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Decision

Matter of: U S Information Technologies Corporation

File: B-404357; B-404357.2

Date: February 2, 2011

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DIGEST

1. In a procurement conducted pursuant to Federal Supply Schedule procedures, an agency, when ordering services priced at hourly rates and when a statement of work is included, is required to consider the level of effort and the mix of labor offered to perform a specific task being ordered and determine that the total price is reasonable.

2. Protest of an agency evaluation of the awardee's past performance is sustained, where the solicitation provided for the evaluation of projects that were similar in scope and complexity, and there is no explanation in the record or in response to the protest explaining why the awardee's smaller-value past performance projects were similar in scope and complexity.

3. Protest is sustained in a Federal Supply Schedule procurement that provided for issuance of a task order on a best value basis, where the agency failed to assess the vendors' differing strengths or otherwise explain why the quotations were technically equal.

DECISION

U.S. Information Technologies Corporation (USIT), of Chantilly, Virginia, protests the issuance of a task order to 5D Information Management, Inc., of Braintree, Massachusetts, under request for quotations (RFQ) No. 452182, issued by the

Department of Defense, Defense Logistics Agency (DLA), for information technology services supporting and sustaining DLA's "Fusion Center."¹ USIT challenges the agency's evaluation of proposals and selection decision.

We sustain the protest.

BACKGROUND

The RFQ, which was issued pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 procedures, sought "proposals" from vendors holding Federal Supply Schedule (FSS) contracts under Schedule 70, Information Technology.² The solicitation included a detailed performance work statement (PWS), which identified various design, analysis, support, and sustainment tasks the contractor would perform.³ See RFQ amend. 3, PWS. In this regard, the RFQ provided that vendors, in order to provide a "total solution," would be required to enter into a teaming arrangement with other FSS contractors to provide all of the necessary sustainment services for the Fusion Center. RFQ § 1.3.

Vendors were informed that the task order would be issued on a best value basis, considering price and the following evaluation factors (listed in descending order of importance): technical solution, management approach, key personnel/experience, quality control approach, and past performance. RFQ § 3.2. The RFQ stated that the non-price factors were significantly more important than price, but that price would become the "major consideration" between quotations found to be relatively technically equal. RFQ § 3.1.

With regard to the technical solution factor, the RFQ provided for the evaluation of the vendor's overall approach, including approach to staffing and work breakdown

¹ The Fusion Center provides an online environment, in which the agency's operational and performance data is integrated, analyzed and presented for DLA's decision-makers. See RFQ amend. 3, Performance Work Statement, § 2.1; Agency Report (AR), Tab 19, Contract Negotiation Memorandum, at 1.

² Although the solicitation is a RFQ, which provides for the issuance of a task order to the successful vendor, the solicitation, and the parties, describe the vendors' quotations as "proposals."

³ DLA states that there was an existing contract (with a less extensive scope of work than this procurement) for technical support of the Fusion Center. The agency's original intention for this procurement was to replace the existing contract with the task order at issue here, but the agency revised its acquisition strategy to leave the existing contract in place, and supplement with this task order. As a result, amendment 3, among other things, deleted technical support tasks from the PWS. See AR at 7; Tab 19, Contract Negotiation Memorandum, at 1-2.

structure. RFQ § 3.2.1.1. Vendors were instructed to address the level of effort required to perform the PWS work, and to identify at a minimum the labor categories and labor hours to be used in performance of the PWS tasks. Id. § 4.2.2.1. With regard to the key personnel/experience evaluation factor, vendors were informed that the agency would evaluate the qualifications and experience of the vendor's proposed task manager.⁴ RFQ amend. 3, § 3.2.1.3. Vendors were instructed to provide a resume for the task manager that demonstrated recent and relevant experience for similar projects. RFQ § 4.2.2.3. Vendors were also informed that, under this factor, the agency would assess whether the vendor's corporate experience demonstrated the ability to manage and perform tasks similar in size and scope to the work solicited here. RFQ amend. 3, § 3.2.1.3.

With regard to past performance, the agency anticipated evaluating the quality of the vendor's relevant past performance, and success with projects similar in scope and complexity to the tasks identified in the PWS. RFQ amend. 3, § 3.2.1.5. Vendors were instructed to identify at least three projects performed within the past 5 years similar in scope and complexity to the tasks here, and to discuss similarities and differences between the PWS tasks and the vendor's past performance. RFQ § 4.2.3.

With regard to price, the RFQ provided that the vendors' quoted prices must be in accordance with the rates and labor categories established in the vendors' FSS contracts. Vendors were informed that the agency would evaluate, among other things, the vendors' quoted level of effort; the quoted pricing and discounts for all tasks for completeness, realism, and reasonableness; and the quoted total price for fairness and reasonableness. RFQ § 3.2.2. Vendors were instructed to provide detailed annual pricing information by task (based on the vendors' FSS pricing), describe any discounts from their FSS rates, and provide estimated annual labor hours per labor category. Vendors were also instructed to demonstrate the relationship of their pricing structure to their technical approach. RFQ § 4.2.4.1.

The agency received quotations from USIT and 5D, which were evaluated by the agency's technical evaluation panel (TEP). DLA communicated with both vendors regarding their quotations. AR, Tab 19, Contract Negotiation Memorandum, at 10. For example, the agency asked USIT to explain its plan for operating the call center, and requested that 5D revise its quotation to reflect the fact that the technical support tasks had been removed from the RFQ by amendment 3. See id., Tab 14, DLA Communication to 5D, Sept. 13, 2010. Both firms submitted revised quotations. 5D's revised quotation provided the same overall price and total labor hours as its initial quotation. To maintain its overall price and labor hours, 5D reallocated its

⁴ The task manager was to be the vendor's primary point of contact for all task order activities, and was required to provide "management of each task order to ensure that the task is performed efficiently, accurately, on time, and in compliance with the requirements." RFQ amend. 3, PWS, § 2.8.2.

technical support task labor hours and labor mix (along with the associated prices) to another PWS task, customer support. Compare 5D Price Quotation at 5-6, 8-9, with 5D Revised Price Quotation at 6, 9.

USIT's and 5D's revised quotations were evaluated as follows:⁵

	USIT	5D
Technical Solution	Acceptable	Acceptable
Management Approach	Acceptable	Acceptable
Key Personnel/Experience	Acceptable	Acceptable
Quality Control	Acceptable	Acceptable
Past Performance	Acceptable	Acceptable
Price	\$9,417,305	\$7,914,815

AR, Tab 16, Final Consensus Evaluation Summary for USIT; Tab 17, Final Consensus Evaluation Summary for 5D. The evaluators' adjectival ratings were supported by narrative discussions that identified each vendors' respective strengths under each factor. No weaknesses or deficiencies were identified in either vendor's quotation under any of the factors.

With regard to the evaluation of USIT's quotation under the technical solution evaluation factor, the TEP found that USIT demonstrated an understanding of the PWS requirements and that its approach was logical and well defined. AR, Tab 16, Final Consensus Evaluation Summary for USIT, at 1. The TEP also found, however, that these strengths did not elevate the quotation to highly acceptable. Id. With regard to the evaluation of USIT's quotation under the key personnel/experience factor, the agency found, among other things, that USIT's task manager demonstrated recent, relevant experience as the existing Fusion Center technical lead. Id. With regard to USIT's past performance, the agency found that the firm provided relevant past performance examples for each of its team members that demonstrated satisfactory customer approval. Id.

⁵ The TEP anticipated rating quotations under the non-price factors as exceptional, highly acceptable, acceptable, marginally acceptable, or not acceptable. See AR, Tab 18, TEP Evaluation Plan. An exceptional rating reflected a quotation that contained significant strengths that would allow DLA to exceed applicable objectives and performance parameters, with no weaknesses or deficiencies. A highly acceptable rating reflected a quotation that contained strengths that would allow DLA to meet or exceed applicable objectives and performance parameters, with no significant weaknesses and no deficiencies. An acceptable rating reflected a quotation that may contain some strengths and weaknesses.

The TEP also rated 5D's quotation acceptable under the technical solution factor. This rating reflected the evaluators' judgment that 5D's quotation contained numerous strengths, such as the vendor's experience in reverse engineering systems and system administration, and its comprehensive understanding of system lifecycle requirements. AR, Tab 17, Final Consensus Evaluation Summary for 5D, at 1. As with USIT, the TEP concluded that 5D's assessed strengths did not merit a rating higher than acceptable. Id. With regard to the key personnel/experience factor, the TEP found, among other things, that 5D's task manager had re-engineering experience that was relevant to the Fusion Center, especially regarding design, documentation, and processes. Id. With regard to past performance, the TEP found that 5D provided relevant past performance examples for each of its team members, that the feedback from former clients was positive, and that 5D demonstrated satisfactory customer approval. Id.

The contracting officer (CO), who was the source selection authority for this procurement, reviewed the TEP's evaluation of the two firms' quotations. The CO concluded that both vendors' quotations were equal in technical merit. AR, Tab 20, Selection Decision, at 15. In addition, the CO compared 5D's quoted price to the government estimate (noting that 5D's total price was within 8 percent of the government estimate) and concluded that 5D's quoted price was fair and reasonable "based on the existence of full and open competition, the fact that the [TEP] accepted the total labor hours, and the use of [FSS] pricing." AR, Tab 20, Selection Decision, at 12-13. The CO decided to issue the task order to 5D on the basis of that firm's lower price. Id. at 15-16.

This protest followed.⁶ 5D's performance of the task order has been stayed pending our decision in this matter. See AR, Tab 27, DLA Stop Work Order to 5D, Oct. 28, 2010.

⁶ DLA and 5D contend that USIT's protest was untimely. In this regard, DLA states that USIT filed its protest 22 days after receiving the agency's October 5 letter informing USIT that a \$7,914,816 task order had been issued to 5D and that USIT's rating was acceptable. AR, Tab 22, DLA Letter to USIT. DLA and 5D contend that USIT learned the protest bases from this letter. We disagree. This letter did not inform USIT as to the agency's basis for award (that is, that the vendors' quotations were found technically equal), how USIT's quotation was rated under the individual technical ratings, or how the agency evaluated the vendors' price quotations. We find that the firm learned the basis of protest from the agency's October 22 debriefing, and that its October 27 initial protest was timely filed.

DISCUSSION

The protester raises a number of objections to the agency's evaluation of proposals and selection decision. Among other things, the protester challenges DLA's determination that the awardee's price was reasonable. USIT also complains that DLA unreasonably determined that 5D's identified past performance was relevant. USIT further contends that DLA did not reasonably consider USIT's evaluated strengths in its selection decision. For the reasons discussed below, we sustain the protest.

DLA's Price Evaluation

With respect to USIT's challenge to the agency's evaluation of 5D's price, USIT complains that DLA relied upon a flawed independent government estimate in evaluating prices, because the government estimate (\$7,359,688) was overstated by approximately \$900,000 due to the inclusion of costs and labor hours associated with the technical support tasks that had been removed from the procurement by amendment 3.⁷ Protester's Comments at 9. USIT argues that 5D's quoted price should have been found to be approximately 22.5 percent higher than the government estimate (and not 8 percent higher) once the estimate was corrected to remove the hours and costs associated with the deleted technical support tasks. See Protester's Comments at 11; see also AR, Tab 20, Selection Decision, at 12. USIT also argues that the price evaluation was unreasonable because DLA did not evaluate 5D's reallocation of labor hours from the deleted technical support tasks to the customer support tasks in its revised quotation. Protester's Comments at 11; Protester's Supp. Comments at 5.

When an agency issues an RFQ to vendors holding FSS contracts for the delivery of services at hourly rates, and, as here, a statement of work is included, the ordering agency must evaluate the quotations received consistent with the stated evaluation criteria. FAR § 8.405-2(d). The FAR also requires the agency to consider the level of effort and the mix of labor proposed to perform the task being ordered, determine that the total price is reasonable, and document the agency's price reasonableness

⁷ The protester also contends that the government estimate should have had 6,750 fewer labor hours than the estimated 67,888 hours. Protester's Comments at 10. 5D's initial quotation included 6,768 hours priced at \$878,354 for the technical support tasks that were deleted by RFQ amendment 3. DLA concedes that the government estimate was not revised after the technical support tasks were removed from the RFQ. Supp. AR at 6-7.

determination. FAR § 8.405-2(d), (e); see also Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 9-10.⁸

In our view, the record here does not show that DLA's price evaluation was reasonable. As noted above, vendors were required to provide detailed pricing information, labor hours, and labor mix for each PWS task and to demonstrate the relationship between their pricing structure and their technical approach. See RFQ § 4.2.4.1. USIT and 5D both provided labor categories, corresponding labor rates, and hours by labor category for each task, as required by the RFQ. USIT and 5D apparently have very different approaches to performing the PWS tasks, given the dramatic differences in the vendors' quoted labor hours and labor mix for the PWS tasks. For example, with respect to the customer support task (to which 5D reallocated its labor hours from the deleted technical support task), USIT quoted a total of [DELETED] hours at a price of \$2.4 million, and 5D quoted a total of [DELETED] hours at a price of \$4.5 million.

At best, the record here indicates that the vendors' quoted labor hours were reviewed by the TEP, and found "sufficient to complete the tasks." See, e.g., AR, Tab 17, Final Consensus Evaluation Summary for 5D, at 1. As noted above, the CO also compared 5D's quoted price to the government estimate (noting that 5D's total price was within 8 percent of the government estimate) and concluded that 5D's quoted price was fair and reasonable "based on the existence of full and open competition, the fact that the [TEP] accepted the total labor hours, and the use of [FSS] pricing." AR, Tab 20, Selection Decision, at 12-13.

There is no documentation in the record demonstrating that the TEP or the CO evaluated 5D's, or USIT's, labor mix to perform the PWS tasks, or performed the analysis required by FAR § 8.405-2(d) to determine whether the labor mix proposed--albeit at fixed hourly rates--would result in a reasonable price for performance. Rather, the TEP's evaluation report and CO's selection decision merely state that the TEP found that the vendors' total labor hours were considered sufficient to perform

⁸ While the General Services Administration has already determined that the rates for services offered at hourly rates under FSS contracts are fair and reasonable (and, thus, ordering activities are generally not required to make a separate determination of fair and reasonable pricing), where a statement of work is required, the ordering agency must still perform a price evaluation to determine that the vendor's total price is reasonable. FAR §§ 8.404, 8.405-2(d). This regulatory requirement came after consideration of GAO audit report findings that reliance on labor rates alone did not provide agencies with a meaningful basis for assessing which vendor was providing the best and most cost-effective services. See 68 Fed. Reg. 19,294, 19,296 (Apr. 18, 2003); GAO, Contract Management: Not Following Procedures Undermines Best Pricing Under GSA's Schedule, GAO-01-125, Nov. 28, 2000.

the PWS tasks.⁹ The record also lacks any analysis of 5D's reallocation of over 6,000 labor hours (at a price over \$878,000) from a task that had been deleted from the PWS to another task. There is also no explanation for why reallocating these hours to another PWS task was reasonable. Moreover, no such analysis or explanation has been provided in response to this protest. On this record, we cannot find a basis to uphold DLA's determination that the vendors' overall price (which is based upon the application of the vendors' FSS rates to their quoted labor hours for each labor category) was reasonable.¹⁰

Other Evaluation Issues

USIT also challenges DLA's evaluation of the vendors' quotations under the technical solutions, key personnel/experience, and past performance factors. In this regard, USIT complains that none of 5D's past performance references are relevant. Specifically, the protester asserts that 5D's identified past performance references are not similar in scope and complexity to the work at issue here.¹¹ USIT also complains that DLA, in determining that the vendors' quotations were technically equal, did not consider the strengths USIT offered by virtue of its role as a subcontractor under the prior contract. For example, USIT complains that DLA did not consider the protester's offer of the current Fusion Center task manager, or its specific corporate experience performing the PWS tasks.¹²

In reviewing protests of an agency's evaluation and source selection decision in procurements conducted under FSS procedures, we do not conduct a new

⁹ The record is also devoid of any documentation supporting the agency's determination that 5D's or USIT's total labor hours were reasonable to perform the PWS tasks.

¹⁰ USIT also complains that DLA did not advise the firm that the agency considered USIT's price to be prohibitively high. While the procedures of FAR part 15 governing contracting by negotiation do not govern competitive procurements under the FSS program, FAR § 8.404(a), exchanges that occur with vendors in a FAR subpart 8.4 procurement, like all other aspects of such a procurement, must be fair and equitable. See COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 5. There is no evidence in the record here that shows DLA considered USIT's quoted price to be unreasonably high.

¹¹ The size of a vendor's past performance projects is a proper consideration in determining whether the vendor has performed projects of similar scope and complexity. See Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 12.

¹² The protester states that it is the incumbent subcontractor and it has worked on the development of the Fusion Center for the past 10 years. Protest at 1.

evaluation or substitute our judgment for that of the agency but examine the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6; RVJ Int'l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5.

With respect to the agency's evaluation of 5D's past performance, the TEP states, without analysis or discussion, that 5D provided relevant past performance examples for itself and each teaming partner. See AR, Tab 17, Final Consensus Evaluation Summary for 5D, at 2. The RFQ required vendors to identify at least three projects performed within the past 5 years that were similar in scope and complexity and to discuss similarities and differences between the PWS tasks and the vendor's past performance. RFQ § 4.2.3. In its quotation, 5D identified nine past performance projects for its contractor team, but did not discuss similarities or differences between these projects and the PWS tasks. Two of these projects appear to be valued at \$5.5 million and \$5.25 million, and another two at \$2.8 million and \$2.25 million. The remaining projects appear to have values ranging from \$50,000 to \$1.5 million. See 5D Past Performance Quotation at 3-30. While two of these projects might reasonably be considered similar in size to the approximately \$8 million project here, there is no explanation in the record why the remaining projects--which are much smaller in value than the work solicited here--were considered relevant. As a result, we are unable to conclude that the agency reasonably found that 5D had identified relevant past performance, as required by the RFQ.¹³

Finally, the protester argues--in several ways--that the agency, in essence, ignored possible discriminators in the quotations that might have formed a valid basis for a cost technical tradeoff. For example, USIT contends that the agency failed to properly consider its specific experience at the Fusion Center, and its offer of the existing Fusion Center task manager.

Where, as here, a solicitation anticipates the use of a best value evaluation plan--as opposed to selection based on low price and technical acceptability--evaluation of quotations is not limited to determining whether a quotation is merely technically acceptable; rather, quotations should be further differentiated to distinguish their relative quality under each stated evaluation factor by considering the degree to which technically acceptable quotations exceed the stated minimum requirements or will better satisfy the agency's needs. See Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 5-6; see also The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8 (a best value procurement under FAR part 15). In fact, we have long

¹³ DLA did not substantively respond to the protester's arguments concerning 5D's past performance. Instead, the agency merely asserted that the protester's arguments were nothing more than disagreement with the agency's judgment.

stated that evaluation ratings should be merely guides for intelligent decision-making, see Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11, and that therefore evaluators and selection officials should reasonably consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing quotations, in a manner that is fair and equitable and consistent with the terms of the solicitation. See Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 24.

Here, the record shows that the TEP considered USIT's specific experience, and its offer of the existing Fusion Center task manager to be strengths in its quotation. The TEP also noted as a strength the awardee's similar experience and the offer of a task manager with relevant experience. Given the absence of an explanation in the record about why the differing strengths in the vendors' quotations did not reflect discriminators that should be considered in a cost/technical tradeoff, and the absence of any explanation about why--despite the assessed differing strengths--the vendors' quotations were otherwise technically equal, we find that DLA failed to evaluate the quotations in accordance with the RFQ's criteria.

The protest is sustained.

RECOMMENDATION

We recommend that DLA perform a new evaluation consistent with this decision, reopen negotiations with the vendors (if necessary), and make a new selection decision. If USIT's quotation is selected for issuance of the task order, the agency should terminate 5D's task order. We also recommend that the agency reimburse USIT for their reasonable costs of filing and pursuing the protests. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2010). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

Lynn H. Gibson
General Counsel