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Decision

Matter of: PAE National Security Solutions, LLC

File: B-419207.2; B-419207.3; B-419207.4

Date: May 19, 2021

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Michael Giordano, Esq., Department of Justice, for the agency.

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DIGEST

Protest challenging agency's evaluation of quotations is sustained where record shows agency applied unstated evaluation considerations and also otherwise evaluated the quotations disparately.

DECISION

PAE National Security Solutions, LLC, of Fredericksburg, Virginia, protests the issuance of a task order to Celerety Government Solutions, LLC, d/b/a Xcelerate Solutions, of McLean, Virginia, under request for quotations (RFQ) No. 20-NNCP, issued by the Department of Justice, Federal Bureau of Investigation (FBI), to provide administrative and analysis support services for the agency's National Name Check Program (NNCP).¹ PAE argues that the agency miscalculated quotations, failed to engage in adequate discussions, and made an unreasonable source selection decision.

We sustain the protest.

¹ The RFQ was issued using the General Services Administration's Federal Supply Schedule program.

BACKGROUND

The RFQ contemplates the award, on a best-value tradeoff basis, of a fixed-price task order to perform the solicited services for a base year and four 1-year option periods. Firms were advised that quotations would be evaluated considering price and three non-price factors, technical, past performance and security.² RFQ at 24. The technical factor included four subfactors--listed in descending order of importance--as follows: workforce plan, transition plan, key personnel and quality control.³ *Id.*

In response to the solicitation, the agency received a number of quotations.⁴ The agency established a competitive range comprised of PAE and Xcelerate, engaged in discussions, and solicited, obtained and evaluated revised quotations. After evaluating the quotations the agency assigned the following ratings to the quotations:

	PAE	Xcelerate
Technical	Outstanding	Outstanding
Workforce Plan	Acceptable	Outstanding
Transition Plan	Outstanding	Outstanding
Key Personnel	Acceptable	Outstanding
Quality Control	Outstanding	Outstanding
Past Performance	Pass	Pass
Security	Pass	Pass
Price	\$45,996,869	\$47,094,457

Agency Report (AR) exh. 15, PAE Technical Evaluation Report (TEP), *passim*; exh. 16, Xcelerate TEP, *passim*; exh. 17, Source Selection Decision Document (SSDD) at 5. The record shows that the agency concluded that Xcelerate proposed the superior workforce plan, AR, exh. 17, SSDD, at 21, 25; that PAE proposed the superior transition plan, *id.* at 23, 26; that Xcelerate's proposed key personnel were superior compared to PAE's, *id.* at 24, 26; and that PAE proposed the superior quality control plan, *id.* at 25,

² The RFQ did not identify the relative importance of the non-price factors, except to state that they were "individually and combined" more important than price. RFQ at 24. Under the circumstances, we conclude that the three factors are relatively equal in importance. *Bio-Rad Labs, Inc.*, B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6.

³ The RFQ advised that the agency would assign pass or fail (or neutral in the case of a firm having no past performance) ratings to the quotations under the past performance and security factors. RFQ at 26, 27. For the technical factor, the agency would assign ratings of outstanding, acceptable, marginal, unacceptable or neutral. RFQ at 27-28.

⁴ This is the second source selection in connection with this acquisition. The FBI previously issued a task order to Xcelerate in September 2020 and PAE protested that selection decision. In response to that protest, the agency took corrective action and we dismissed PAE's earlier protest as academic. *PAE National Security Solutions, LLC*, B-419207, Oct. 26, 2020 (unpublished decision).

26. On the basis of these evaluation results, the agency made award to Xcelerate, concluding that, on balance, its quotation offered the best overall value despite its higher price. After being advised of the selection decision and receiving a brief explanation of the evaluation and selection decision, PAE filed the instant protest.

DISCUSSION

PAE argues that the agency miscalculated quotations for numerous reasons, failed to engage in adequate and equal discussions, and made an unreasonable source selection decision. Broadly speaking, PAE's challenges to the evaluation principally fall into two broad categories: allegations that the agency improperly applied unstated evaluation criteria, and allegations that the agency evaluated the quotations disparately.

We have considered all of PAE's allegations and sustain its protest based on the issues discussed below; we find no merit to PAE's remaining allegations. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals or quotations, our Office does not independently evaluate proposals or quotations; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. *PMSI, LLC d/b/a Optum Workers' Compensation Services of Florida, B-417237.2 et al.*, Jan. 29, 2020, 2020 CPD ¶ 63 at 6.

Application of Unstated Evaluation Considerations

PAE argues that the agency improperly applied unstated evaluation considerations in two instances, improperly giving evaluation credit to Xcelerate for having previously performed a contract calling for the implementation of a "continuous vetting" program, and for having previously transitioned certain FBI contracts. We discuss these allegations in detail below, but note here that agencies are required to evaluate proposals based solely on the factors identified in the solicitation. *Information International Associates, Inc.*, B-416826.2 *et al.*, May 28, 2019, 2019 CPD ¶ 200 at 4. While agencies properly may apply evaluation considerations not expressly identified in the solicitation, those considerations must be reasonably and logically encompassed by the stated evaluation criteria; in a word, there must be a clear nexus between the stated criteria and unstated considerations. *Id.*

Continuous Vetting

As noted, this task order is to provide administrative and analysis support services in connection with the agency's NNCP program. Under the NNCP program, the FBI performs investigations and provides reports in response to requests from federal government agencies for security and background investigations for current or prospective employees as a condition to extending a particular privilege to the individual, for example the granting of a security clearance. These requests/reports are referred to in the RFQ (and throughout the record) as work items (WI), and these WIs can be described as a discrete product in the sense that a request is made, an

investigation is performed, and a report is produced, after which the WI is considered completed. See, AR, exh. 6, Statement of Work.

In contrast to the discrete WI investigations contemplated under the RFQ, there is a different method of performing investigations referred to as continuous vetting (CV). CV refers to the concept of performing what amounts to an ongoing review of individuals that have already been found eligible for a particular privilege (such as a security clearance) to determine whether those individuals continue to meet the eligibility criteria for the privilege.⁵ Contracting Officer's Supplemental Statement of Facts at 4.

The record shows that, in evaluating quotations overall, the agency assigned significant strengths, strengths and weaknesses to the firms' quotations under each of the technical evaluation subfactors. As is relevant here, the record shows that the agency assigned just two significant strengths to the Xcelerate quotation under the most important subfactor--workforce plan--one of which was based on the fact that Xcelerate had experience establishing and scaling up a CV program at another agency. PAE argues that this significant strength was unreasonably assigned to the Xcelerate quotation because the RFQ does not contemplate providing CV services, and because evaluation of experience providing such services is not contemplated under the RFQ's workforce plan evaluation subfactor.

The agency acknowledges that the RFQ does not explicitly contemplate evaluation of experience providing CV-related services, but maintains that its actions are unobjectionable because evaluation of such experience is reasonably encompassed by the RFQ's workforce plan evaluation subfactor.

We sustain this aspect of PAE's protest. The workforce plan evaluation subfactor, in its entirety, provides as follows:

Workforce Plan will be utilized to determine the degree of confidence the Government has in the Quoter's ability to provide efficient and effective staffing services described in Section 2.6 with the quality and quantity personnel requirements of this RFQ, as described in Section 9.5.⁶

RFQ at 25. This evaluation subfactor makes no mention of experience performing CV-related services. In fact, the RFQ as a whole makes no mention of, or reference to, CV-related services (nor does the RFQ include the phrase continuous evaluation, the other phrase used to describe such services).

⁵ Throughout the record the parties use the phrases "continuous vetting" and "continuous evaluation" interchangeably.

⁶ Section 2.6 of the RFQ describes the services to be performed by the contractor's program manager, deputy program manager and analysts working on the task order. RFQ at 6-7. Neither the RFQ nor the statement of work includes a section 9.5.

Against this backdrop, the record shows that Xcelerate was assigned the following significant strength by the evaluators:

Xcelerate demonstrated experience with DCSA's [Defense Counterintelligence and Security Agency's] Continuous Evaluation program for DoD [Department of Defense], scaling the program from 250,000 initial enrollees to more than 2.2M. (pg.4) Deploying a Continuous Vetting solution is part of NNCP's 5 year business plan and [the agency] values a partner that has shown a willingness to grow in both size and complexity as the NNCP program grows; therefore, the technical team valued this analogous experience and with a strategic partner.

AR, exh. 16, Xcelerate TEP, at 2. Again, the RFQ makes no mention of CV-related services or experience providing such services. In addition, the RFQ makes no mention of the agency's 5-year business plan, or how offerors might demonstrate experience that might be viewed favorably in connection with such a plan. In the agency's SSDD, this same significant strength is repeated *verbatim* twice, AR, exh. 17, SSDD, at 10, 15; is referenced a third time, *id.* at 16; and is specifically identified as a discriminator in the agency's cost/technical tradeoff conclusion. *Id.* at 21.

In sum, the record appears to show that this is an extremely important consideration in the agency's view, and also a part of what the agency describes as its 5-year business plan. However, the RFQ does not require the successful firm to provide CV-related services; makes no mention of firms having (or demonstrating) experience providing such services; does not contemplate evaluating experience providing such services; and does not discuss or otherwise reference the agency's 5-year business plan relating to any possible future requirement for CV-related services. As noted above, CV-related services are entirely different from the discrete, WI services being solicited here. As the name implies, CV--continuous vetting--services contemplate an ongoing--continuous--investigation and evaluation of the individual being investigated, whereas the services being solicited here are to provide discrete, open-and-close--as opposed to continuing--investigation services.

Notwithstanding the absence of any reference in the RFQ to either CV-related services, or to the agency's 5-year business plan, the agency assigned Xcelerate's quotation a significant strength under the workforce plan subfactor, and this was one of only two such significant strengths identified under that subfactor. The agency also used this consideration as a significant discriminator in its decision to select Xcelerate's higher-priced quotation. In light of the foregoing, we sustain this aspect of PAE's protest.

Transitioning Contracts for the FBI

PAE argues that, under the key personnel subfactor, the agency unreasonably assigned Xcelerate's quotation a significant strength, in part, based on the experience that the firm's proposed contract program manager (CPM) possessed transitioning contracts for the FBI. PAE argues that such experience was not identified as a consideration under the key personnel subfactor and that, accordingly, it was unreasonable for the agency to

have assigned Xcelerate's quotation this significant strength. PAE also points out that the RFQ required the agency to confine its evaluation of proposed key personnel to information included in their resumes, and the record here shows that the information about Xclerate's CPM transitioning contracts for the FBI is not included in his resume.

As with the workforce plan subfactor issue discussed above, the agency acknowledges that the key personnel subfactor makes no explicit mention of experience transitioning contracts for the FBI. Nonetheless, the agency argues that this consideration is encompassed within the stated evaluation subfactor. The agency explains that the current solicitation contemplates the award of a fixed-price contract, which represents a transition away from the predecessor labor-hours type contract, and that it was reasonable for it to have assigned the significant strength to the Xcelerate quotation based on this consideration.

We sustain this aspect of PAE's protest. The key personnel evaluation subfactor makes no reference to experience transitioning contracts for the agency, and instead provides only for the evaluation of a firm's key personnel experience to the following extent: "Experience relevant to the technical requirements described in this RFQ, Sections 2.1-2.5." RFQ at 25. The referenced technical requirements, sections 2.1-2.5 likewise make no mention of experience transitioning contracts for the FBI.

Notwithstanding this fact, the record shows that the evaluators assigned a significant strength to Xcelerate's quotation based, in part, on the experience its CPM has with transitioning contracts for the FBI. The evaluators found as follows: "CPM's resume shows a breadth of experience in both managing contracts of this size as well as success transitioning contracts for Xcelerate for the FBI." AR, exh. 16, Xcelerate TEP, at 7. In addition, the SSDD also makes explicit reference to the CPM's experience transitioning contracts for the FBI as a consideration in the agency's assigning the Xcelerate quotation a significant strength. AR, exh. 17, SSDD, at 13, 17, 23. The SSDD also identifies this as a basis for favoring Xcelerate in the tradeoff decision. *Id.* at 23.

In addition, PAE correctly points out that the key personnel evaluation subfactor expressly states that the agency would confine its evaluation of a firm's proposed key personnel by considering only information included in the resume submitted for the individual in question: "Evaluation will be based upon the information provided on the actual resumes of key personnel proposed in accordance with Section 9.5." RFQ at 25.

A review of Xcelerate's CPM's resume demonstrates that it makes no reference to this individual's experience transitioning contracts for the FBI. AR, exh. 9, Xcelerate Technical Proposal, at 27-28. Rather, the sole reference to Xcelerate's CPM transitioning contracts for the FBI appears in a small text box submitted with its revised quotation entitled "CPM's FBI Transition and Start-up Experience." AR, exh. 14, Xcelerate Revised Quotation Change Pages, at pdf 8. The text in the box provides, in its entirety, as follows: "Captured 100% of desired, available incumbents on five FBI

contracts, and retained those staffed for more than 4 years. Delivered 100% of proposed Key personnel on all FBI programs.” *Id.*

We draw several conclusions. First, the key personnel subfactor contains nothing to suggest--either explicitly or by implication--that the agency would consider the experience of a firm’s proposed key personnel in transitioning contracts for the FBI. Once again, neither the key personnel evaluation subfactor itself, nor any of the referenced technical requirements of the RFQ (sections 2.1-2.5 of the RFQ) make any mention of the key employees experience transitioning contracts for the FBI or any other agency.⁷ We therefore conclude that the RFQ’s key personnel evaluation subfactor did not contemplate a review of a firm’s key personnel’s experience transitioning contracts for the FBI.

Second, the RFQ expressly limited the agency’s review of a firm’s key personnel to information included in the resumes submitted with the quotation. Notwithstanding this limitation, the record shows that the agency considered information included elsewhere in Xcelerate’s quotation rather than confining its review to information found in the CPM’s resume, as required by the RFQ.

Third, the scant quotation provision reviewed by the FBI provides no information about the proposed CPM’s ability to transition a requirement from a labor-hours type contract to a fixed-price contract. In fact, it cannot even be determined from a review of the Xcelerate quotation what types of contracts were being transitioned by Xcelerate’s CPM, or whether there had even been a change in the contract type during the claimed transitions.

Finally, the record shows that the FBI relied on this finding, in part, to conclude that Xcelerate’s quotation was superior to PAE’s quotation under the key personnel factor, and this finding also served as a discriminator in the source selection decision justifying issuance of the task order to Xcelerate at a higher price compared to that offered by PAE. In light of these considerations, we sustain this aspect of PAE’s protest.

Disparate Treatment

PAE argues that the agency engaged in disparate treatment in two instances when evaluating the quotations. First, PAE alleges that the agency treated the firms differently in evaluating their proposed staff size. Second, PAE alleges that the agency treated the firms differently in evaluating their retention rates. We discuss each issue in detail below. We note at the outset that it is axiomatic that agencies are required to evaluate quotations or proposals on a common basis and in accordance with the terms of the solicitation; agencies may not properly engage in disparate treatment in the

⁷ It bears mention as well that the RFQ’s transition plan subfactor (where the agency might arguably have considered the experience of a firm transitioning contracts for the FBI) also makes no mention of the agency giving consideration to the experience of a firm’s key personnel--or the firm itself--transitioning contracts for the FBI.

evaluation of quotations or proposals. *Fluor Federal Solutions, LLC*, B-410486.9, Jan. 18, 2017, 2017 CPD ¶ 334 at 6.

Staff Size

PAE points out that the FBI assigned a weakness to its quotation based, in part, on an ambiguity that the agency identified in the firm's quotation relating to the size of the protester's proposed staff. PAE argues that the agency also should have assigned a weakness to the Xcelerate quotation because Xcelerate also did not clearly identify the size of its staff.⁸

We sustain this aspect of PAE's protest. The record shows that the agency assigned a weakness to PAE's quotation under the workforce plan subfactor based, in part, on an ambiguity identified by the evaluators relating to the proposed size of PAE's staff. AR, exh. 15, PAE TEP, at 3. The agency argues that this weakness was assigned principally based on concerns the evaluators had relating to an incentive plan outlined in PAE's revised quotation, rather than any concern over an ambiguity relating to the size of PAE's proposed staff. While the agency is correct that the weakness discussed flaws perceived by the evaluators in PAE's proposed incentive plan, it nonetheless clearly criticized PAE's quotation based on a perceived ambiguity in the size of PAE's proposed staff. The evaluators found as follows:

The organizational structure in Figure 1.1.1-1. PAE's Organizational Structure pg. 5 and Figure 1.1.2-1 PAE's Experienced Workforce pg. 7 lists [deleted] proposed positions, including [deleted] analyst positions, which approximates the current staffing level as indicated in the solicitation. The technical proposal did not describe the expected size of the offeror's proposed [deleted] and how it differ[s] from the depiction in the Figures listed above.

Id.

At the same time, the evaluators did not assign any weaknesses to Xcelerate's quotation under the workforce plan subfactor based on any perceived ambiguity in the

⁸ PAE also argues that the assignment of a weakness to its quotation for the alleged ambiguity in its staff size was unreasonable because, according to PAE, there was no such ambiguity. However, even a cursory review of the firm's quotation reflects a disparity between the number of personnel identified in its technical quotation, compared to the number of personnel identified in its price quotation. *Compare*, AR, exh. 12, PAE Revised Technical Quotation, *with* AR, exh. 13, PAE Revised Price Quotation. Although PAE argues that the technical evaluators never saw its price quotation--and therefore could not have known of its contents--PAE does not deny the existence of this disparity. In any event, there appears to be some ambiguity relating to the number of personnel listed in PAE's technical quotation, consistent with the agency evaluators' finding. AR, exh. 12, PAE Revised Quotation at 3, 5, appendix B.

size of its proposed staff, or for any other reason. However, as PAE points out, Xcelerate also did not commit to a definitized staff size in its revised quotation. Xcelerate's revised quotation provides as follows:

It is important to note that Xcelerate does not intend to limit our incumbent capture to only [deleted] analysts. We understand that the 200,000 WIs that drove the calculation of [deleted] analysts is an estimate used for evaluation and may not represent actual volume. *We will work closely with the FBI to [deleted] our initial staffing to meet both throughput and metrics requirements, while preparing for ramp-up should projections indicate increasing demand.*

AR, exh. 14, Xcelerate Revised Technical Quotation, at pdf 5-6 (emphasis supplied). In effect, Xcelerate did not offer any particular number of employees, and instead promised only to work closely with the agency to [deleted] its initial staff.

To the extent the agency had a concern relating to a perceived ambiguity about the proposed size of PAE's staff, it also should have had the same concern relating to the proposed size of Xcelerate's staff since, as noted, Xcelerate also did not commit to a staff of any particular size. In light of the foregoing, we sustain this aspect of PAE's protest based on the inconsistency in the agency's evaluation relative to the firms' respective proposed staff size.

Retention Rate

PAE argues that the agency disparately evaluated the quotations when considering the firms' respective retention rates. PAE argues that the agency gave Xcelerate a significant strength based on a retention rate that the firm never offered, while at the same time assigning only a strength to the protester's quotation based on its offer of clear, definitized retention rates.

We sustain this aspect of PAE's protest. The record shows that the agency assigned the Xcelerate quotation a significant strength, in part, based on a perceived high retention rate. The evaluators found as follows:

Xcelerate's proposal cites a [deleted] approach which has yielded a [deleted] retention rate on National Security programs (Pg.10). *Given the steep learning curve and 200-hour training requirement for new analysts, this high rate exceeds the expected retention levels required to be successful.*

AR, exh. 16, Xcelerate TEP, at 2 (emphasis supplied).⁹ Again, the agency argues that it assigned the significant strength based principally on Xcelerate's proposed [deleted] strategy, but it is clear from the language quoted above that the evaluators thought that

⁹ This evaluation finding is repeated twice in the SSDD. AR, exh. 17, SSDD, at 10, 15.

Xcelerate would achieve this high rate of retention for the solicited requirement. However, there is no commitment on the part of Xcelerate to actually achieve that retention rate. Rather, Xcelerate's quotation merely references its claimed success at achieving a [deleted] retention rate on other programs. AR, exh. 14, Xcelerate Revised Technical Quotation, at pdf 6.

The FBI concedes that PAE offered definitized retention rates over the life of the task order. However, the record shows that the agency only assigned PAE a strength-- rather than a significant strength--for this aspect of its quotation. AR, exh. 15, PAE TEP, at 3. Under the circumstances, we conclude that the agency treated the firms disparately in evaluating their respective retention rates. We therefore sustain this aspect of PAE's protest.

RECOMMENDATION

In light of the foregoing discussion, we sustain PAE's protest. We recommend that the agency reevaluate proposals and make a new selection decision. Alternatively, if the agency wants to clarify its requirements, we recommend that the agency amend the RFQ as appropriate; engage in discussions with the firms to clarify their respective quotations; solicit, obtain, and evaluate revised quotations; and make a new selection decision. Finally, we recommend that PAE be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. PAE should submit its certified claim for such costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving this decision.

The protest is sustained.

Thomas H. Armstrong
General Counsel