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Decision

Matter of: Celtech Corporation

File: B-407256.2

Date: April 11, 2013

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Christopher M. McNulty, Esq., and Charles R. Epperson, Esq., Department of the Air Force, for the agency.
Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's evaluation of awardee's proposal for repair of aircraft engine test stands was unreasonable is denied where agency reasonably concluded that awardee's detailed proposal acceptably addressed each sample task, and the potential need of the awardee for reverse engineering was not significantly greater than that of the protester.

DECISION

Celtech Corporation, of Carlsbad, New Mexico, protests the Department of the Air Force's award of a contract to Atec, Inc., of Stafford, Texas, under request for proposals (RFP) No. FA8519-11-R-21050, a competitive small business set-aside for repair support of engine test stands. Celtech asserts that the agency's technical and price/cost evaluations of Atec's proposal were unreasonable.

We deny the protest.

BACKGROUND

The RFP sought proposals to provide worldwide field and depot level repair support, phone-based technical support, and commissioning support of relocated engine test stands (ETS) in the T-20 (T-20, T-20A, T-20B, T-20C) and T-21 (T-21, T-21A, T-21D) series. ETSs are used for organizational level testing of uninstalled aircraft

engines, and are comprised of four major parts: thrust (T-20 series) or turboprop (T-21 series) trailer; fuel trailer; control cab; and instrumentation, data acquisition and control (ID&C) system. All versions, with the exception of the T-20C and T-21D, include mechanical gauges for readouts (analog). The T-20C and T-21D type ETSs incorporate a digital computer-based ID&C system known as the engine data acquisition system (ENDAS). The ENDAS uses software proprietary to Celtech.

The solicitation contemplated award of a requirements contract, with a base year and four 1-year options, comprised of time-and-materials, fixed-price, and cost-reimbursable contract line items. Award was to be made to the technically acceptable offeror whose proposal represented the “best value” considering past performance and price/cost.

Offerors were required to detail a technical approach to repairing the various ETSs. In this regard, offerors were to address five representative sample tasks, providing the supporting rationales and assumptions for their approaches and identifying any omitted or incomplete information necessary for meeting the task requirements. The RFP specifically cautioned that the government’s technical data packages (drawings and technical orders) were incomplete and/or outdated, and that some tasks might involve “a significant amount of reverse engineering to provide repair solutions.” RFP at 3.

Technical acceptability was to be evaluated on the basis of six subfactors: performance-based work statement; engineering configuration control; disassemble/reassemble capabilities; resource planning/management; repair capabilities; and key personnel. As part of this evaluation, technical risk was to be assessed based on the degree to which an offeror’s proposed approach to the RFP’s requirements may cause disruption of schedule, increased costs, or degraded performance; the need for increased government oversight; and the likelihood of unsuccessful contract performance. RFP at 90. Further, offers could be determined unacceptable, even though meeting minimum requirements, if the proposed approach posed too great a risk. Id.

Offerors’ proposed cost/price was to be evaluated for reasonableness, balance, and total evaluated price (TEP). The TEP was to be based on evaluation of an offeror’s proposed fully-burdened fixed hourly rates for each of ten specified labor categories for the base and option years for the prime and all subcontractors (as well as the estimated percentages of work for each), and add-on factors for subcontracts and materials. The proposed labor rates were to be multiplied by an estimated number of hours determined by the government (but not disclosed to the offerors) and weighted by the offeror’s estimated percentage of performance. RFP, as amended, at 93.

Only Celtech and Atec submitted proposals. After conducting discussions with both offerors, the agency eliminated Celtech’s proposal from the competitive range on

the basis that it was technically unacceptable. However, when Celtech protested the elimination of its proposal, the agency took corrective action, readmitting the proposal to the competitive range. Our Office then dismissed the protest as academic (B-407256, Sept. 19, 2012).

The agency subsequently conducted additional discussions and requested final proposal revisions in December 2012. Both revised proposals were evaluated as technically acceptable and as having a satisfactory confidence rating for past performance. However, Atec's final evaluated price was \$9.8 million while Celtech's was \$13.6 million. The contracting officer, as source selection authority, determined that Atec's lower-priced proposal represented the best value to the government. After receiving notice of the award, Celtech filed this protest challenging the evaluation of Atec's proposal.

DISCUSSION

Celtech asserts that the agency's evaluation failed to adequately consider and account for Atec's ability to perform the contract. In this regard, Celtech does not challenge any specific aspect of Atec's proposal or of the evaluators' findings; rather it asserts that, given Atec's lack of access to Celtech's complete, proprietary technical data and drawings, the awardee will face "a significant amount of reverse engineering." RFP at 3. Noting that work such as that included under Sample Tasks 1, 2, and 3 involves the protester's proprietary ENDAS computer instrumentation (e.g., requirements to correct erroneous displays of information, calibrate the ENDAS system, etc.), Celtech argues that the evaluators should have considered Celtech's technical advantages as compared with Atec's asserted inability to reverse engineer a software solution to these ENDAS-related problems and the risk of delayed performance, increased costs, or non-performance due to Atec's lack of access to Celtech's proprietary information. See Celtech Comments at 4-6, 8.

In reviewing protests relating to an agency's evaluation of proposals, we will not independently reevaluate proposals; rather, we will review the record to ensure that the agency's evaluation was consistent with the terms of the solicitation and applicable statutes and regulations. Engineered Elec. Co. d/b/a/ DRS Vermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. Mere disagreement with the agency's evaluation is not sufficient to call an evaluation into question. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

The agency's technical evaluation was unobjectionable. While Celtech asserts that the agency should have considered its asserted superior capabilities (given its access to its own proprietary software), the RFP did not provide for the evaluation of offerors' relative access to technical information. Instead, it provided for an assessment of technical acceptability. RFP at 89. Thus, in accordance with the RFP, the evaluators reviewed Atec's proposal to determine whether it had provided

a sound, compliant approach that met the requirements of the five sample tasks and demonstrated a thorough knowledge and understanding of the requirements and their associated risks. Id.

For example, under Sample Task 1, for the repair of a T-20C ETS displaying instrumentation parameter problems, the evaluators noted that Atec's solution included a detailed discussion of its proposed approach, including the tasks to be performed. In this regard, Atec discussed eliminating the engine as the cause; fault isolation of several components with an expected outcome; a plan of disassembly, repair, and re-assembly; a list of testing/inspection requirements; validation of the repair to include precision measurement equipment laboratory calibration and successful engine runs; a list of work tasks to be performed to the third work breakdown structure level; a proposed task delivery schedule; identification of all personnel required for the task, including hours for each; a risk mitigation plan comparing the original risk and the reduced mitigated risk; a list of all data deliverables; and how to submit and implement any necessary technical order and drawing changes as required under the solicitation's performance work statement. Final Technical Report at 8. Based on their review of Atec's proposal, the evaluators found the firm provided a detailed, thorough understanding of the requirements, addressing all issues under each subfactor for each sample task. Celtech has not shown this conclusion to be unreasonable.

Nor has Celtech shown that the agency failed to reasonably account for the likely need for reverse engineering by Atec. On the contrary, the record supports the agency position that Celtech has overemphasized Atec's relative need for reverse engineering. Technical Lead Evaluator Declaration ¶ 11. As an initial matter, according to the agency, although the ENDAS system on the digital ETSs uses Celtech software that manipulates data from a tested engine, replacing analog indicators and gauges with virtual instruments, much of the ENDAS hardware is commercial and not proprietary to Celtech. Id. ¶ 8. Further, since the existing ETSs have evolved over time, they exist in different configurations of hardware components, some of which are obsolete or otherwise no longer available. Id. at ¶ 11. Thus, according to the agency, both Atec and Celtech on occasion would need to resort to reverse engineering in order to complete a satisfactory repair. (Indeed, the agency reports that Celtech itself has previously undertaken reverse engineering as part of its ETS work for the government.) Id. The agency further notes that while it is conceivable that a repair might be needed that only the original manufacturer, with access to its proprietary information, would be able to perform, in fact actual ETS repairs have involved very little access to anything proprietary to Celtech. Id. ¶ 9. Finally, the agency notes that since the Air Force has Celtech's software available in its computer program identification number libraries, Air Force field operating personnel can reload ENDAS software if required. Id. ¶¶ 8, 10.

The record further reflects that the agency fully considered in its evaluation any potential risk associated with Atec's lack of access to Celtech proprietary

information. In this regard, Atec's proposal specifically addressed risk, including opportunities for reverse engineering and any inability to diagnose and repair a particular issue, mitigating these issues in part through its access to a large pool of qualified resources through its subcontractor. Atec Proposal at 14, 27, 34, 43, 50. The evaluators included Atec's risk mitigation plan in their evaluation of each sample task approach for acceptability and identified no areas that would likely cause schedule disruption, increased cost, degraded performance, the need for increased government oversight, or the likelihood of unsuccessful contract performance. Final Technical Report at 31.

Celtech further asserts that the price evaluation was flawed because the agency failed to apply to each offeror a reasonable estimate of the necessary hours based on the capabilities of the individual offeror. Protest at 13; Celtech Comments at 7. In this regard, Celtech argues that since the contract includes time and materials line items, the agency should have considered that Atec's lack of access to Celtech's proprietary information would require additional time for reverse engineering. Protest at 13.

Celtech's assertion is without merit. The RFP did not require offerors to submit specific estimates of the number of hours necessary to perform each of the time and material CLINs. Instead, offerors proposed fully-burdened labor rates for each labor category for the prime and any subcontractors, along with add-on factors for subcontracts and materials. The RFP provided for the subsequent evaluation as follows:

To evaluate the offeror's proposal for labor cost, the offeror's provided labor rates will be multiplied by an estimated number of hours determined by the government and weighted by the offeror's estimated percentage of performance, applying the subcontract add-on factor. . . . The totals for estimated hours and material estimates will not be disclosed to the offerors and will be used for evaluation purposes only. The estimated unit price will be multiplied by the BEQs [best estimated quantities] provided in the schedule for basic and each option.

RFP at 93.

We see nothing in the above provision which required evaluators to use an offeror-specific estimate of labor hours, based on an offeror's access to proprietary information and potential for reverse engineering, rather than applying a single government estimate to each offeror's unique labor rates. Indeed, the agency explains that it was unaware of any possible way to determine in advance how long it might take one company versus another to solve a repair issue requiring reverse engineering. Technical Lead Evaluator Declaration ¶ 11. In any case, as discussed above, the record supports the agency position that Celtech has overemphasized

Atec's relative need for reverse engineering and the need for access to the protester's proprietary information. To the extent Celtech believed that individualized estimates for reverse engineering were an appropriate calculation for the price evaluation, it was required to protest such an alleged solicitation impropriety prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2012). Thus, any post-award protest on this ground is untimely and not for consideration.

The protest is denied.

Susan A. Poling
General Counsel