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United States Government Accountability Office
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Decision

Matter of: ASRC Communications, Ltd.

File: B-412093.4

Date: July 1, 2016

Kevin P. Mullen, Esq., Ethan E. Marsh, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP; and Mark J. Nackman, Esq., Jenner & Block LLP, for the protester. Lee P. Curtis, Esq., Andrew E. Shipley, Esq., Seth Locke, Esq., and Andrew J. Victor, Esq., Perkins Coie LLP, for Aleut O&M Services, LLC, the intervenor. Capt. Michael Ahl, and Sarah L. Stanton, Esq., Department of the Air Force, for the agency.

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

DIGEST

Protest of an agency's reevaluation of proposals is sustained where the record shows that the agency failed to evaluate the awardee's proposal in accordance with the solicitation's evaluation criteria.

DECISION

ASRC Communications, Ltd. (ASRC), of Beltsville, Maryland, protests the award of a contract to Aleut O&M Services LLC, of Colorado Springs, Colorado, under request for proposals (RFP) No. FA2521-13-R-0019, issued by the Department of the Air Force for operations, mission support and facilities/infrastructure maintenance and sustainment at Cape Canaveral Air Force Station in Cape Canaveral, Florida. ASRC challenges the Air Force's reevaluation of Aleut's proposal and subsequent award decision.

We sustain the protest.

BACKGROUND

The RFP, set aside for small businesses, provides for the award of a hybrid, fixed-price, cost-plus-fixed-fee, cost-reimbursement type contract to perform various operations, maintenance and engineering support services for facilities and systems at Cape Canaveral for a 5-year base period and a 1-year option period. RFP § B.

Firms were advised that award would be made on a best-value basis, considering cost/price, technical capability, and technical risk. The two non-cost/price factors were equal in importance and, when combined, deemed equal in importance to cost/price. RFP at 187. Within the technical capability factor, there were four equally-weighted subfactors: program management, operations and maintenance, mission support, and engineering support. ¹ Id. at 188.

In response to the RFP, the Air Force received eight proposals, including those of ASRC and Aleut. The agency evaluated proposals, engaged in discussions; and solicited, obtained, and evaluated final proposal revisions (FPRs). On the basis of the evaluation results, the Air Force made award to Aleut as the best-value offeror, concluding that, although the ASRC proposal was superior to the Aleut proposal, that superiority was not worth the cost premium associated with making award to ASRC. Agency Report (AR), Tab 30, Source Selection Decision Document (SSDD), at 6.

After receiving a debriefing, ASRC filed a protest with our Office. Among other things, ASRC challenged the Air Force's evaluation of Aleut's proposal under the mission support subfactor. ASRC argued that, in its evaluation of Aleut's FPR, the Air Force improperly had removed a deficiency assigned to Aleut's initial proposal for not demonstrating an adequate approach to performance work statement (PWS) § 1.10. The deficiency concerned the operation and maintenance of the Naval Ordnance Test Unit (NOTU) port/wharf and cranes services, and was based on four specific concerns identified by the evaluators. ² ASRC argued that Aleut had addressed only one of the four concerns in its FPR.

¹ Proposals were to be assigned ratings at the subfactor level. The technical capability adjectival ratings were blue/outstanding, purple/good, green/acceptable, yellow/marginal or red/unacceptable. RFP at 188. The technical risk ratings were low, moderate or high. RFP at 190-191.

² The concerns raised by the evaluators were: (1) The experience cited in Aleut's proposal to demonstrate its capability to maintain the Trident Wharf demineralized water system did not actually demonstrate the firm's capability to maintain the facility as required by PWS § 1.10.4; (2) Aleut proposed personnel with skill sets that did not appear to meet the requirements necessary to perform minor ship repairs, as required by PWS § 1.10.3; (3) Aleut's proposed work control supervisor, NOTU port/wharf supervisor and engineer did not have the appropriate certification and training to perform crane management and operations, operation support, maintenance support, records keeping duties, certifying official duties, training, and corrosion control, as required by PWS § 1.10.8; and (4) Aleut's proposal made reference to providing port services to an airfield and hangar, even though no airfield or hangar existed at the NOTU facility. AR, Tab 15, Aleut's Initial Technical Evaluation Report, at 21-24.

We sustained the protest, concluding that the agency unreasonably eliminated the assigned deficiency. See ASRC Comms., Ltd., B-412093, B-412093.2, Dec. 23, 2015, 2016 CPD ¶ 36. Specifically, we concluded that ASRC was correct that three of the four concerns identified by the evaluators in Aleut’s initial proposal remained in its FPR.³ Id. at 4-7. We recommended that the agency reevaluate proposals in a manner consistent with our decision (or, alternatively, reopen discussions and request revised proposals before performing its reevaluation), determine whether Aleut was eligible for award and either affirm its initial award decision or make a new source selection decision based on that reevaluation.

In response to our decision, the Air Force reevaluated Aleut’s proposal,⁴ which resulted in the following ratings to the ASRC and Aleut proposals:

Technical Capability and Risk		Aleut	ASRC
Program Management	Technical Rating	Good	Good
	Risk Rating	Low	Low
Operations and Maintenance	Technical Rating	Good	Outstanding
	Risk Rating	Low	Low
Mission Support	Technical Rating	Good	Acceptable
	Risk Rating	Low	Low
Engineering Support	Technical Rating	Acceptable	Outstanding
	Risk Rating	Low	Low
Proposed Total Evaluated Price		\$285,413,875	\$307,372,779
Most Probable Cost Total Evaluated Price		\$285,413,875	\$307,372,779

AR, Tab 41, Comparative Analysis Report (Re-Evaluation), at 11.

The evaluators provided additional explanation for concluding that Aleut’s proposal met the PWS § 1.10 requirements under the mission support subfactor. The evaluators also lowered Aleut’s risk rating under the operations and maintenance subfactor from moderate to low. AR, Tab 39, Proposal Analysis Report (Re-Evaluation), at 59, 66. On the basis of these evaluation results, the agency again made award to Aleut. The source selection authority (SSA) noted that, although Aleut’s proposal received a weakness in the operations and maintenance subfactor based on the water distribution system operations and maintenance approach, the associated risk did not rise above a low rating. AR, Tab 42, SSDD (Re-Evaluation),

³ In its FPR, Aleut deleted references to the non-existent airfield and hangar at the NOTU facility, the fourth concern identified by the agency evaluators.

⁴ The Air Force did not obtain revised proposals.

at 4. The SSA concluded that ASRC's higher rated proposal did not merit the cost premium. Id. at 5. After receiving a debriefing, ASRC filed the instant protest.

DISCUSSION

ASRC argues that the Air Force again miscalculated Aleut's proposal under the mission support subfactor. ASRC also argues that the agency miscalculated Aleut's proposal under the operations and maintenance subfactor. As discussed below, we sustain ASRC's challenge to the agency's evaluation of Aleut's proposal under the mission support subfactor and deny the remainder of ASRC's protest.

Mission Support

ASRC argues that the Air Force's reevaluation of Aleut's proposal under the mission support subfactor is unreasonable because the three areas of concern that formed the basis of the deficiency--involving training and certifications, minor ship repairs, and the de-mineralized water system--remain. ASRC maintains that, as the Air Force did not conduct discussions and obtain revised proposals after our Office sustained its previous protest, the agency reasonably could not find that Aleut's proposal met the solicitation's requirements with respect to the three identified areas of concern.

In reviewing an agency's evaluation of proposals, we examine the record to determine whether the agency's evaluation was reasonable and in accordance with the RFP's evaluation criteria, along with applicable procurement statutes and regulations. Cherry Rd. Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

Training and certifications

ASRC maintains that the Air Force unreasonably determined that Aleut's proposal addressed the requirement to provide personnel with the required training and certifications, as well as training and certification programs for various crane personnel in accordance with NAVFAC P-307 (PWS § 1.10.8.6).⁵ Protest at 10. ASRC further argues that Aleut's proposal simply repeats the PWS requirement without identifying the personnel that it will provide, or how Aleut will provide the training. ASRC Comments at 6-7.

The Air Force states that Aleut's identification of the required certifications and staff proposed to have those certifications was an acceptable approach to meeting the

⁵ NAVFAC P-307 is a Naval Facilities Engineering Command management of weight handling equipment directive that provides for certification of equipment and sets requirements for training personnel.

requirements of PWS § 1.10.8.6. The agency further states that Table 5 of Aleut's proposal included the appropriate certifications and training qualifications for all personnel associated with providing crane management services, including the proposed work control supervisor (which the agency asserts is also the ordnance manager), the port/wharf supervisor, and the engineer. AR Legal Memorandum at 8.

The record shows that the Air Force's reliance on Table 5 of Aleut's proposal is unreasonable. Table 5, which is titled "Team Aleut Skill and Staffing Level Mix" contains three columns that include information on: (1) labor category, full-time equivalents, and the responsibilities assigned to that labor category by PWS paragraph; (2) an explanation of the skill mix and staffing approach; and (3) certification and training requirements. While Table 5 lists the certification and training requirements, it does not identify whether or not the individuals proposed for the labor categories meet these qualifications. For example, for the work control supervisor, the table lists "n/a" for certifications and lists training on the Air Force's automated work management system, Maximo, as the only required training. AR, Tab 24, Aleut's Final Proposal, at 29. Moreover, we find nothing in Aleut's proposal to support the agency's assertion that the port/wharf supervisor and the ordnance supervisor are the same individual. In comparison, the narrative, supported by Figure 5, states that Mr. [A], the Mission System Operations & Maintenance Division Manager, would be cross-utilized as the Ordnance Manager. See id. at 20, 22.

For the port/wharf supervisor, under the heading for certification and training requirements, Table 5 lists NAVFAC P-307, Chief of Naval Operations 5090.1, and other required training, but again does not state that the proposed individuals meet the qualifications for the position. Id. at 30. Only for the engineer does Aleut's proposal state that the proposed individual actually has the required certifications. In Table 14, Aleut proposed the engineer as the certifying official required by PWS § 1.10.8.5, noting that "Team Aleut will designate a qualified/certified [Deleted] Official (currently the [Deleted]) to oversee the management and administration of the program in the areas of instructing, examining and certification of crane operators." Id. at 78.

With regard to ASRC's assertions that Aleut did not demonstrate how it would meet the requirements of PWS § 1.10.8.6 to provide training and certification programs for all crane personnel, the agency states that Aleut's identification of the need for appropriate training and certifications was sufficient to be compliant with the RFP and constituted an acceptable approach to the PWS section in question. The Air Force further states that the RFP did not require the offeror to provide a copy of its training program, but rather to comply with RFP § L.2.1.1.2, which required offerors to provide a listing of personnel certifications and personnel training requirements. AR Legal Memorandum at 8-9.

We agree with the protester that the Air Force unreasonably determined that Aleut's proposal met the requirements of PWS § 1.10.8.6. Read as a whole, the RFP advised offerors that proposals would be evaluated under the mission support factor for demonstrating the ability to, among other things, provide training and certification programs for all crane operators, crane inspector, crane mechanics, crane electrician, load test director, and certifying official in accordance with NAVFAC P-307. See RFP at 190, 231. Here, Table 5 of Aleut's proposal states:

Provide training and certification programs for all crane operators, crane inspector, crane mechanics, crane electrician, load test director and certifying official IAW [in accordance with] NAVFAC P-307. This includes ordnance certification IAW NAVFAC P-307, PPE, Overhead Bridge Crane Safety, Hydra-Set Training.

AR, Tab 24, Aleut's Final Proposal, at 30. As we stated in our prior decision:

[T]he offeror was required to provide training and certification programs for all crane operators, crane inspectors, crane mechanics, crane electricians, load test directors and certifying officials. Simply stated, nothing in the narrative references relied on by the agency in responding to the protest demonstrates that Aleut's proposed work control supervisor, port/wharf supervisor, or engineer possesses the necessary training or certifications themselves, and nothing in the narrative describes **how** Aleut will provide the training (other than ordnance handling training) required by the PWS to its applicable personnel. (Emphasis added.)

ASRC Comms., Ltd., supra, at 7. While an agency reasonably may come to a different conclusion in reevaluating proposals, see IAP World Servs., Inc., infra, our review of the record shows that there was no reasonable basis for the agency to have concluded that this concern was resolved. Moreover, the Air Force erroneously relies on RFP section L.2.1.1.2 to support its position as to the propriety of accepting lists of certifications and training requirements to meet the requirements of PWS § 1.10.8, as section L.2.1.1.2 provides instructions for the program management subfactor, not the mission support subfactor. See id. at 175.

Based on the record before us, we cannot determine the impact that the awardee's failure to provide an approach to provide personnel with the required training and certifications and training and certification programs for various crane personnel in accordance with the solicitation would have been on the awardee's proposal or on the agency's tradeoff decision. We therefore conclude that ASRC was prejudiced by the flawed evaluation and sustain this basis of protest. See, e.g., Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 6.

Minor ship repairs

With respect to the issue relating to Aleut's proposal of personnel with skill sets necessary to perform minor ship repairs (PWS § 1.10.3), ASRC argues that Aleut's proposed personnel lack the skills necessary to perform all of the work--specifically carpentry and metal work--required under the PWS. Protest at 9.

The fact that a reevaluation varies, or does not vary, from an original evaluation does not constitute evidence that the reevaluation was unreasonable. It is implicit that a reevaluation could result in different findings or conclusions. IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4. The overriding concern for our Office's review is not whether the evaluation results are consistent with the earlier evaluation results, but whether they reasonably reflect the relative merit of the offers. Spectrum Comm., Inc., B-412395.2, Mar. 4, 2016, 2016 CPD ¶ 82 at 7.

The Air Force states that it relied on Tables 14 and 5, as well as Figure 5, of Aleut's proposal to determine that the requirements of PWS § 1.10.3 were met. AR, Tab 39, Proposal Analysis Report (Re-Eval.), at 64; AR Legal Memorandum at 16. Table 14 proposed using an [Deleted], and a [Deleted] to meet the requirements of PWS § 1.10.3, and stated that additional support could be made available within the firm's [Deleted] or from its subcontractor's reach-back capabilities. The evaluators concluded that Figure 5, which identified Aleut's corporate support services, showed that Aleut's [Deleted] could provide the personnel--specifically sheet metal workers and carpenters --to perform minor ship repairs. See AR Legal Memorandum at 16-17; AR, Tab 44, Decl. of Technical Evaluator Mr. G, at 3-4.

Based on the record before us, we conclude that the Air Force reasonably found Aleut's proposal to have met the requirement. With respect to PWS § 1.10.3, the RFP required offerors to demonstrate the ability to provide minor ship repairs including minor electrical, metal or carpentry work not associated with vessel structural integrity or seaworthiness. See RFP at 190, 230. The protester does not dispute that the awardee's proposal demonstrated in Table 14 that it proposed personnel skilled in minor electrical work, based on job titles. Table 14 also referenced Aleut's [Deleted] as a source of additional support. AR, Tab 24, Aleut's FPR, at 77. Thus the evaluators reasonably looked to Figure 5, which listed staffing for the various [Deleted]. As noted above, Figure 5 included a carpenter and a sheet metal worker under the [Deleted]. Although ASRC contends that the RFP prohibited the agency from looking to other sections of Aleut's proposal to determine whether Aleut met the solicitation requirements, we see nothing in the RFP that would preclude the agency from doing so. In the absence of solicitation language expressly precluding the consideration of certain proposal information, an agency properly may evaluate a proposal by reading it as a whole. See Vinculum Solutions, Inc., B-406760, B-406760.2, Aug. 22, 2012, 2012 CPD ¶ 249 at 6.

De-mineralized water system

With respect to the issue of Aleut's ability to meet the requirements of PWS § 1.10.4, ASRC argues that Aleut's proposal failed to provide an approach to maintaining the Trident Wharf de-mineralized water system. Protest at 9-10. The protester asserts that Aleut's use of a checklist to perform pre-arrival inspections does not explain how Aleut will actually maintain the water system. Comments at 5.

The record shows that the source selection evaluation board (SSEB) concluded that Aleut's use of checklists for all required systems, including the demineralized water system, was an acceptable approach to maintaining the demineralized water system. The SSEB primarily relied on Table 14 of Aleut's proposal as well as narrative generally addressing the requirements of PWS § 1.10, which stated that it would use detailed pre-arrival inspections, checklists, and sampling of the demineralized water system for pH, resistivity, conductivity, and other features. AR, Tab 39, Proposal Analysis Report (Re-Eval.), at 63-64. One evaluator explains that Aleut's proposed use of checklists can reasonably be accepted as a maintenance approach because checklists are a key component of ensuring operational readiness and will identify maintenance needs. AR, Tab 44, Decl. of Technical Evaluator Mr. G, at 5. Although the protester maintains that the awardee's proposed use of checklists does not constitute an approach as required by the solicitation, the protester's disagreement with the agency's judgment does not render that judgment unreasonable. Rome Research Corp., B-291162, Nov. 20, 2002, 2002 CPD ¶ 209 at 4.

Operations and Maintenance

ASRC argues that the Air Force unreasonably rated Aleut's proposal as good and lowered Aleut's risk rating under the operations and maintenance subfactor. ASRC maintains that Aleut's proposed [Deleted] flushing of the water mains will not meet Florida water quality standards, and that Aleut's proposed long range sustainment plans are inadequate, and therefore Aleut's proposal failed to demonstrate an adequate approach or understanding of the requirement. Protest at 13-16; ASRC's Comments at 8-10.

Under the operations and maintenance subfactor, the RFP required offerors to provide a proposed approach for operating and maintaining large utility distribution systems, including water, which complies with PWS § 1.4. RFP at 189. The PWS section in question required offerors to provide all labor and materials required to operate and maintain installation water distribution systems in accordance with specific Air Force instructions and the Florida Administrative Code. The offerors also were required, in relevant part, to develop and implement a flushing program in accordance with an Air Force instruction, and optimize the flushing plan to achieve the minimum amount of water needing to be discharged to achieve water quality standards. RFP at 211. The RFP required offerors to provide an approach to

sustainment and improvement of the power, water and wastewater systems that complies with PWS § 1.4, and more specifically to develop, prioritize, submit, and program long-range project plans for all facilities, systems, equipment, and utilities. RFP at 175, 224.

The record shows that in reevaluating Aleut's proposal, the evaluators concluded Aleut's proposed [Deleted] flushing of water mains met the minimum requirements, but recognized that the approach may not achieve the minimum amount of water needing to be discharged to maintain drinking water quality. As a result, the SSEB assigned a weakness to Aleut's proposal under the subfactor. AR, Tab 39, Proposal Analysis Report (Re-Eval.), at 62.

With respect to the long range sustainment planning, Aleut proposed that the supervisors of its Infrastructure O&M Division's utilities and mechanical work centers would work closely with Aleut's Installation Engineering division to provide input based on technicians' feedback on the condition and life expectancy of utility systems to update the long-range plan. The agency concluded that this was an adequate approach because it reflected an understanding of the necessity of having the people responsible for day-to-day operations provide information to their engineering counterparts. The Air Force also states that, since the PWS requires coordination with government subject matter experts, a normal amount of government oversight would ensure that each utility system is addressed in the contractor's plan, and that there was no potential impact to cost, schedule or performance based on the awardee's approach.

The SSEB lowered the risk rating from moderate to low after determining that the possibility of a service disruption caused by Aleut's proposed approach was minimal. AR, Tab 39, Proposal Analysis Report (Re-Eval.), at 62. One evaluator analyzed the risk posed by Aleut's approach to water main flushing, and concluded, based on historical information on water outages, that the probability of an outage from flushing the water mains was less than 1 percent. The evaluator also concluded that if Aleut's approach caused a problem with potable water, any outage would last 48 hours, and the cost of providing drinking water would be comparatively minimal. Additionally, the SSEB concluded that any failure to implement an optimized plan for flushing the water mains would not disrupt the availability of water to support a launch mission. Contracting Officer's Statement of Facts at 26-27. Based on the agency's explanation, we find no basis to question the agency's judgment with regard to the adjectival rating or risk level.

In light of the foregoing discussion, we sustain ASRC's protest in part, and deny it in part.

RECOMMENDATION

We recommend that the agency reevaluate the Aleut proposal in a manner that is consistent with the discussion above (or, alternatively, reopen discussions and request revised proposals before reevaluating). Should the agency conclude that the Aleut proposal is unacceptable (or not the best value) based on that reevaluation, we further recommend that the agency terminate the contract awarded to Aleut and make a new source selection decision. Finally, we recommend that the agency reimburse ASRC the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel