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Decision

Matter of: Alutiiq Pacific, LLC

File: B-409584; B-409584.2

Date: June 18, 2014

Richard B. Oliver, Esq., and J. Matthew Carter, Esq., McKenna Long & Aldridge LLP, for the protester.

William A. Roberts, III, Esq., John R. Prairie, Esq., and Nooree Lee, Esq., Wiley Rein LLP, for Bowhead Professional Solutions, LLC, an intervenor.

Debra J. Talley, Esq., and Jonathan A. Hardage, Esq., Department of the Army, U.S. Army Materiel Command, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency miscalculated proposals is sustained where agency improperly credited awardee with experience arising from contracts performed by two affiliated concerns, even though the record shows the proposal does not clearly detail or explain how the affiliated concerns will contribute meaningfully to contract performance, as required by solicitation.
 2. Protest that agency unreasonably credited awardee with offering to furnish large proportion of incumbent staff is sustained, where record shows that agency's evaluation failed to take into consideration the fact the awardee was proposing compensation for a majority of the incumbent staff that is substantially below what the incumbent proposes to pay the same staff.
 3. Protest that agency disparately assigned strengths to proposals during its evaluation is sustained where record shows that agency assigned different number of strengths to awardee's and protester's proposals for offering essentially the same feature.
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DECISION

Alutiiq Pacific, LLC (AP), of Anchorage, Alaska, protests the award of a contract to Bowhead Professional Solutions, LLC, (BPS) of Alexandria, Virginia, under request for proposals (RFP) No. W9124P-13-R-0009, issued by the Department of the Army

for commercial information technology services. AP maintains that the agency misevaluated proposals and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

The RFP, issued as a competitive 8(a) set-aside, contemplates the award of a time-and-materials, indefinite-delivery, indefinite-quantity contract that includes four 1-year ordering periods. RFP at 5-15. The RFP specifies a minimum quantity of 1,600 labor hours, and also specifies maximum labor hour quantities for each of the ordering periods. Id. In total, the RFP contemplates the provision of a maximum of 631,120 projected labor hours over the life of the contract. Id. at 46.

The RFP provided that award would be made on a best value basis, considering technical, price and past performance.¹ Agency Report (AR), exh. 11, Amendment No. 3, at 15. Technical was the most important factor, and was deemed slightly more important than price; price was deemed significantly more important than past performance; and technical and past performance combined were deemed more important than price. Id. The technical factor also included two subfactors, technical experience and management approach; the first was deemed slightly more important than the second. Id. at 15-16. The RFP advised that the agency would evaluate cost/price² for fairness, reasonableness, completeness, compliance with the requirements of the RFP, and realism. Id. at 17-19.

The agency received 16 proposals in response to the solicitation. After evaluation of the proposals, the agency established a competitive range of 10 firms, engaged in discussions with these firms, and solicited, obtained and evaluated final proposal revisions. AR at 2. As is pertinent here, the agency assigned the following ratings to the proposals of BPS and AP:

¹ The Army assigned adjectival ratings to the technical proposals of outstanding, good, acceptable, marginal or unacceptable. AR, exh. 6, Source Selection Plan, at 8. The Army assigned each past performance example a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant; and a performance confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 11-12.

² The RFP included certain minor cost reimbursable elements such as incidental other direct costs. RFP at 5-15.

Offeror	Technical Factor Overall	Technical Experience Subfactor	Management Approach Subfactor	Past Performance Confidence	Cost/Price
BPS	Outstanding	Outstanding	Outstanding	Substantial Confidence	\$36,722,496
AP	Outstanding	Outstanding	Outstanding	Substantial Confidence	\$37,186,561

AR, exh. 25, Source Selection Decision Document (SSDD), at 7. Based on these evaluation results, the agency selected BPS for award, concluding that its proposal represented the best value to the government. Id. at 32. This protest followed.

PROTEST

AP raises numerous challenges to the agency's evaluation of proposals.³ We have carefully considered all of AP's contentions, and sustain its protest for the reasons discussed below. We note at the outset that, 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. Exelis Sys. Corp., B-407111.5 et al., May 20, 2013, 2013 CPD ¶ 123 at 6.

Attribution of the Experience/Past Performance of BPS's Affiliates

AP argues that the agency improperly considered the two contracts performed by affiliates of BPS in evaluating the awardee's proposal under both the technical experience subfactor and the past performance factor. AP maintains that the BPS proposal does not explain how the resources of the affiliates will be brought to bear in BPS's performance of the current requirement, and that it was therefore improper for the Army to have attributed the performance of these two contracts to BPS during its evaluation. The two contracts at issue are a prime contract performed for [deleted], and a subcontract in connection with work [deleted]. AR, exh. 21, BPS Past Performance Proposal, at 2-9.

³ AP also withdrew several protest contentions. In its first supplemental protest, AP alleged that the Army improperly failed to assign its proposal significant strengths for its proposed storage team's designing of various elements of the requirements; its proposed program manager; and the training levels and certifications of its workforce. AP withdrew these contentions in its comments responding to the initial agency report. AP Comments, Apr. 21, 2014, at 11 n.4. In its second supplemental protest, AP alleged that the Army failed to evaluate the price realism of the BPS proposal. AP withdrew this contention in its comments responding to the supplemental report. AP Supplemental Comments, May 15, 2014, at 3 n.2.

AP contends that, in contrast, the Army properly attributed the performance of several predecessor contracts performed by its affiliates to AP during its evaluation of the protester's proposal, because its proposal detailed how the resources of the affiliates would be brought to bear during AP's performance of the contract. AP notes that the agency's evaluators performed a careful attribution analysis in evaluating its proposal, but a similar analysis was not performed in evaluating the BPS proposal. We sustain this aspect of AP's protest.

An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2 et al, July 10, 2013, 2013 CPD ¶ 171 at 8-9; Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. Ecomplex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5. While it is appropriate to consider an affiliate's performance record where the affiliate will be involved in the contract effort, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. National City Bank of Indiana, B-287608.3, Aug. 7, 2002, 2002 CPD ¶ 190 at 10.

In addition to these general requirements that relate to attributing the experience of a parent or affiliate concern to an offeror, the RFP here included detailed instructions concerning this issue in connection with the preparation of the offerors' proposals under the technical experience factor. The RFP provided as follows:

NOTICE: Examples of experience. Breadth of experience reflects the Offeror's experience in performing the full range/all of the efforts required. Depth of experience reflects the magnitude, significance, and applicability/relevance of the Offeror's experience in performing each of the efforts required. The Offeror should discuss the technologies/tools used and the approaches taken on related projects. Experience considered may include both Government and commercial contracts in providing the same or similar products and services as described in the PWS of this solicitation. The Government will not consider experience of subordinate or affiliated offices of the Offeror, unless the Offeror clearly details the proposed involvement of the Offeror's subordinate or affiliated offices in this requirement. The Offeror must indicate whether it was the prime contractor or subcontractor on each project. If the Offeror was the prime contractor, the Offeror shall also describe its primary role/duties in execution of the work (i.e. the primary role/duties of the project which were

completed by the prime's staff and those which were subcontracted out).

RFP at 40-41; AR, exh. 11, Amendment No. 3, at 5 (emphasis supplied).

As an initial matter, AP correctly notes that both the contents of its proposal, and the agency's contemporaneous evaluation materials, show that AP carefully detailed the interrelationship among its parent and affiliated concerns, and the agency specifically examined that explanation to determine whether or not to credit AP with the experience and past performance of its affiliated concerns. In this connection, the record shows that two of AP's affiliate concerns performed the incumbent contracts for the current requirement.

The record shows that AP specifically explained the structure of its business organization, and detailed how it would bring the resources of its affiliated concerns to bear on performance of the current requirement. AR, exh. 14, AP Technical Proposal at T-2, M-15-17; exh. 16, AP Past Performance Proposal at 1-2. For example, AP specifically detailed how it would transition the entire incumbent workforce from its sister affiliate to AP. AR, exh. 14, AP Technical Proposal at M-15-17. The record shows that both the technical evaluation team, as well as its past performance team, independently examined the AP proposal and reached specific conclusions about the interrelationship among AP and its affiliated and parent concerns, finding that it would be appropriate to credit AP with the experience and past performance of its affiliates under the circumstances. AR, exh. 15, AP Final Technical Evaluation Report, at 4; exh. 17, AP Final Past Performance Evaluation Report, at 4-5.

In contrast to the AP proposal and evaluation materials relating thereto, there is no information in the BPS proposal that meets the requirements of the RFP quoted above relating to BPS's obligation clearly to detail the proposed involvement of [deleted] or [deleted] in the performance of the contract. There also is no explanation in the contemporaneous evaluation record describing the basis for the agency's attribution of the two prior contracts to BPS under either the technical experience subfactor or the past performance factor, notwithstanding this threshold omission from the BPS proposal, and the clear requirement of the RFP.

Notwithstanding the absence of information in the BPS proposal or the contemporaneous evaluation record, both the agency and intervenor have directed our Office to various portions of the BPS proposal in an effort to demonstrate that, in fact, the resources of BPS's affiliates will be brought to bear in connection with its performance of the contract. We discuss their principal contentions below.

Both the agency and the intervenor first cite to the cover pages for each volume of the BPS proposal. These cover pages identify the offeror as follows: "Bowhead Professional Solutions, LLC, a subsidiary of Ukpeagvil Inupiat Corporation

Technical Services, LLC, An Ukpeagvik Inupiat Corporation Company.” See e.g., AR, exh. 19, BPS Technical Proposal, cover page. These cover pages also identify the two authorized negotiators for BPS. Id. One of these individuals is identified as “President, Engineering & IT Group Bowhead Professional Solutions, LLC.” The second individual is identified as “Director of Contracts UIC Technical Services, LLC.” None of this information explains the interrelationship between BPS and its affiliated concerns, [deleted] and [deleted], and none of this information demonstrates that the resources of [deleted] or [deleted] will be brought to bear in connection with BPS’s performance of the contract. At most, this information shows that BPS is a subsidiary of Ukpeagvik Inupiat Corporation Technical Services, LLC, and that one of the concern’s authorized negotiators is an employee of the parent company.⁴

Next the agency and the intervenor direct our attention to a brief narrative portion of the BPS technical proposal that provides as follows:

Bowhead is a Small Business Administration-certified 8(a) company and an Alaska Native Corporation (ANC). We are a subsidiary of the Ukpeagvik Inupiat Corporation Technical Services, LLC (UICTS), a holding company directly under the auspices of Ukpeagvik Inupiat Corporation (UIC) and its native Alaskan shareholders. As such, we have full reach-back capability to our sister companies as well as our parent company. Based in Alexandria, [Virginia], UICTS and its subsidiary companies (which include Bowhead) have more than [deleted] employees and combined annual revenues of \$[deleted]. Bowhead has been delivering service and product solutions to DoD, numerous Federal agencies, and commercial customers for more than 13 years.

⁴ The intervenor represents that its other authorized negotiator is also an employee of the parent concern. The intervenor states that the “Engineering and IT Group” is one of several “operational groups” comprising the “UIC family of companies;” that BPS is a part of this “operational group;” and that the individual identified is the president of this “operational group.” Intervenor’s Comments on the Supplemental Agency Report, May 15, 2014, at 4. Presumably, this explanation is offered to demonstrate that this negotiator is employed by BPS’s parent company, rather than by BPS, and that this demonstrates that the resources of the parent concern are available to BPS. The plain words of the proposal cover pages, however, provide no explanation or detail concerning the interrelationship between BPS and its parent company. The intervenor concedes that the BPS proposal does not explicitly identify its several “operational groups,” but maintains it is “common knowledge in the industry and at the Army Contracting Command-Redstone that this is how many ANCs [Alaskan Native Companies] are structured.” Id. Whether or not this is true, none of this information is in the BPS proposal itself, as required by the RFP.

AR, exh. 19, BPS Technical Proposal, at T-2. This narrative portion of the BPS proposal goes on to note various achievements of “Bowhead,” and specifically notes “Bowhead’s” history of providing information technology support services at Fort Eustis and Fort Monroe network enterprise centers.⁵ Id. According to the agency and the intervenor, this narrative demonstrates that BPS is part of a larger corporate group, and that the firm intended to leverage the resources of this larger corporate group in performing the contract.

We disagree. Nothing in this narrative describes clearly the interrelationship among BPS and its parent and affiliated concerns. More important, it is not clear from this narrative (or the pleadings) that there is a relationship between BPS, [deleted] and [deleted] as part of this larger corporate group. In addition, the passing reference to “full reach-back capabilities” is inadequate, without more, to demonstrate that the resources of [deleted] or [deleted] will be brought to bear in BPS’s performance of this contract. IAP World Servs., Inc.; EMCOR Gov’t Servs., supra, at 9.⁶

Finally, both the agency and the intervenor have presented a long list of BPS proposal references that they maintain demonstrates that the resources of BMSI and BITS will be brought to bear during BPS’s contract performance. These extensive references, however, make no mention of either BMSI or BITS, or explain how the resources of those two concerns will be brought to bear in BPS’s performance of the contract. Instead, these references use either the phrase “Team Bowhead” or the term “Bowhead” in describing how contract performance will be accomplished. Significantly, the terms “Team Bowhead” and “Bowhead” are defined early in the BPS proposal as follows:

MISSION FIRST is Team Bowhead’s service delivery philosophy. It is the driving force behind all that we will say and do in supporting our customers. It translates into customer satisfaction and a trusted partnership. Bowhead Professional Solutions LLC (Bowhead) and our

⁵ We discuss how BPS’s proposal defines “Bowhead,” and why, based on that definition, the proposal improperly attributes to BPS the experience and past performance of [deleted] and [deleted] below.

⁶ The intervenor also directs our attention to a Defense Contract Audit Agency (DCAA) report included in the record that briefly describes the UIC Technical Services corporate structure. AR, exh. 41, DCAA Bowhead Audit Report. The intervenor maintains that this report also sheds light on the interrelationship among the parent and affiliated concerns. Additionally, the intervenor maintains that this report shows that BPS and [deleted] and [deleted] use a shared accounting system maintained and operated by a parent concern. Even if this were true, however, it does not demonstrate that the BPS proposal committed the resources of [deleted] or [deleted] to contract performance.

partners—[deleted]--have designed a mission-first solution to support the United States Army Signal Network Enterprise Center--Redstone (NEC-R) and the Army Logistics Transformation (ALT II). As Team Bowhead, we offer innovative solutions to improve service response times, significantly enhance service delivery, and reduce the Total Cost of Ownership (TCO).

AR, exh. 19 BPS Technical Proposal, at T-1 (emphasis supplied). Thus, by the proposal's own terms "Team Bowhead" is comprised of BPS and its proposed subcontractors, and "Bowhead" is BPS. Simply stated, neither of those entities is comprised of or includes any of the resources of [deleted] or [deleted], and it was improper for the agency to credit BPS with either the experience or past performance of those two concerns. In addition, as noted above, the BPS proposal itself attempted to ascribe the performance of [deleted] and [deleted] prior contracts to "Bowhead." This was inaccurate in light of the fact that BPS (a.k.a "Bowhead") did not perform those contracts.

In light of the foregoing discussion, we conclude that the agency improperly ascribed the experience and past performance of [deleted] and [deleted] to BPS. The agency's evaluation conclusions concerning BPS under the technical experience subfactor and past performance factor therefore were unreasonable and, accordingly, we sustain this aspect of AP's protest.⁷

BPS's Proposed Staffing Approach

AP argues that the Army unreasonably assigned the BPS proposal an outstanding rating under the management approach subfactor based, in part, on its proposal to retain up to [deleted] percent of the incumbent staff. The record shows that the agency's evaluators specifically credited BPS with its proposed approach of retaining up to [deleted] percent of the incumbent workforce, and also assigned the firm's proposal a specific strength for its record of successfully retaining incumbent personnel. AR, exh. 20, Bowhead Technical Evaluation Report, at 8, 9. AP

⁷ The agency asserts that BPS would have received the same past performance rating, even if the agency had not considered the past performance examples of [deleted] and [deleted]. There is no basis on the record before us to conclude that the agency's assertion has merit. Without the [deleted] and [deleted] past performance examples, BPS would have no examples of its own past performance, and would instead be relying entirely on the past performance examples of its subcontractors. Those subcontractors are proposed to perform [deleted] of the requirement, AR, exh. 37, BPS Final Price Proposal, at 32, and regardless of how well they performed their past performance examples, there is no basis on this record for us to conclude that this would have been adequate to overcome the absence of past performance information relating to BPS.

maintains that this was unreasonable because BPS's proposal reflects that it intends to offer compensation for a majority of the proposed positions (and a majority of the required labor categories) that is significantly below that currently being paid by AP.

The Army offers no meaningful response to this aspect of AP's protest, other than to point out that AP offered proposed hourly rates for the labor categories not identified by AP in its allegation that are significantly below the rates proposed by BPS.

We find the agency's assignment of an outstanding rating to the BPS proposal under the management subfactor, based on BPS's proposal to retain up to [deleted] percent of the incumbent workforce, unreasonable in light of the fact that the agency evaluators gave no consideration to BPS's proposed compensation. We also find unreasonable the agency's assignment of a specific strength under that subfactor based on BPS's proven record of success in retaining incumbent personnel.

As correctly noted by the protester, BPS proposed loaded labor rates significantly below those offered by AP for [deleted] of the [deleted] labor categories required under the RFP. These 11 labor categories include 37 of the 56 full time employees required for initial contract performance. Protester's Comments, Apr. 21, 2014, at 18-19; Protester's Supplemental Comments, May 18, 2014, at 30-31.⁸ In addition, for these categories, BPS proposed compensation that ranged from [deleted] percent to [deleted] percent below the compensation proposed by AP, the firm that already has the incumbent workforce available.⁹ Id. There is no indication in the record that the technical evaluators were aware of this difference in the offerors' proposed compensation, or how that difference could affect BPS's ability to attract or retain the incumbent workforce in light of its significantly lower proposed compensation.

⁸ AP's comments and supplemental comments include tables that summarize the discrepancies between AP's proposed hourly rates and salaries and BPS's proposed salaries and rates. For convenience, we refer to these tables because they present an accurate aggregation of information spread throughout the record, and because neither the agency nor the intervenor has presented information that would lead us to question these calculations.

⁹ AP presented two calculations of the discrepancy between its proposed rates and salaries and those of BPS. AP Supplemental Comments, May 15, 2014, at 30-31. The first calculation used a labor year comprised of 2,080 hours and the second used a labor year of 1,960 hours. AP presented these alternate calculations because the agency, in its supplemental report, alleged that AP had inflated the difference between the offered compensation by using 2,080 hours per year rather than 1,960 hours per year. In our discussion above, we use the more conservative figures calculated based on a labor year of 1,960 hours.

Moreover, to the extent that the evaluators assigned the BPS proposal a specific strength based on its past, proven ability to hire a substantial portion of the incumbent workforce, that past success occurred under the [deleted] and [deleted] contracts discussed above. In light of our earlier discussion, it also was unreasonable for the agency's evaluators to attribute the success of [deleted] and [deleted] to BPS. We therefore sustain this aspect of AP's protest.

Disparate Assignment of Significant Strengths and Strengths

AP maintains that the agency disparately assigned significant strengths and strengths in its evaluation of proposals.¹⁰ According to AP, this was prejudicial because the source selection authority ultimately made the selection decision based, at least in part, on the number of significant strengths and strengths assigned to the proposals.

Agencies are required to evaluate proposals on a common basis and in accordance with the terms of the RFP. Agencies may not properly engage in disparate treatment of offerors in the evaluation of proposals. Global Analytics Information Technology Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 4.

The record supports this aspect of AP's protest. For example, under the management approach subfactor, the record shows that the agency assigned the BPS proposal a significant strength for its transition approach, and a separate strength for its proven track record of retaining a high percentage of the incumbent workforce. AR, exh. 20, BPS Technical Evaluation Report, at 9. In contrast, when evaluating the AP proposal under the same evaluation subfactor, the agency assigned only a single significant strength to the AP proposal both for its proposed transition plan and its demonstrated ability to retain 100 percent of the incumbent workforce. In other words, the Army did not also assign the AP proposal a separate strength for its demonstrated ability to retain 100 percent of the incumbent workforce. AR, exh. 15, AP Technical Evaluation Report, at 7. There is no explanation in the record for this disparate treatment and, as correctly noted by AP, the source selection authority based the selection decision, at least in part, on the fact that the BPS proposal had the most significant strengths and strengths of any proposal. AR, exh. 25, SSDD, at 30. We therefore sustain this aspect of AP's protest.

RECOMMENDATION

¹⁰ AP challenges the assignment of significant strengths and strengths not only to its proposal and BPS's proposal, but also to the proposals of other offerors. We need not consider these latter allegations in any detail, since we recommend below that the agency reevaluate proposals.

We recommend that the Army reevaluate proposals in a manner consistent with the discussion above and make a new source selection decision based on that reevaluation. Should the Army conclude that a concern other than BPS properly is in line for award, we recommend that the agency terminate the contract awarded to BPS, and make award to the new concern, if otherwise proper. Finally, we recommend that the Army reimburse AP reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d) (2014). The protester's certified claim for costs, detailing the time expended and costs 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.

Susan A. Poling
General Counsel