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Decision

Matter of: Bowhead Science and Technology, LLC

File: B-409871

Date: August 26, 2014

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Stephanie J. Quade, Esq., and Theresa M. Francis, Esq., Department of the Navy, for the agency.

Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's proposal under the past performance factor and cost/price factor is denied where the information the protester claims the agency should have considered under both factors was not presented or referenced by the protester; the agency had no obligation to seek out and favorably consider information the protester could have, but did not include in its proposal.

DECISION

Bowhead Science and Technology, LLC,¹ of Alexandria, Virginia, protests the issuance of a task order to Imagine One Technology & Management, Ltd., of Colonial Beach, Virginia, under request for proposals (RFP) No. N00024-13-R-3149, by the Department of the Navy, for program management support services for the V-22 Joint Program Office. Bowhead argues that the agency unreasonably and disparately evaluated Bowhead's and the awardee's past performance, and challenges the Navy's evaluation of its cost proposal.

¹ References herein to Bowhead are to Bowhead Science and Technology, LLC. As discussed below, this protest also concerned other corporate affiliates of Bowhead, which are identified by their full names.

The protest is denied.

BACKGROUND

On May 30, 2013, the Navy issued the RFP as a competitive set-aside under the Small Business Administration's 8(a) program, to vendors under the Navy's SeaPort-e multiple award indefinite-delivery, indefinite-quantity contract.² RFP at 11. The PMA-275, V-22 Osprey is a joint program led by the Navy, for developing, testing, evaluating, procuring, and fielding a tilt rotor, vertical takeoff and landing aircraft for joint service application. Id. at 26. The instant task order sought the support and capability necessary to fully integrate program and acquisition management support services and processes for the Marine Corps, Navy, Air Force, and other activities within the V-22 joint program. Id. The solicitation contemplated the award of a non-performance-based cost-plus fixed-fee level-of-effort task order. Id. at 48.

The solicitation provided for award on a best-value basis, considering three factors: (1) technical, (2) past performance, and (3) cost/price. Id. at 103. The technical factor included the evaluation of three subfactors, in descending order of importance: (1) understanding of the work, (2) management plan, and (3) workforce. Id. For purposes of award, the technical factor was more important than the past performance factor; these two factors, when combined, were more important than the cost/price factor. Id. While the cost/price factor was not the most important factor, the solicitation stated that its "degree of importance would increase commensurably with the degree of equality among different offerors' Technical and Past Performance proposals." Id.

As relevant here, under the cost/price factor, the solicitation required offerors to submit their cost and pricing information using two spreadsheets that were provided as attachments to the solicitation. RFP at 96. The solicitation stated that this information would be evaluated for reasonableness and realism. Id. at 104-105.

Under the past performance factor, the solicitation required offerors to identify "contracts whose performance is within five years of this proposal submission and contains efforts similar to those efforts." RFP at 95. The solicitation also stated that "[w]hen possible, these contracts should include at least five contracts for the prime contractor, and at least two contracts for each primary subcontractor." Id. In addition, the solicitation advised offerors that the agency "may use information other than that provided by the [o]fferors in their proposals" to evaluate past performance,

² Although the solicitation anticipated the issuance of a task order under the awardee's SeaPort-e multiple award contract, the evaluation record primarily refers to "offerors," and also refers to the solicitation as an RFP. For the sake of consistency, we use the term offerors in this decision.

and that the “Past Performance Information Reporting system (PPIRs) will be the primary method used to evaluate past performance.” Id. at 96.

The Navy received proposals from six offerors, including from Bowhead and Imagine One, by the July 2 closing date. Contracting Officer (CO) Statement at 2. Bowhead is the incumbent contractor for the requirement, and has been a vendor under the SeaPort-e contract since 2008. Protest at 3. At the time it submitted its proposal, however, Bowhead was in the process of voluntarily graduating from the SBA’s 8(a) program. As discussed below, the protester apparently intended to “transition” an award to a different Bowhead corporate affiliate.³

Following the evaluation of proposals, the contracting officer established a competitive range of three offerors, including Bowhead and Imagine One, and on February 5, 2014, the contracting officer issued amendment 0006 to the solicitation to enter discussions with these offerors. CO Statement at 3. After conducting discussions, the agency received timely final proposal revisions (FPRs) from all three offerors by the February 20 closing date. Id.

After evaluating the FPRs, the technical evaluation team assigned the following ratings to Bowhead’s and Imagine One’s proposals:

	BOWHEAD	IMAGINE ONE
Technical	Outstanding	Outstanding
Understanding the Work	Outstanding	Outstanding
Management Plan	Outstanding	Outstanding
Workforce	Acceptable	Acceptable
Past Performance	Substantial confidence	Substantial confidence
Total Proposed Price	\$28,778,303.97	\$26,226,283.28
Total Evaluated Price	\$28,779,999.26	\$26,226,283.28

Agency Report (AR), Tab 16, Source Selection Decision Memorandum (SSDM), at 6.⁴

³ Bowhead is a subsidiary of Ukpeaġvik Iñupiat Corporation Technical Services, LLC (UICTS), a wholly-owned holding company of the Ukpeaġvik Iñupiat Corporation (UIC), an Alaska Native Corporation. AR, Tab 4, Bowhead Cost Proposal, at 1; Protest at 2.

⁴ The technical evaluation team assessed the technical proposals as outstanding, good, acceptable, marginal or unacceptable. RFP at 106. In conducting the performance confidence assessment, the evaluators assessed each offeror with one of the following ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown (neutral) confidence. Id. at 107.

The source selection authority concluded that Imagine One provided the best value proposal, and the agency awarded that firm the task order. In this regard, the SSA found that the strengths assigned to Imagine One's proposal translated to a high probability of successful performance in support of PMA-275, and the perceived benefits of the Bowhead proposal did not merit the 9.73 percent cost premium. Id. at 4-7; CO Statement, at 3-4. Bowhead requested and received a debriefing from the agency. This protest followed.⁵

DISCUSSION

Bowhead argues that the Navy's evaluation of its past performance failed to consider "close at hand" information concerning the performance of the protester's corporate affiliates. Bowhead also challenges the Navy's evaluation of its cost proposal, arguing that the agency failed to consider "close at hand" information concerning the indirect rates of a corporate affiliate to whom the protester intended to "hand off" the task order following award. Protest at 4. For the reasons discussed below, we conclude that the agency reasonably evaluated Bowhead's cost proposal and past performance.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Past Performance Evaluation

Bowhead argues that the agency's past performance evaluation of Bowhead's proposal was unreasonable because it failed to account for the totality of past performance of all of Bowhead's corporate affiliates that have performed task orders under the SeaPort-e program since its inception because this information was "too

⁵ As the value of this task order is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

close at hand” for the agency to ignore. The protester also argues that Bowhead should have received a higher past performance rating than Imagine One because, the protester contends, the awardee’s performance record was not equal to that of the entire family of Bowhead companies. Protest at 9. As discussed below, we find the agency’s evaluation under this factor was reasonable.

In reviewing a protest challenging an agency’s past performance evaluation, we will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider “outside information” bearing on the offeror’s past performance when it is “too close at hand” to require offerors to shoulder the inequities that spring from an agency’s failure to obtain and consider the information. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. These limited circumstances, however, do not include those where an offeror fails to include information in its proposal. See Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 8. Where an offeror is in control of information in its proposal—and not reliant on third parties to submit that information—it exercises its own judgment as to the information that the agency should consider. See West Sound Servs. Grp., LLC, B-406583.4, B-406583.5, July 9, 2014, 2014 CPD ¶ 208 at 12-13. Such circumstances are instead governed by the well established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Grp., LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9.

As discussed above, the solicitation required offerors to identify, for themselves and any proposed subcontractors, contracts performed on similar efforts, and within five years of proposal submission. RFP at 95. The solicitation also stated that past performance would be evaluated based on “the relevance of the past performance” and “how well the offeror performed.” Id. at 104.

Bowhead’s initial and final proposals identified six contracts: four from Bowhead, one of which was the incumbent contract, and two from Bowhead subcontractors. AR, Tab 5, Bowhead Proposal, Past Performance, at 187; Tab 11, Bowhead FPR, at 248.

In evaluating Bowhead’s past performance, the evaluators reviewed Contractor Performance Assessment Reporting System (CPARS) reports for all six of the contracts identified in Bowhead’s proposal. AR, Tab 14, Past Performance Evaluation Consensus Report, at 22. Based on the information in the CPARS reports, the agency assessed a substantial confidence past performance rating to Bowhead, stating the following:

Based on the 6 (six) contracts submitted to the Government, two (2) were rated Very Relevant, one (1) was Relevant, and three (3) were Somewhat Relevant. All received positive ratings. All were the same or similar type of work at varying levels of magnitude as the effort covered by the RFP. Bowhead is the current incumbent performing very well in the tasking from this solicitation. Based on the offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort. Therefore a Substantial Confidence assessment is assigned.

Id. at 25. After discussions, the evaluators concluded that Bowhead's past performance assessment should remain substantial confidence, stating: "There were no changes to the Offeror's past performance; therefore, there are no further updates or additional information needed for past performance." Id.

Bowhead does not challenge the adequacy of the agency's evaluation of the past performance information submitted in Bowhead's proposal, or allege that the agency failed to comply with the solicitation's evaluation criteria. Rather, as discussed above, Bowhead contends that the agency's evaluation should have also considered the past performance of all of Bowhead's corporate affiliates that have performed task orders under the SeaPort-e program for the past 13 years because this information was "too close at hand" for the agency to ignore.⁶ Specifically, Bowhead argues that "PMA-275 and its evaluators were well aware of not just the performance of BST but the performance of all Bowhead companies," and that "[t]he sheer number of task order contracts BST and the other Bowhead companies have held with PMA-275 attests to its unique position among the other bidders." Protest at 9.

We conclude that the agency had no obligation in its past performance evaluation to import and consider favorable past performance information not provided in the protester's proposal. The record reflects that Bowhead's proposal provided past performance information only for Bowhead and Bowhead's subcontractors. AR, Tab 5, Bowhead Proposal, Past Performance, at 187; Tab 11, Bowhead FPR, at 248. Specifically, Bowhead's proposal stated: "Team Bowhead presents six

⁶ To the extent the protester contends that the agency should have considered past performance on contracts completed beyond the 5-year time frame, this issue was apparent on the face of the solicitation, and therefore, this argument is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2014) (protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to the time set for receipt of initial proposals). In this regard, offerors were advised that past performance would be evaluated based on contracts that were ongoing, or completed within the past five years. RFP at 104.

current contract citations herein: four from Bowhead, one from [Jahn], and one from Wyle.” Id. Bowhead’s proposal did not mention the other UICTS subsidiaries, or provide any indication that any of the other UICTS subsidiaries would be involved in the task order effort or explain how the resources of the subsidiaries would be brought to bear during Bowhead’s performance of the task order. See IAP World Servs., Inc.; EMCOR Gov’t Servs., B-407917.2 et al., July 10, 2013, 2013 CPD ¶ 171 at 9 (explaining that, while it is appropriate to consider an affiliate’s performance record where the affiliate will be involved in the contract effort or where it shares management with the offeror, it is inappropriate to consider an affiliate’s record where that record does not bear on the likelihood of successful performance by the offeror). To the extent Bowhead believed the past performance of its corporate affiliates was relevant to the past performance evaluation of Bowhead, Bowhead could have included that information in its proposal, but chose not to do so. We will not shift to the agency the responsibility to remedy Bowhead’s failure to include this information in its proposal. Great Lakes Towing Co. dba Great Lakes Shipyard, supra, at 8. We find nothing unreasonable about the agency’s evaluation.

Next, relying on the assumption that the agency was required to consider the past performance of Bowhead’s corporate affiliates in evaluating Bowhead’s past performance, the protester argues that Imagine One’s past performance could not be equal to the past performance of the entire family of Bowhead companies, and therefore, the agency should have assessed Bowhead with a higher past performance rating than Imagine One. Protest at 9. In this regard, Bowhead’s argument does not raise any negative allegations regarding Imagine One’s past performance or contend that the agency improperly evaluated the past performance information provided in Imagine One’s proposal.⁷ Rather, the argument is based solely on the consideration of the past performance of Bowhead’s affiliated companies. As discussed above, however, we find that the agency had no basis to

⁷ In its comments responding to the agency report, the protester attempts to revise this protest ground to allege that Imagine One should not have received the same past performance rating as Bowhead because Imagine One does not have the same level of experience and knowledge as Bowhead. Comments at 3. As discussed above, however, the initial protest argued that Bowhead’s past performance rating should have been higher because Imagine One’s past performance was not equal to the past performance of the entire family of Bowhead companies. To the extent the protester relies upon this different assertion regarding the agency’s alleged improper evaluation, the protester was required to include that information in its initial protest. The protester’s failure to do so renders the revised allegation untimely. See 4 C.F.R. § 21.2(a)(2) (protests other than alleged solicitation improprieties must be filed within 10 days of when the protester knows or should have known its bases for protest); FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9 (piecemeal presentation of issues is not permitted by our timeliness rules).

evaluate the past performance of the entire family of Bowhead companies. Accordingly, we need not further address this protest ground.

Cost/Price Evaluation

Next, Bowhead argues that the Navy's cost evaluation was unreasonable because the agency based its evaluation on the indirect rates utilized in Bowhead's cost proposal, rather than on the lower indirect rates listed in the SeaPort-e contract of one of the protester's corporate affiliates. For the reasons discussed below, we conclude that the agency reasonably evaluated Bowhead's cost proposal based on the cost information proposed by Bowhead.

As relevant here, in response to a previous protest, Bowhead, and the Navy entered into a settlement agreement regarding the SeaPort-e contract, which provided the following, in relevant part:

[Under] the Alaska Native Claims Settlement Act and the Small Business Act[,] . . . Alaska Native Corporations (ANCs) are entitled to unique participation in the Federal procurement system. As a result of these statutes, Bowhead and companies owned by its parent company, Ukpeaġvik Iñupiat Corporation (UIC) are granted preferential consideration in many Federal procurement programs.

* * * * *

[S]hould Bowhead be unable to certify as a small 8(a) business then Bowhead will be permitted to propose another of its small and/or 8(a) companies as the prime contractor; and this replacement process will continue throughout the life of the SeaPort-e contract.⁸

Protest, Exh. 3, Settlement Agreement (July 23, 2008), at 1-2. Based on this agreement, and because Bowhead was graduating from the 8(a) program, Bowhead argues in its protest that if it won the task order, it intended to transition the task order to another UICTS 8(a) subsidiary, Bowhead Professional Solutions, LLC (BPS). Protest at 4. At the time Bowhead submitted its initial proposal, BPS was in the process of obtaining a SeaPort-e contract. Id. Thereafter, in November 2013, BPS was awarded a SeaPort-e contract. Id.

The protester asserts that the Navy knew that Bowhead intended to transfer the task order to BPS, and that the agency had access to BPS' indirect rates because these rates were included in BPS' SeaPort-e contract, which was also awarded by

⁸ The protest that precipitated the settlement agreement was docketed by our Office as B-400287.

the Navy. Bowhead contends that the agency's knowledge of Bowhead's intent to transition the task order to BPS, and the information regarding BPS' pricing, was "too close at hand" for the agency to ignore in its cost evaluation. The Navy responds that it reasonably evaluated Bowhead's cost proposal based on the indirect rates utilized in Bowhead's cost proposal.

Similar to our conclusion above regarding the agency's past performance evaluation, we conclude that the agency also had no obligation in its cost evaluation to import and consider information the protester could have, but did not include in its proposal.⁹ As stated above, where an offeror is in control of information in its proposal--and not reliant on third parties to submit that information--it exercises its own judgment as to the information that the agency should consider. See West Sound Servs. Grp., LLC, supra, at 12-13. Here, the solicitation required that offerors submit their cost and pricing information using two spreadsheets that were provided as attachments to the solicitation, and advised offerors that this information would be evaluated for reasonableness and realism. RFP at 96, 104-105. Bowhead's initial cost proposal included the two required spreadsheets, and utilized the cost and pricing information of Bowhead and Bowhead's subcontractors. AR, Tab 6, Initial Cost/Price Analysis Report, at 216-220; Tab 11, Bowhead FPR, Cost Proposal, Attach P6, at 259-309.

As discussed above, BPS was awarded a SeaPort-e contract in November 2013--after the submission of initial proposals for the competition here, but prior to the February 2014 submission of FPRs. Protest at 4. Even though Bowhead had the opportunity to revise its proposal following discussions to include BPS' indirect rates, Bowhead's FPR did not include this information, nor any other statements indicating Bowhead's intention to transition the task order to BPS. AR, Tab 11, Bowhead FPR, Cost Proposal, Attach. P6, at 259-309. Instead, Bowhead's FPR reaffirmed that, "[f]or this effort, Bowhead has partnered with Avian Engineering, LLC (Avian), Engility Corporation (Engility), Jahn Corporation (Jahn), and Wyle Laboratories, Inc. (Wyle)," and that "[t]ogether as Team Bowhead, we remain committed to supporting the immediate and long-term needs of PMA-275." AR, Tab 11, Bowhead FPR, Cost Proposal, Cover Letter. Accordingly, we find that the agency's evaluation of Bowhead's cost proposal based on the information submitted

⁹ To the extent the protester relies on our decision in Nuclear Prod. Partners LLC; Integrated Nuclear Prod. Solutions LLC, B-407948 et al., Apr. 29, 2013, 2013 CPD ¶ 112, we note that this decision does not extend an agency's obligation to import and consider outside information during its evaluation, as the protester asserts. Id. at 20. Rather, Nuclear Production Partners stands for the proposition that an agency may, but is not required to, consider information known to the agency and not found in the firm's proposal in evaluating the firm's corporate experience. Id. at 20.

by Bowhead in its final cost proposal, including the indirect costs proposed by Bowhead and Bowhead's subcontractors, was reasonable.¹⁰

The protest is denied.

Susan A. Poling
General Counsel

¹⁰ The intervenor also argues that the protester's plan to assign its task order to BPS post-award would be a violation of the statutory and regulatory prohibition on the assignment or transfer of contracts. As we recently explained in Wyle Labs., Inc., B-408112.2, Dec. 27, 2013, 2014 CPD ¶ 16 at 10 n.13, the Federal Acquisition Regulation § 42.1204(a) and 41 U.S.C. § 6305 prohibit the transfer of contracts without the government's consent. That said, we need not resolve this issue for the purpose of this protest.