



Decision

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Matter of: IAP Worldwide Services, Inc.

File: B-417824; B-417824.2

Date: November 13, 2019

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DIGEST

1. Protest challenging the assessment of a strength for the awardee's experience recruiting local Afghan personnel is sustained where the agency failed to document its basis for concluding that this experience had any bearing on the instant requirement for cyber-operations support personnel in Indiana.
 2. Protest challenging the assessment of a strength for the awardee's proposal not to subcontract is sustained where the agency failed to adequately explain its basis for concluding that this approach would benefit the agency.
 3. Protest contending that agency unequally evaluated the protester's and awardee's approaches is denied where the agency reasonably credited the awardee with strengths based on unique features in its proposal.
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DECISION

IAP Worldwide Services, Inc., located in Cape Canaveral, Florida, protests the issuance of a task order to IDS International Government Services LLC, a small business located in Arlington, Virginia, under request for proposals (RFP) No. RS3-19-0010, issued by the Department of the Army for services in support of the Cybertropolis Technology Environment Platform (CTEP) at the Atterbury-Muscatatuk Center for Complex Operations (A-MCCO) in Butlerville, Indiana. IAP argues that the agency unreasonably

and unequally evaluated technical proposals, improperly adjusted IAP's cost upwards, and conducted a flawed best-value tradeoff determination.

We sustain the protest.

BACKGROUND

On March 29, 2019, the Army issued the RFP under its Responsive Strategic Sourcing for Services contract vehicle, seeking services in support of the CTEP. The CTEP provides a one-of-a-kind platform for the Department of Defense and its joint, interagency, intergovernmental, and multinational partners to conduct training or research, development, testing and experimentation (RDT&E) in a wide variety of emerging technology areas primarily related to cyberspace and cyber-electromagnetic operations. Agency Report (AR), Tab 2, Performance Work Statement, at 1. Services sought by the RFP include supporting A-MCCO in conducting technology-related training and RDT&E operations, together with administrative and supply functions required to support these operations. Id.

The solicitation contemplated the issuance of a hybrid fixed-price/cost-plus-fixed-fee/cost-reimbursement task order with a 1-year base period and three 1-year option periods. AR, Tab 17, RFP, at 1. Under the RFP's evaluation scheme, the agency would conduct a best-value tradeoff considering each offeror's cost/price and its technical approach, with the technical evaluation factor of significantly more importance than the cost/price factor. Id. at 13.

Additionally, an offeror's proposal would need to receive an acceptable rating under the small business participation factor and a "[m]eets" or "[e]xceeds" under the transition-in plan factor to be eligible for award. Id. For the small business participation factor, offerors were required to propose a total small business participation minimum goal of 25 percent of total task order dollars. Id. at 11.

For the evaluation of the technical factor, the solicitation anticipated that proposals would be evaluated as either "[e]xceeds," "[m]eets," or "[d]oes not meet," based on strengths and deficiencies assessed under four separate elements: subcontracting, manpower, quality control plan, and management plan. Id. at 5, 13.

As relevant here, for the subcontracting element, the RFP required each offeror's technical proposal to identify the percentage of work (direct and indirect labor costs) to be performed by the offeror, and the percentage of work to be performed by each of its subcontractors. Id. at 5. The solicitation warned that "**[o]fferors who subcontract more than 70 percent of total cost of work will not be considered for award.**" Id. (emphasis in the original).

For the management plan element, the solicitation anticipated that the agency would evaluate offerors' organization and staffing charts and their approaches for: (1) recruiting and hiring the professionals required under the contract; (2) retaining the

personnel to successfully manage, maintain, and work in contract locations; (3) providing oversight on managing schedules; (4) managing the task order and providing related support services; and (5) managing and maintaining government furnished property. Id. at 5-6.

For the evaluation of the cost/price factor, the solicitation contemplated that the agency would evaluate proposals “to ensure the costs are fair, reasonable, and realistic.” Id. at 14. An offeror’s total evaluated cost/price to be used in the award determination would be the total identified in that offeror’s proposal subject to a most probable cost adjustment. Id.

Nine offerors, including IAP and IDS, submitted proposals in response to the RFP. Following the agency’s evaluation of proposals, the Army assessed the proposals as follows:

	IDS	IAP
Transition-In Plan	Meets	Meets
Technical	Exceeds	Exceeds
Small Business Participation Plan	Meets	Meets
Proposed Cost/Price	\$46,844,519	\$43,977,788
Evaluated Cost/Price	\$47,063,279	\$44,279,607

Contracting Officer’s Statement/Memorandum of Law (COS/MOL) at 7.

While IDS and IAP received the same adjectival ratings, and IAP’s evaluated cost/price was \$2,783,672 lower than IDS’s, the agency determined that IDS’s proposal provided the best value to the agency. AR, Tab 62, Task Order Decision Document (TODD), at 42. The agency based this conclusion on IDS’s “highly advantageous” technical approach, which the agency found to be superior to IAP’s approach. Id. at 41. In this regard, the Army’s source selection official determined that IDS’s technical approach was of equal benefit to IAP’s approach in the manpower and quality control plan elements, but was superior in both the subcontracting element and the management plan element. Id. at 37-40.

Following the Army’s issuance of the task order to IDS, IAP timely filed this protest.¹

DISCUSSION

The protester challenges the evaluation of IAP’s and IDS’s technical proposals, the Army’s upward adjustments to IAP’s cost, and the reasonableness of the agency’s best-

¹ The task order at issue is valued in excess of \$25 million, and was placed under an indefinite-delivery, indefinite-quantity multiple-award contract established by the Army. Accordingly, our Office has jurisdiction to consider IAP’s protest. 10 U.S.C. § 2304c(e)(1)(B).

value tradeoff determination. For the technical evaluation, IAP contends that the agency ignored several strengths in IAP's proposal associated with its experience and capabilities as the incumbent contractor for this requirement. In addition, the protester argues that IDS should not have received certain strengths credited to its technical proposal under the subcontracting and management plan elements, and, in fact, should have received a deficiency for its management plan. For the evaluation of IAP's cost/price, the protester argues that two conceded errors in the evaluation of IAP's cost/price were prejudicial. Last, the protester argues that the Army's best-value tradeoff determination was flawed as a result of these errors and was otherwise unreasonable.

For the reasons discussed below, we sustain IAP's protest.²

Management Plan Element

The protester argues that the Army unreasonably credited IDS with an unwarranted strength under the management plan element for its recruitment efforts relating to a contract performed in Afghanistan. In this regard, the agency's technical evaluators credited IDS's recruitment approach for "demonstrat[ing] its ability to recruit by citing another one of its contracts in which within '30 days of the [sic] IDS recruited, screened, hired and trained 400 local Afghan staff who were then deployed to provinces throughout Afghanistan.'" AR, Tab 41, IDS Technical (Tech.) Evaluation (Eval.) at 8.³ The source selection official relied on this experience as a key discriminator, in the TODD noting that while IAP's staffing and recruitment plan:

meets the requirements of the RFP, but was not assigned a strength, IDS's staffing plan demonstrated that IDS was capable of staffing complex requirements in risky environments which is more beneficial than IAP's plan which only demonstrates it will meet the requirements for staffing. IDS' plan provides greater assurance of contract success.

² While we do not address in detail every argument raised by the protester, we have reviewed each issue and, with the exception of those issues discussed herein, do not find any basis to sustain the protest. For example, the protester argues that the agency should have credited IAP's proposal with additional strengths, e.g., a strength for its plan for managing government furnished property, which the protester contends exceeded the RFP requirements. We have reviewed each of these arguments and conclude that the protester has not demonstrated that the agency acted unreasonably in determining that the proposal aspects at issue did not merit the assignment of additional strengths.

³ The Army's technical evaluation report of IDS's proposal, AR Tab 41, does not contain page numbers. Our Office assigned consecutive pagination to this document for purposes of citing it in this decision.

AR, Tab 62, TODD, at 39.

IAP argues that this contract experience should not have been credited as a discriminator because “[r]ecruiting local nationals to perform operations and maintenance work overseas has no relevance to IDS’s ability to hire highly sought-after cyber professionals in the United States.” Protester’s Comments & Supp. Protest at 7. The protester therefore contends that the agency should not have credited this experience with a strength.

As an initial matter, the agency asserts that this argument is untimely because it was first raised within IAP’s comments on the agency report. The agency, however, has not alleged that it provided information on the above strength prior to the submission of the agency report. We note the protester’s comments on the agency report were timely filed with our Office.⁴ The agency has not explained how the protester could have known about, or challenged, this strength any sooner. Accordingly, we conclude that the protester has timely raised this challenge. To the extent the agency’s complaint is directed at the fact that the protester raised this argument in the comments section of its filing, rather than labeling it a supplemental protest issue, we find that this semantical distinction does not warrant our Office’s dismissal of the argument.

Beyond asserting that the argument is untimely, the Army largely fails to substantively address the protester’s contention that IDS’s recruitment experience in Afghanistan has no bearing on the instant requirement. Elsewhere in its legal memorandum, however, the agency downplays the importance of the applicable strength, arguing that “it was only one sentence in the evaluation of [IDS’s] staffing plan” and noting that the agency praised many other aspects of IDS’s staffing plan. Supp. COS/MOL at 4.

In reviewing a protest challenging an agency’s evaluation of task order proposals, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency’s conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Paradigm Techs., Inc., B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257 at 6.

Based on our review of the evaluation record, we find that the Army has not documented or meaningfully explained its basis for concluding that the above recruitment experience provided an advantage over the incumbent experience and approach proposed by IAP. In this regard, we note that neither IDS’s proposal nor the agency’s evaluation record provides any detail on the type of personnel that were the

⁴ Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), require protest issues to be filed within 10 days after the basis of protest is known or should have been known. Here, the protester’s comments and supplemental protest was timely filed on Monday, September 16, 2019, which was 11 days after the agency report was filed. Under our Bid Protest Regulations, where, as here, a deadline falls on a Sunday, the deadline extends to the next day that our Office is open. 4 C.F.R. § 21.0(d).

subject of IDS's recruitment efforts beyond describing them as "400 local Afghan staff who were then deployed to provinces throughout Afghanistan." AR, Tab 42, IDS Tech. Proposal, at 12; AR, Tab 41, IDS Tech. Eval., at 8; AR, Tab 62, TODD, at 39.⁵ The record is devoid of any explanation for why the recruitment of local Afghan staff to perform an unexplained contract in Afghanistan has any bearing on the instant requirement, which seeks highly-qualified cybersecurity and information technology professionals, possessing security clearances, in southern Indiana. While the agency appears to have assumed that the Afghanistan requirement was "complex" and therefore that recruitment for this "complex" requirement in a risky environment demonstrated valuable experience that would translate to the instant Indiana-based requirement, neither the contemporaneous record nor the post-protest record provide any further explanation to support these conclusions. AR, Tab 62, TODD, at 39.

Rather than providing further explanation for the strength, the agency argues that the strength was but one small part of a larger management plan strength. The agency therefore contends that the strength was not significant. We disagree. While the agency cited many favorable aspects of IDS's management plan in its best-value tradeoff determination, IDS's experience recruiting Afghan locals was cited as a key discriminator in the agency's assessment of the offerors' staffing and recruitment plans. In this respect, the Army's best-value tradeoff compared IAP's and IDS's staffing and recruiting plans to each other, noting favorable attributes of each approach. See AR, Tab 62, TODD, at 39. In assessing IAP's plan, the agency noted that the plan provided detailed and specific information, but ultimately concluded that it only met, rather than exceeded, the requirements of the RFP. See id. Immediately following this conclusion, the agency noted the contrast with IDS's approach: "IDS's staffing plan demonstrated that IDS was capable of staffing complex requirements in risky environments which is more beneficial than IAP's plan which only demonstrates it will meet the requirements for staffing." Id. Thus, IDS's Afghan-recruiting experience was used as a key discriminator weighing in favor of IDS's proposal. As a result, and in the absence of any meaningful explanation or response to the substance of this argument, we sustain this protest ground.

Subcontracting Element

The protester additionally challenges a strength assigned to IDS's proposal under the subcontracting element for IDS's plan to self-perform 100 percent of the RFP's requirements rather than proposing to subcontract any part of the instant effort.⁶ In this

⁵ The protester contends that such personnel supported wastewater treatment plants, solid waste collection and disposal, and heating, ventilation, and air conditioning units. See Protester's Comments & Supp. Protest at 4. The agency failed to respond to this assertion.

⁶ The protester also argues that IDS's proposal contained a material misrepresentation that should have resulted in the assignment of a deficiency because, while IDS

(continued...)

respect, the Army determined that IDS's proposal "had advantages over . . . IAP" because IDS proposed "to source the required personnel organically without any subcontracting support which minimizes reporting requirements for the [g]overnment." AR, Tab 62, TODD, at 37.⁷ The protester argues that the assessment of this strength was unreasonable and amounted to the application of an unstated evaluation criterion. The protester further asserts that the agency's explanations for this strength do not withstand logical scrutiny.

In response to this argument, the agency contends that this strength was consistent with the evaluation criteria and was reasonably assessed because "it would be helpful for contract administration to only have to deal with one entity with one set of leadership and one set of company policies." Supp. COS/MOL at 3. The Army also asserts that with only one company performing the contract, the agency would be in a position to realize "the full benefits of that company." Id.

Based on our review of the record, we find that the agency has not provided a reasonable explanation for its conclusion that IDS's proposal of 100 percent self-performance warranted a strength. In this respect, we note that IDS's proposal did not cite any efficiencies stemming from this approach, whether with respect to reporting requirements or any other contract administration matter. See AR, Tab 42, IDS Tech. Proposal, at 1. Furthermore, while the agency's source selection official found that IDS's approach presented an advantage over IAP's approach because it "minimizes reporting requirements for the [g]overnment," AR, Tab 62, TODD, at 37, it is not clear what this means given that the agency would, by definition, not be in privity of contract with any potential subcontractors. Subcontractors in federal procurements generally do not report to the government, and instead are subject to oversight and management by the prime contractor, which means that the prime contractor is responsible for reporting to the agency, just as the offeror would be if there are no subcontractors.

represented it would not have any subcontractors, it proposed a company, [DELETED] to [DELETED]. We have reviewed the record but find no basis to conclude that this discrepancy amounted to a material misrepresentation. In this respect, we note that the company was proposed as a contingency [DELETED] not as a subcontractor with an allocated contract role assigned to it. AR, Tab 42, IDS Tech. Proposal, at 12. Additionally, while the protester contends that the company does not provide [DELETED], the protester has not adequately supported this assertion. We also note that, in response to this protest ground, the intervenor provided a copy of its "[DELETED] Agreement" with the company, belying the assertion that the company would have a larger role beyond contingent [DELETED]. See Intervenor's Supp. Comments, exh. A, [DELETED] Agreement.

⁷ IDS was able to meet the solicitation's small business participation goals, despite proposing no subcontracting, because it is a small business.

Additionally, we note that the evaluation record does not support the agency's post-protest explanation that IDS's approach would allow the Army to realize the "full benefits" of having IDS as the contractor. And the Army does not explain what it means by this statement. While the agency's technical evaluators stated that proposing no subcontracting would allow the offeror to source all of the total labor itself, thus easing IDS's transition-in, we note that the source selection official did not reference this advantage in the source selection decision. See AR, Tab 41, IDS Tech. Eval., at 4. Moreover, this aspect would be of questionable benefit relative to IAP's approach, which relied on its incumbent status to minimize risk during the transition-in period. See AR, Tab 26, IAP Transition Proposal, at 1.

In sum, we conclude that the agency has not provided a reasonable explanation for its assessment of a strength in this regard.

Disparate Treatment

The protester also argues that the agency unequally evaluated proposals by applying a harsher standard in its evaluation of IAP's proposal under the management plan element than it applied in evaluating IDS's proposal. In this respect, the protester contends that the Army credited IDS's proposal with multiple strengths, which were not similarly credited to IAP's proposal despite IAP proposing similar approaches.

Where a protester alleges that an evaluation is the product of unequal treatment, the protester must show that the difference in the evaluation result was, in fact, the result of unequal treatment, rather than differences in the offerors' proposals. DataSource, Inc., B-412468.9, Apr. 14, 2017, 2017 CPD ¶ 122 at 4. Based on our review of the evaluation record here, we find that the agency evaluated proposals equally and that the strengths credited to IDS's proposal were the result of its unique proposal approaches.

For example, the protester argues that the agency disparately evaluated proposals by crediting IDS with a strength for schedule management for proposing "a practical approach to managing workload fluctuation by [DELETED]" AR, Tab 62, TODD, at 40. The protester argues that IAP's proposal also advocated [DELETED], but the agency failed to assign a strength to IAP's proposal for this approach.

We note, as an initial matter, that proposing [DELETED] was only one part of the schedule management strength credited to IDS's proposal. Thus, even if IAP had proposed a similar approach of [DELETED], there would still have been important differences in the two offerors' schedule management plans. In fact, however, IAP's proposal did not propose [DELETED] within its schedule management approach; instead, IAP referenced [DELETED] as part of its quality management approach. See AR, Tab 25, IAP Tech. Proposal, at 5.

The protester argues that its proposal intended its reference to [DELETED], which was discussed within its quality management plan, to broadly apply to IAP's entire program

management approach. While the relevant description in IAP's proposal does mention that IAP will use [DELETED] in its operational plans, we note that this description does not specifically mention or reference IAP's schedule management approach as one such operational plan. See id.

Moreover, the agency was under no obligation to credit IAP's schedule management plan with an approach that was only found in a separate proposal section. When evaluating a particular section of a proposal, evaluators are not obligated to review unrelated sections of the proposal in search of missing or inadequately presented information. Savantage Fin. Servs. Inc., B-299798, B-299798.3, Aug. 22, 2007, 2007 CPD ¶ 214 at 8-9. Ultimately, it is the offeror's obligation to submit an adequately written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19. Accordingly, we find that the agency's evaluation of IDS's and IAP's schedule management approach was reasonable and did not amount to unequal treatment.

PREJUDICE

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17.

Here, but for the above discussed errors, the agency might not have found two of the key discriminators it relied upon to determine that IDS's proposal was technically superior to the equally-rated IAP proposal. Additionally, the gap between IAP's lower cost/price and IDS's higher cost/price would have widened following the correction of two conceded errors in the agency's cost realism evaluation.⁸ This change could have resulted in a different best-value tradeoff determination. In such circumstances, we resolve any doubts regarding prejudice in favor of the protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.-Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that IAP has established the requisite competitive prejudice to prevail in its bid protest.

RECOMMENDATION

We recommend that the agency reevaluate IDS's and IAP's proposals in a manner consistent with the terms of the solicitation and this decision, and make a new source selection decision based on that reevaluation. We also recommend that the agency

⁸ In this regard, the agency concedes that it erred in upwardly adjusting two of IAP's labor rates, resulting in an erroneous upward adjustment of \$99,224 to IAP's cost. COS/MOL at 33-34.

reimburse IAP its reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Thomas H. Armstrong
General Counsel