness for its proposed marketing/sales manager because her resume demonstrated high levels of experience with property management but not sales; rather her resume reflects that she worked closely with local real estate agents to market and sell properties. AR, Tab 2, Consensus Evaluation for ISN, at 7.

ISN argues that its candidate exceeded both of the requirements for the position and contends that USMS imposed an unstated criterion that required the candidate's experience to be primarily or extensively in property sales. Protest at 20; Protester's Comments at 8. We do not agree.

The candidate's experience in federal forfeiture and seizure is not in dispute; her relevant real estate experience is. The candidate's resume shows that, as the agency notes, most of her most relevant experience has been with property maintenance and management, including preparing properties for sale. One of her positions, which lists her as the owner and president from 1995 to present at a firm which is a USMS contractor in Florida,⁸ describes a number of duties associated primarily with

⁷ The agency's description of this significant weakness also notes that the resume paraphrases the RFP requirements. AR, Tab 2, Consensus Evaluation for ISN, at 6. ISN argues that the agency engaged in unequal treatment because the resume for Colliers' title clearance coordinator also paraphrases the RFP requirements and it was not given a weakness. Supplemental Protest at 6. However, as the agency notes, unlike with the ISN candidate, Colliers' key personnel met the minimum requirements, and the paraphrasing simply identified the job duties specified in the RFP, and did not involve the explanation of the candidate's experience and qualifications.

⁸ These dates appear to conflict with the dates of other employment on her resume, and the USMS states that the firm was not a USMS contractor for the entire length of time,
(continued...)

maintenance and management of real estate but includes the phrase, “[w]orked closely with local Real Estate Agents to market and sell the properties” Protest exh. B, ISN Technical/Management Proposal, Key Personnel Resumes appendix, at xiv. ISN asserts that this meets the RFP’s specific requirement for eight years of relevant real estate experience. However, the required experience is to be relevant to organizing and leading marketing and sales teams, so we are not persuaded that the agency was unreasonable in concluding that working with real estate agents, as depicted in the candidate’s resume, fell short of that requirement.

ISN also challenges the agency’s assessment of a weakness because it failed to have its title clearance coordinator and marketing/sales manager at the oral presentation. AR, Tab 2, Consensus Evaluation for ISN, at 7. Again, offerors whose proposals cleared the gate criteria were invited to an oral presentation and the RFP stated that “[t]he Offeror’s Project Manager and other Key Personnel should be presenting.” RFP amend. 3 at 4. ISN argues that the weakness is unreasonable because it was not mandatory to have these two key personnel attend the oral presentation, but its argument is immaterial. Whether or not the requirement was mandatory, ISN opted not to have its title clearance coordinator and marketing/sales manager present and participating during the oral presentation. This decision deprived the agency of the opportunity to hear from them and ask any questions. Thus it is also insignificant that, as ISN argues, the agency asked no questions during the oral presentation and has not identified questions it might have asked. We do not view it as necessary for the agency to speculate as to what the absent key personnel might have said that might have generated questions, in order to conclude that the assessment of this weakness was reasonable.

Finally, the agency assigned ISN’s proposal a weakness because the firm did not address how its key personnel—significantly, the title clearance coordinator and marketing/sales manager—would interact with the subcontractors performing these functions. The agency found that the proposal did not clearly state what these individual’s roles would be within the operation and how they would or would not interact with the subcontractors. AR, Tab 2, Consensus Evaluation for ISN, at 7. We do not agree with ISN that this is an unstated evaluation criterion.

Again, where an offeror intended to utilize subcontractors, it was required to integrate the subcontractors’ approaches within its own overall approach. RFP amend. 3 at 6; see also RFP at 58. Since ISN’s approach utilized subcontractors to provide expertise for both the title function and the sales and marketing function, a consideration of how the key personnel responsible for those functions would interact with the relevant subcontractors was reasonably encompassed within the evaluation. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3 (agency properly may take into account

(...continued)

casting into question the extent of relevant experience with this firm. Advanced Commc’n Sys., Inc., supra, at 5.

specific matters that are logically encompassed by, or related to, the stated evaluation criteria).

Subcontractors and Vendors

One criterion under the management approach factor concerned the offeror's demonstration of the capability and proficiency to successfully implement operations and perform in each management and functional area defined in the SOW. RFP at 48. ISN's proposal was assessed a significant weakness because it proposed to use [DELETED] for valuation management and for sales and marketing, two of the SOW's functional areas. The agency found that all that was required to sign up as an [DELETED] real estate agent was basic information submitted to a website and the agents would be placed on a list of agents on the [DELETED] panel regardless of their experience. The agency was concerned that this lack of experience appreciably increased the risk of successful performance. AR, Tab 2, Consensus Evaluation of ISN, at 8.

ISN objects that this information about [DELETED] is nowhere in its proposal. The firm states (and the agency does not dispute) that, during its debriefing, the agency advised that it obtained this information from the internet. AR, Tab 8, Declaration of Technical/ Management Evaluator, at 2. ISN explains that the application process is just the first step of the [DELETED] screening of agents and presents an incomplete and inaccurate picture, and that the agency improperly evaluated information obtained outside its proposal. We agree. It is one thing, as discussed below, to find a weakness because the firm failed to include sufficient information. It is another to seek information from outside a technical proposal in order to conduct an evaluation. We have recognized that an agency's evaluation is not generally limited to the four corners of an offeror's proposal, but may rely upon other extrinsic information of which it is aware. Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 11. However, the agency here sought and obtained extrinsic information to fill in a proposal's informational gaps, and we have no basis to question ISN's assertion that it resulted in a speculative evaluation and an erroneous picture of the [DELETED] process. The evaluation was thus unreasonable.⁹

In contrast, another criterion was an offeror's capability and proficiency to implement and support the contract requirements related to subcontracting and real property sales and marketing. As mentioned previously, where proposed expertise was to be provided by a subcontractor or vendor, the proposal was to include and integrate the firm's corporate information, experience and capabilities into its overall approach. RFP amend. 3 at 6; see also RFP at 58.

⁹ Several other weaknesses concerning ISN's proposed subcontractors were similarly based on extrinsic information and for similar reasons are also unreasonable.

ISN's proposal was assigned a significant weakness for its failure to show proficiency in marketing real properties. AR, Tab 2, Consensus Evaluation of ISN, at 9. The agency found that the firm had not provided a marketing plan detailing how it intended to hire competent real estate firms or assign them properties. Id. ISN argues that there was no requirement to provide a marketing plan but, rather, a summary of a marketing plan, and that the information it provided met the solicitation's requirement.

The RFP states that offerors should include a document summarizing the sales and marketing plan that meets the requirements for what such plan shall include as set forth in the SOW. The RFP also required the offeror to address its overall marketing and sales approach, and its proposed resources, techniques, and processes for marketing and selling each different type of residential and commercial property through appropriate channels and mechanisms. The offeror was also required to address the use, if any, of subcontracts for any part of the marketing or sales process, and the auction, cashing, or banking processes related therein. RFP amend. 3 at 10.

Our review of the ISN proposal gives us no basis to find that the agency unreasonably concluded that the firm's proposal, including its sales and marketing section and the plan summarized therein, lacks the required detail. The proposal discusses the tasks that "Team ISN" will perform but not how [DELETED]--the subcontractor for marketing and sales--fits into the team or how [DELETED] will perform its tasks. See, e.g., Protest exh. B, ISN Technical/Management Proposal, at 2, 7-9, 35. Given that [DELETED] will be the subcontractor for this work, we cannot fault the agency for finding that ISN did not demonstrate how the subcontractor's experience and capabilities fit into its overall approach. Identifying the sales and marketing approach as being delivered by "Team ISN," and saying that it will "leverage the experience and capability of all of its team members", id. at 35, does not meet the solicitation's requirements.¹⁰

Prejudice

Finally, USMS argues that even if aspects of the evaluation were found to be flawed, the superiority of Colliers' proposal under the technical approach and management approach factors was significant, and the price difference was minimal, so ISN cannot show that it was competitively prejudiced by any evaluation errors. We agree.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, so our Office will not sustain the protest, even where flaws in the procurement have been shown. AEgis Techs. Grp., Inc., B-412884 et al., June 28, 2016, 2016 CPD ¶ 175 at 10-11 (protest

¹⁰ The same conclusion also extends to a significant weakness that the agency reasonably assigned to ISN's technical proposal under the technical approach factor for its failure to provide a detailed approach for marketing real properties. AR, Tab 2, Consensus Evaluation of ISN, at 15.

denied where latent ambiguity that adversely affected protester's cost was insufficient to show that protester would have had a substantial chance of award).

Even though we have found the evaluation of ISN's proposal unreasonable in several aspects, when the selection decision is viewed as a whole, we are unable to find that these errors were prejudicial. More specifically, apart from those flaws, the remaining record of a reasonable evaluation justifies the contracting officer's source selection judgment. The evaluated advantages of Colliers' proposal under the past performance, management approach, and technical approach factors were significant, while ISN's proposal was reasonably assessed material weaknesses in both its management approach and technical approach. Given the significant difference in the evaluations here and the contracting officer's tradeoff judgment, even when taking into consideration ISN's lower price, the record does not point to a substantial chance of award for ISN.

The protest is denied.

Thomas H. Armstrong
General Counsel