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Decision

Matter of: DynCorp International LLC

File: B-417704.5

Date: December 20, 2019

David M. Nadler, Esq., Justin A. Chiarodo, Esq., Stephanie M. Harden, Esq., and Carolyn Cody-Jones, Esq., Blank Rome LLP, for the protester. Stephen C. Edinger, Esq., and Melissa K. Erny, Esq., Department of Homeland Security, for the agency. Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the proposed corrective action taken in response to earlier protests is denied where the agency had a reasonable basis for the scope of proposal revisions that would be permitted.

DECISION

DynCorp International LLC, of Fort Worth, Texas, protests the corrective action taken in connection with request for proposals (RFP) No. 70B02C18R00000063, issued by the Department of Homeland Security, United States Customs and Border Protection (CBP), for national aviation logistics and support. The protester maintains that the proposed corrective action is unreasonable.

We deny the protest.

BACKGROUND

The agency has a diverse fleet of aircraft necessary to accomplish its mission of border protection. CBP requires aircraft maintenance and logistics support to ensure its aircraft are available where and when required. Agency Report (AR), Tab 2, RFP at 102. To procure those services, this RFP was issued on June 1, 2018, with a closing date of July 27, 2018. Id. at 1. The solicitation contemplated the award of a single hybrid (fixed-price and cost-plus-incentive-fee) contract with a 12-month base period and nine 1-year options. Id., attach. 2, Quality Assurance Plan, at 5. Award was to be made to the offeror whose proposal was most advantageous to the government, considering

technical, safety, past performance, and price/cost factors. RFP at 95. Neither the evaluation criteria nor the evaluation of proposals is at issue in this protest of the solicitation's terms.

As set forth below, over the past year and a half, this procurement has been the subject of multiple protests at the agency and GAO.

On May 31, 2019, CBP made the first and only award of this requirement to DynCorp. PAE Aviation and Technical Services, LLC, and Vertex Aerospace, LLC, protested that award with this Office. GAO dismissed both protests as academic after the agency notified GAO of its intent to re-evaluate proposals and make a new award decision. See PAE Aviation and Tech. Servs., LLC, B-417704, July 12, 2019 (unpublished decision); Vertex Aerospace, LLC, B-417704.2, July 12, 2019 (unpublished decision). On July 16, the contracting officer notified offerors that it was making no changes to the solicitation; the agency requested that offerors extend their final proposal revisions, which the agency would reevaluate. AR, Tab 14, Letters from Agency to Offerors, July 16, 2019.

On July 25, the contracting officer revised the period of performance to reflect schedule slippage due to the protests and requested that offerors provide new pricing on attachments 6 and 8 of the RFP consistent with the changed performance period.¹ AR, Tab 16, Contracting Officer Memo to Offerors, July 25, 2019. The contracting officer notified offerors that no other proposal changes would be permitted. Id.

On July 31, the contracting officer provided offerors with updated Collective Bargaining Agreement (CBA) rates, and in the transmittal of the new CBA labor rates, advised offerors that, in addition to price revisions resulting from the changed performance period, offerors were permitted to change labor rates impacted by the updated CBA. AR, Tab 18, Contracting Officer Memo to Offerors, July 31, 2019. Proposal revisions were due August 8. Id.

PAE filed an agency-level protest seeking clarification of the instructions for submitting revised pricing. AR, Tab 25, PAE Agency Level Protest, Aug. 7, 2019 at 3, 7. PAE also asserted that the instructions were "unduly restrictive of the warranted proposal changes." Id. at 9. Specifically, PAE argued that the agency's instructions improperly limited offerors from making necessary revisions to their technical and safety proposals, and that the agency should, at a minimum, allow all revisions inextricably linked to the pricing revisions. Id. PAE asserted that because it--"and likely other offerors"--had "developed ways to significantly and safely reduce labor quantities, overhead rates, and fee to coincide with the revised [period of performance] and make improvements to their

¹ Attachment 6 of the RFP is a set of spreadsheets used by offerors to propose cost/price for labor and other direct costs. See AR, Tab 8, RFP amend. A0006. Attachment 8, the Standard Workforce Template, required offerors to break down the labor hours, labor category, and cost/price for each location and aircraft included under the contract. See AR, Tab 10, RFP amend. A0008.

technical proposals,” the agency should “broaden the range of proposal changes.” Id. at 10.

After PAE filed a supplemental agency-level protest, see AR, Tab 27, the contracting officer notified offerors that CBP was reverting to its original corrective action plan, that is, the agency would re-evaluate the previously submitted proposals and make a new award decision, but would not seek any revisions to previously submitted proposals. AR, Tab 31, Contracting Officer Memo to Offerors, Aug. 16, 2019. The agency further explained that it would not consider the recently submitted revised pricing but would instead “work with the selected awardee” to adjust the price based on the change in the period of performance and the updated CBA. Id. On that same date, the contracting officer denied PAE’s agency-level protest and supplemental protest. AR, Tab 29, Response to Agency Level Protest and Agency Level Supplemental Protest, Aug. 16, 2019.

On August 23, both PAE and Vertex again filed protests at GAO. PAE asserted that the agency was required to utilize the updated pricing provided by the offerors, and that the agency should allow for new proposals based on any changes “inextricably linked” to the required pricing changes, as well as “any other changes the offerors deem competitive.” AR, Tab 32, PAE Protest at 11-16. Vertex argued that, having identified changed requirements, the agency was required to amend the solicitation and request revised proposals. AR, Tab 33, Vertex Protest at 4-5.

CBP informed GAO that it was again taking corrective action, this time by amending the solicitation and requesting revised price and technical proposals that would provide the basis for a reevaluation and new best-value tradeoff decision. AR, Tab 34, Agency Corrective Action Notice, Sept. 5, 2019. GAO concluded that the agency’s actions again rendered academic the pending protests and dismissed both of them. See Vertex Aerospace, LLC, B-417704.3, Sept. 9, 2019 (unpublished decision); PAE Aviation and Tech. Servs., LLC, B-417704.4, Sept. 9, 2019 (unpublished decision).

On September 13, the contracting officer notified the parties of the following changes to the RFP: the targeted base year period of performance was amended; section M, which had advised offerors that the agency would conduct an analysis of “cost reasonableness and/or cost realism,” was changed to advise that the agency would conduct an analysis of “cost reasonableness and cost realism”; and attachment 5, containing the CBA wage rates, was updated. AR, Tab 38, Contracting Officer Memo, Sept. 13, 2019, at 1 (emphasis in original). The contracting officer advised offerors that they were permitted to make “any changes applicable to both [price and technical] volumes,” with revised proposals due October 4. Id. at 1-2.

This protest followed on September 20.²

DISCUSSION

DynCorp asserts that the agency's decision to permit unlimited proposal revisions is unreasonable. Protest at 8-10. Alternatively, the protester argues that, if the agency permits such proposal revisions, it is unreasonable and prejudicial to DynCorp for the agency not to disclose the total evaluated cost and technical ratings for all offerors from the initial evaluations. As explained below, we conclude that the agency had a reasonable basis for permitting revised proposals as part of its corrective action, and that the agency was not required to disclose the total cost and ratings of the other offerors. Accordingly, we deny the protest.

In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. MayaTech Corp., B-400491.4, B-400491.5, Feb. 25, 2009, 2009 CPD ¶ 55 at 3. When the corrective action taken by an agency is otherwise unobjectionable, a request for revised price proposals is not improper merely because the awardee's price has been exposed. Strand Hunt Constr., Inc., B-292415, Sept. 9, 2003, 2003 CPD ¶ 167 at 6. The passage of time can provide a reasonable basis for an agency to request revised proposals after taking corrective action, McKean Def. Grp.-Info. Tech., LLC, B-401702.2, Jan. 11, 2010, 2010 CPD ¶ 257 at 4, and ameliorates possible prejudice caused by the exposure of prices after contract award. OMNI Int'l Distrib., Inc., B-224027.5, Dec. 8, 1987, 87-2 CPD ¶ 563 at 2.

The RFP here was first issued almost a year and a half ago, with a closing date of July 27, 2018. Since proposals were submitted, the agency has modified the period of performance, modified the RFP's language regarding cost realism, and updated the CBA wage rates. Given the extended period of time since the receipt of initial proposals and the many possible ways the initial proposals might require updating, we see no basis on which to question the broad discretion afforded CBP to determine the permissible scope of proposal revisions.

DynCorp also argues that, if the agency permits unrestricted proposal revisions, CBP should disclose the costs and ratings of the other offerors to level the playing field. When, as here, reopening the competition is otherwise proper, prior disclosure of an offeror's price does not render resoliciting or reopening the competition improper.

² After PAE asserted that the agency had not adequately explained how it would conduct its price realism analysis, the contracting officer issued RFP amendment 10 on October 16. AR, Tab 49, RFP amend. A0010. Among other things, amendment A0010 restructured the base period of performance from a nine-month period to a 12-month period, and permitted offerors to propose escalation factors for the option periods (with accompanying justification) in lieu of the flat 3 percent escalation rate previously provided by CBP. Id. The amendment extended the deadline for revised proposals to November 1. Id.

American Material Handling, Inc., B-406739, Aug. 14, 2012, 2012 CPD ¶ 234 at 4. Here, in accordance with the post-award debriefing requirements of the Federal Acquisition Regulation (FAR), the agency properly disclosed the awardee's-- DynCorp's--price and technical rating to disappointed offerors. See FAR §15.506(d)(2). As a general matter, an agency is not required to equalize the possible competitive advantage flowing to other offerors as a result of the release of information in a post-award setting, when the release was not the result of preferential treatment or other improper action on the part of the agency. American Material Handling, Inc., supra. The record does not provide a basis to depart from that general rule.

The protest is denied.

Thomas H. Armstrong
General Counsel