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Decision

Matter of: Logistics 2020, Inc.

File: B-408543.4

Date: February 28, 2014

Thomas A. Coulter, Esq., and Nicole Hardin Brakstad, Esq., LeClair Ryan, for the protester.

Joseph M. Goldstein, Esq., Sally Woodward, Esq., and Andrew Schwartz, Esq., Shutts & Bowen LLP, for Advanced C4 Solutions, Inc., the intervenor.

Howard Phifer, Esq., National Geospatial-Intelligence Agency, for the agency.

Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In responding to our Office's prior decision that sustained a protest and recommended that the agency reevaluate proposals in a manner that is consistent with the solicitation's evaluation criteria, the agency was not required to amend the solicitation or request revised proposals prior to its reevaluation.

DECISION

Logistics 2020, Inc., of Chester, Virginia, protests the National Geospatial-Intelligence Agency's (NGA) proposed corrective action, taken in response to a decision by our Office sustaining an earlier protest of the award of a contract to Advanced C4 Solutions, Inc., (AC4S), of Tampa, Florida, under request for proposals (RFP) No. HM0210-12-R-0002 for NGA's deployed logistics services 2 program. Logistics, the incumbent contractor, argues that the agency's plan to reevaluate proposals is unreasonable because the agency has stated that it will not amend the solicitation or request revised proposals prior to conducting its reevaluation.

We deny the protest.

BACKGROUND

The RFP was issued as a total small business set-aside on October 5, 2012, to acquire logistical support services on behalf of NGA's expeditionary operations

office for NGA personnel in deployed and crisis environments in the Middle East and in other places around the world. RFP, Statement of Work (SOW) at 3. The SOW required the contractor to provide a full range of logistics support, including: planning, transportation, supply, warehouse, armory, facility maintenance, escort, asset management/property accountability, fuel, billeting, and food services. Id.

The solicitation anticipated the award of a time-and-materials contract for a base year and four 1-year options. RFP at 63, 120. The solicitation advised that award would be made to the offeror submitting the proposal that provided the best value to the government, based upon the following evaluation factors: (1) technical/management, (2) past performance, (3) security, and (4) cost/price. Id. at 121. The solicitation further provided that the technical/management factor was comprised of the following evaluation subfactors, listed in descending order of importance: (1) logistics services approach, (2) appropriately proposed personnel, and (3) program control. Id. For purposes of award, the RFP stated that the technical/management factor was slightly more important than the past performance factor, and that these two factors together were significantly more important than cost/price. Id. The security factor was pass/fail. Id.

The solicitation stated that cost/price would be evaluated for completeness and reasonableness to determine the offeror's understanding of the requirements, as well as to assess the validity and credibility of the basis of estimate (consistent with the technical approach). Id. at 123. The solicitation also provided that the government "may reject any proposal" that is "unrealistically high or low cost when compared to the Government estimates" such that the proposal is deemed to reflect "an inherent lack of competence or failure to comprehend the requirements and risks of the program." Id. at 120.

The agency received proposals from seven offerors, including Logistics and AC4S, in response to the solicitation. Based upon the agency's initial evaluation, six proposals—including those from the protester and the awardee—were included in the competitive range. The agency opened discussions with the six offerors and accepted final proposal revisions (FPRs).¹ The agency awarded a contract to AC4S on July 2, 2013.

Logistics filed its initial protest with our Office on July 15 challenging virtually every aspect of NGA's evaluation and source selection decision. Based on our review of Logistics' arguments, we concluded that the agency improperly abandoned the stated evaluation scheme when reviewing proposals under the personnel subfactor of the technical/management factor, and failed to document whether it conducted a reasonable price realism analysis as required by the solicitation. Logistics 2020,

¹ Logistics submitted its FPR on March 4, which it revised on March 28. Protest at 10. AC4S submitted its FPR on April 18. Intervenor's Comments at 2

Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 4. With regard to the protester's other challenges, we found that the agency's evaluation was reasonable and consistent with the solicitation criteria. Id.

We recommended that NGA reevaluate proposals in a manner that is consistent with the solicitation's evaluation criteria and properly document its evaluation. Id. at 9. In the alternative, we recommended that if the personnel subfactor did not reflect accurately the agency's requirements--that is, if the agency did not intend to credit offerors for exceeding the minimum requirements for personnel--the agency should amend the solicitation to reflect its actual requirements, obtain revised proposals, and conduct a new evaluation. Id.

On November 12, the agency advised all offerors in the competitive range that, in accordance with GAO's recommendation, the agency "will reevaluate the Final Proposal Revisions (FPRs) submitted by the Offerors remaining in the competitive range." AR, Tab 4a, Agency Corrective Action Notice--Logistics (Nov. 12, 2013), at 1. Upon receiving the notification, Logistics responded to the agency noting that the solicitation stated that proposals were only valid for 180 days. AR, Tab 5a, Logistics' Response to Agency Notice (Nov. 12, 2013), at 1. Since the 180-day mark had past, Logistics argued that all proposals had expired. Id. Therefore, the protester requested that "NGA seek new pricing proposals before it proceeds," with its reevaluation, and additionally consider "amend[ing] the RFP to adjust for the current number of positions needed for the term of the anticipated DLS2 contract." Id.

On November 18, the agency responded to Logistics' concerns, reconfirming that NGA intended to conduct its reevaluation based upon the offerors' FPRs. AR, Tab 6c, Agency Response to Logistics (Nov. 18, 2013), at 1. On November 25, Logistics filed this protest challenging the agency's corrective action.²

DISCUSSION

Logistics challenges NGA's announced intention to conduct its reevaluation based upon the offerors' FPRs. The protester argues that, due to the amount of time that has passed between FPR submission and the agency's corrective action, any evaluation based upon FPRs would be unreasonable. In this regard, the protester asserts that the offerors' proposals have expired, and also argues that the agency

² On December 17, NGA notified Logistics that it had reevaluated proposals, confirmed the award to AC4S, and lifted the stay of performance. Agency's Award Notice (Dec. 17, 2013) at 1. Two days later, the agency notified Logistics that the stay had been reinstated. Agency's Notice of Stay of Performance (Dec. 19, 2013) at 1. The current protest addresses only the agency's intended corrective action; Logistics has not specifically protested the agency's reevaluation or award decision.

should allow offerors to submit new proposals to account for what the protester contends are the agency's changed needs, uncertainty regarding offerors' personnel commitment letters, and changes in the labor market. As discussed below, we find no basis to sustain the protest.³

As a general rule, the details of implementing recommendations of our Office are within the sound discretion and judgment of the contracting agency, and we will not question an agency's ultimate manner of compliance, so long as it remedies the procurement impropriety that was the basis for our recommendation. See Pemco Aeroplex, Inc., B-310372.3, June 13, 2008, 2008 CPD ¶ 126 at 6. An agency's discretion generally extends to determining whether it is necessary to reopen discussions and obtain proposal revisions. Id.

Here, our decision sustaining Logistics prior protest was based on NGA's improper evaluation of the offerors' proposals under the personnel subfactor and the absence of any documentation reflecting the agency's judgments regarding price realism in the context of the offerors' FPRs. We recommended that NGA reevaluate proposals in a manner that is consistent with the solicitation's evaluation criteria and properly document its evaluation.

Logistics first argues that NGA cannot reasonably base its reevaluation on the offerors' FPRs, which were submitted in March and April of 2013, because the proposals have expired. Logistics argues that the agency must amend the solicitation and request revised proposals because the solicitation's minimum acceptance period of 180 days is a material requirement of the solicitation. The protester asserts that if the agency does not amend the solicitation and request revised proposals, NGA will have, effectively, relaxed or waived a material requirement, to Logistics' prejudice.

Our Office has held that a solicitation's minimum acceptance period is a material requirement. Banknote Corp. of Am., Inc., B-278514, Feb. 4, 1998, 98-1 CPD ¶ 41 at 3. An offeror's compliance with a solicitation's acceptance period is required so that all offerors share the same business risks of leaving their bids or proposals open for acceptance by the government for the same amount of time. See General Elevator Co., Inc., B-226976, April 7, 1987, 87-1 CPD ¶ 385 at 2. Nonetheless, where a proposal has expired, we have also recognized that an offeror may extend its acceptance period and revive its proposal if doing so would not compromise the integrity of the competitive bidding system. BioGenesis Pac., Inc., B-283738, Dec. 14, 1999, 99-2 CPD ¶ 109 at 6. Circumstances that compromise the system's integrity include an offeror's express or implied refusal of a request to extend its

³ Although our decision does not specifically address all of Logistics' various arguments, we have fully considered each of them and find that none provides a basis to sustain the protest.

offer, and a subsequent request to revive the proposal subject to the offeror's own interests. Global Auto., Inc., B-406828, Aug. 3, 2012, 2012 CPD ¶ 228 at 4 (protester could not revive its expired proposal where offeror expressly refused to extend its proposal acceptance period because it would compromise the integrity of the competitive bidding system).

The protester and agency agree that the solicitation stated that offerors' proposals shall remain valid for a period of 180 days, and that the 180-day period expired prior to the agency's notification to the offerors of its intended corrective action. RFP at 65. The agency's November 12 corrective action announcement notified the offerors of NGA's planned reevaluation, and requested offerors confirm receipt of the agency's announcement. AR, Tab 4a, Agency Corrective Action Notice--Logistics (Nov. 12, 2013), at 1. The agency's notice did not request an extension of the 180-day proposal acceptance period, nor did it request revised price proposals.

As we have held, an agency may accept an expired offeror without opening negotiations, where acceptance is not prejudicial to the competitive system. Scot, Inc., B-295569, B-295569.2, Mar. 10, 2005, 2005 CPD ¶ 66 at 9 (agency is not required to resolicit proposals after acceptance period expired). Here, the agency's proposed corrective action did not permit any offeror to change its proposal. Additionally, each offeror's FPR was submitted within the 180-day proposal acceptance period. While the agency did not request an extension of the proposal acceptance period once the 180-days had passed, we find that permitting the successful offeror to waive this expiration does not compromise the system's integrity since all offerors have expired and there were no material changes to the offerors' proposals. Accordingly, the agency could properly allow an awardee to waive the expiration of its proposal acceptance period after its reevaluation. See The Fletcher Constr. Co., Ltd., B-248977, Oct. 15, 1992, 92-2 CPD ¶ 246 at 6 (agency may allow the successful offeror to waive the expiration of its proposal acceptance period without reopening negotiations to make an award on the basis of the offer as submitted, since the waiver was not prejudicial to the competitive system). In sum, we conclude that NGA's plan to reevaluate the expired FPRs is reasonable, and that the agency is not required to issue an amendment to the solicitation or request revised proposals.

Next, the protester argues that the agency must amend the solicitation and request revised proposals because the government's requirements have changed and the commitment letters no longer guarantee employee availability due to the passage of time. With regard to the government's requirements, Logistics asserts that, due to the agency's changes in both staffing and location of the logistics services under Logistics' incumbent contract, the current solicitation no longer reflects the needs of the agency.

The agency maintains that neither its current requirements nor the ground rules for this procurement have changed, and that further amendment of the solicitation is not required. AR at 11. The agency states that the solicitation contemplates the

award of a time-and-materials contract with fixed-price labor rates; the location of services or number of staff is not a fixed requirement. Id. at 6-7. In this regard, the agency explains that the solicitation anticipates a fluctuating number of personnel at undefined and changing locations around the globe throughout the five-year period of performance. Id. at 6. To account for the agency's indefinite needs, the agency asserts that the solicitation established a pricing scenario for the evaluation of prices using a common framework that applied to all offerors. Id. at 7. The solicitation presented offerors with a pricing scenario based upon various "Logistics Services Assumptions" for location and number of staff. RFP at 84. The solicitation also advised the offerors that "the assumptions may or may not represent the actual requirements at contract award." Id.

In light of the purpose of the solicitation, discussed above, we find no merit to Logistics' assertions that the government's requirements have changed and that such changes require an RFP amendment. Our Office has held that where a solicitation contemplates ongoing performance fluctuations, and in between the time a solicitation is issued and award is made those contemplated fluctuations occur, there is no need to amend the solicitation. Nuclear Prod. Partners, LLC, B-407948.9, Sept 24, 2013, 2013 CPD ¶ 228 at 5. Thus, the agency's actions to reduce the number or location of staff on the incumbent contract do not provide a basis to require NGA to amend the current solicitation.

With regard to Logistics' challenge to the agency's evaluation of employee commitment letters submitted with the offerors' FPRs, we are likewise unpersuaded that the agency's decision not to request renewed commitment letters is unreasonable. Logistics alleges that the commitment letters initially submitted by employees no longer guarantee employment due to the significant passage of time. Logistics' allegations are based upon the speculation that the employees who signed commitment letters would no longer be available upon contract award, and nothing more. As we have stated, agencies are not required to provide for the submission of revised proposals merely because of the passage of time. Highmark Medicare Servs., Inc.; Cahaba Gov't Benefit Adm'rs, LLC; Nat'l Gov't Servs., Inc., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11 n.10. Thus, it was not unreasonable for the agency to correct the deficiencies as recommended by our prior decision by performing and documenting the required analyses based on the information that was already available in the offerors' FPRs.

Finally, Logistics asserts that the agency's planned reevaluation would result in an unreasonable price realism analysis since the offerors' FPR prices are stale and no longer reflect current market conditions due to the passage of time. The protester contends that the agency must request revised price proposals from the offerors to reflect the changing market. Further, Logistics states that if FPRs were requested, it would specifically lower its price. Logistics' Declaration (Dec. 3, 2013) at 1.

As discussed in our prior decision, where, as here, an RFP contemplates the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. Ball Aerospace & Tech. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6.

In terms of price realism, the solicitation advised that the government "may reject any proposal" that is "unrealistically high or low cost when compared to the Government estimates" such that the proposal is deemed to reflect "an inherent lack of competence or failure to comprehend the requirements and risks of the program." RFP at 120.

We find no basis to recommend that the agency must request revised price proposals here. While Logistics contends that the agency could not reasonably evaluate price realism based upon prices submitted with the offerors' FPRs because they are inaccurate and bear no relation to current market rates, the agency has broad discretion on the type of analysis it conducts to determine price realism of the offerors in a fixed-price contract. We do not find support for the protester's allegations that any market fluctuations during a period of less than one year, would require the agency to request revised proposals or make unreasonable the agency's decision to evaluate price realism based upon FPRs. In this regard, there is no requirement for an agency, in conducting a price realism analysis, to compare offerors' prices to current market rates. See Pemco Aeroplex, Inc., supra at 7 (the Federal Acquisition Regulation, does not explicitly state the type of analysis an agency must conduct when assessing price realism.)⁴ Since the price

⁴ We are also not persuaded by the protester's citation to our case concluding that an agency unreasonable failed to consider information regarding an offeror that was first learned during the pendency of corrective action. See The Futures Grp. Int'l, B-281274.5 et al., Mar. 10, 2000, 2000 CPD ¶ 148 at 9-10 (agency could not reasonably limit its cost realism evaluation to information known to the awardee at the time of initial proposal submission, thereby ignoring relevant information disclosed for the first time during corrective action). Here, the alleged change in current market rates is not new information specific to any offeror that was disclosed for the first time during the pendency of the corrective action. In fact, the changes to labor market conditions were a forecasted possibility, as was referenced by the awardee in its proposal (AC4S' proposal was based upon predictions that rates in Afghanistan and Iraq will decline). See Intervenor's Comments (Aug. 26, 2013). In
(continued...)

analysis was based upon a hypothetical scenario that was reflective of a prior incumbent contract, and put offeror's on notice that the scenario used assumptions that may not reflect actual requirements, we conclude that the protester has not shown that the solicitation would require NGA to conduct a specific analysis based upon current market conditions.

The protest is denied.

Susan A. Poling
General Counsel

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any event, as stated above, unlike cost realism, the FAR does not explicitly state the type of analysis an agency must conduct when assessing price realism; the depth of an agency's evaluation in this regard is a matter within the sound exercise of the agency's discretion. Accordingly, we will not require the agency to request revised proposals merely based upon the passage of time. See Inchcape Shipping Servs. Holding, Ltd., B-403399.3, B-403399.4, Feb. 6, 2012, 2012 CPD ¶ 65 at 4.