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Washington, DC 20548

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Decision

Matter of: Global Computer Enterprises, Inc.; Savantage Financial Services, Inc.

File: B-404597; B-404597.2; B-404597.3

Date: March 9, 2011

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Daniel J. Donohue, Esq., Walter A. I. Wilson, Esq., Claude P. Goddard, Esq., Steven A. Neeley, Jr., Esq., and Sarah M. Graves, Esq., Husch Blackwell LLP, for CACI, Inc.-Federal, the intervenor.

Charles K. Bucknor, Jr., Esq., Department of Homeland Security, for the agency. Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the award of an indefinite-delivery/indefinite-quantity contract is sustained where the agency knew, prior to award, that the agency's anticipated schedule for issuance of task orders was materially different from the assumptions set forth in the solicitation, upon which offerors were required to base their proposals.

2. Protest challenging the evaluation of the awardee's compliance with a mandatory solicitation requirement to propose an integrated financial management solution currently in use in the federal government is sustained, where the record does not show that the agency reasonably evaluated the awardee's proposal and solution demonstration with respect to this requirement.

DECISION

Global Computer Enterprises, Inc. (GCE), of Reston, Virginia, and Savantage Financial Services, Inc., of Rockville, Maryland, protest the award of a contract to CACI, Inc.-Federal, of Chantilly, Virginia, under request for proposals (RFP) No. HSHQDC-09-R-00001, issued by the Department of Homeland Security (DHS) to design and implement DHS's department-wide financial management system, known

as the Transformation and Systems Consolidation (TASC) program. GCE and Savantage argue that DHS awarded the contract to CACI despite knowing, prior to award, that the agency's requirements as set forth in the RFP had materially changed. GCE also argues that DHS unreasonably evaluated CACI's and GCE's technical proposals.

We sustain GCE's protest and dismiss Savantage's protest.

BACKGROUND

The RFP sought proposals to design and implement a solution for the TASC program, which is an "enterprise-wide initiative that will modernize, transform, and integrate the financial, acquisition, and asset management capabilities" of all DHS component agencies.¹ RFP attach. J-2, TASC Solution Process Overview, at 3. The TASC program is intended to address the risks arising from the use by DHS component agencies of disparate financial and asset management systems. The use of disparate, non-integrated systems amongst the DHS component agencies creates redundant infrastructure, support, and maintenance costs, and prevents DHS from achieving department-wide cost and efficiency benefits.²

As relevant here, the revised solicitation required offerors to propose, for all DHS component agencies, an "integrated solution that is currently fully operational in the

¹ The RFP identified 16 DHS component agencies to be migrated: Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, National Protection and Programs Directorate, Science and Technology Directorate, Office of Health Affairs, United States and Immigrant Status Indicator Technology, Office of the Secretary and Under Secretary for Management, United States Coast Guard, Transportation Security Administration, Domestic Nuclear Detection Office, U.S. Secret Service, Customs & Border Protection, Federal Emergency Management Agency, Federal Law Enforcement Training Center, Office of Intelligence and Analysis, and Office of Operations Coordination. RFP attach. J-2, TASC Solution Process Overview for TASC, at 5.

² For more information concerning the history of DHS's financial management system and the attempts to integrate DHS component agencies into a single system, see Financial Management Systems: DHS Faces Challenges to Successfully Consolidating Its Existing Disparate Systems, GAO-10-76, Dec. 4, 2009.

Federal government.”³ RFP § B.1. An integrated solution is one that links all of the various functions of a financial management system into a seamless system that can transfer data within that system, across all component agencies. RFP attach. J-1, Statement of Objectives (SOO), at 1-2; attach. J-2, TASC Solutions Process Overview, at 5-7. After the contractor successfully transitions the DHS component agencies to TASC, it will be responsible for providing services to support the operation, maintenance, and enhancement of TASC for the duration of the contract. RFP attach. J-1, SOO at 7.

The solicitation was issued on January 9, 2009, and anticipated the award of a single indefinite-quantity/indefinite-delivery (ID/IQ) contract for a base period of 5 years with five 1-year options. The RFP stated that task orders could be issued on a fixed-price, time-and-materials, labor-hour, cost-plus-fixed-fee, or cost-plus-award-fee basis. RFP § B.1.

The RFP stated that the competition would be conducted in two phases. The first phase required offerors to describe their proposed TASC solution, including whether the “proposed integrated solution is currently being used in a full production environment” in the federal government. RFP § L.6, Tab B. The solicitation stated that the agency would advise phase 1 offerors whether their proposed approaches were viable. RFP § M.1. All phase 1 offerors, regardless of whether the agency found their proposed approaches viable, were eligible to participate in phase 2 of the competition.

Phase 2 of the competition was to select the “best-value” offeror for award. The RFP advised offerors that their phase 2 proposals would be evaluated on the basis of price⁴, and the following six non-price factors: (1) technical solution, (2) technical

³ Prior to the issuance of the current RFP, Savantage filed a protest at the Court of Federal Claims (COFC), challenging the terms of an earlier version of the solicitation, which sought specific software products and solutions. See Savantage Fin. Servs., Inc. v. United States, 81 Fed.Cl. 300 (2008). The COFC sustained that protest, and in response, DHS issued the current solicitation. Savantage filed a protest against the current solicitation, arguing that the requirement for an integrated solution currently in use in the federal government was unduly restrictive of competition. This second protest was denied by the COFC, which concluded that DHS had a reasonable basis for this requirement. See Savantage Fin. Servs., Inc. v. United States, 86 Fed.Cl. 700 (2009), aff’d Savantage Fin. Servs., Inc. v. United States, 595 F.3d 1282 (Fed. Cir. 2010).

⁴ Although the RFP used the term “price,” the solicitation clearly anticipated issuance of both fixed-price and cost-reimbursement task orders. The RFP also provided for the evaluation of “accuracy, completeness, reasonableness, and realism,” and stated that the agency would use both cost and price analysis techniques. RFP § M.2.3.

approach, (3) management and change management approach, (4) corporate experience, (5) past performance, and (6) small business participation. RFP § M.2.2. As part of the technical solution evaluation factor, offerors were required to provide a practical demonstration of the capabilities of their proposed solution. RFP § M.2.2.1. The RFP stated that the first four non-price factors were of equal importance, and were more important than the equally weighted fifth and sixth factors. RFP § M.2. For purposes of award, the non-price factors were “significantly more important” than price. Id.

As relevant here, the offerors’ price proposals were required to include three parts: (1) time-and-materials and labor-hour rates for all labor categories; (2) TASC solution pricing data for estimated life cycle costs with regard to software licenses, hardware and hosting, implementation, and program management; and (3) a basis of estimate (BOE), which must “provide supporting documentation for pricing basis, allowances, assumptions, exclusions, cost risks and opportunities, and an explanation of any scope, schedule, quantities and historical knowledge as it relates to cost.” RFP § L.7.2, Tab C. Price proposals were to be submitted on the pricing templates contained in attachment J-5 to the RFP.

An offeror’s BOE was required to “be organized to correspond with the offeror’s [performance work statement]/[work breakdown structure] in response to the TASC Contract SOO (Attachment J-1).” Id. The RFP stated that BOEs must be based on the assumptions in the following implementation schedule:

Base Year 2 - 20% of DHS end users on-board

Base Year 3 - 40% of DHS end users on-board

Base Year 4 - 60% of DHS end users on-board

Base Year 5 - 80% of DHS end users on-board

Option Year 1 - 100% of DHS end users on-board

Id.

The agency addressed an offeror’s question regarding these assumptions in the question and answer (Q&A) portion of RFP amendment No. 2, as follows:

Q: It appears the Government wants to migrate 20% of DHS users each year per the pricing assumption. Are bidders required to submit an implementation plan for Phase II that also migrates 20% of the users each year? If so, will the Government disclose what agency DHS will be focusing on first?

A: RFP Section L.7.2 – Tab C provides assumptions for an

implementation schedule offerors must use in proposal preparation. RFP Attachment J-5, Pricing Templates--Contract Lifecycle Cost Summary Tab, repeats these assumptions. Offerors are encouraged to propose the best solution to meet the TASC RFP objectives. The assumptions in the implementation schedule provide a standard for proposal evaluation purposes only. [These assumptions do] not represent any preference on the part of the government for a particular implementation schedule.

RFP amend. 2, Q&A No. 89.

The agency received phase 1 proposals from five offerors, including GCE, Savantage, and CACI. Agency Report (AR), Tab 29, Best Value Recommendation, at 1. DHS advised GCE, CACI, Savantage, and a fourth offeror that the agency was unable to determine the viability of their proposed solutions; the fifth offeror was advised that its proposed solution was non-viable. *Id.* The agency received two proposals, from GCE and CACI, for phase 2; Savantage did not submit a phase 2 proposal.

DHS evaluated GCE's and CACI's proposals, along with their solution demonstrations. The agency conducted discussions with each offeror, and requested revised proposals. The final evaluation of the offerors' proposals was prepared by the source selection advisory council (SSAC). The SSAC prepared a best-value recommendation report for the source selection authority (SSA), which contained the following ratings:⁵

	CACI	GCE
Technical Solution	Very Good	Good
Technical Approach	Very Good	Good
Management and Change Management Approach	Very Good	Good
Corporate Experience	Very Good	Good
Past Performance	Good	Acceptable
Small Business Plan	Good	Not applicable
PROPOSED PRICE	[\$deleted]	[\$deleted]
EVALUATED PRICE	[\$deleted]	[\$deleted]

⁵ The agency used the following ratings for the first four evaluation factors: outstanding, very good, good, marginal, and poor; for past performance, the agency used the following ratings: outstanding, good, acceptable, unsatisfactory, and neutral; for the small business factor, the agency used the following ratings: excellent, good, satisfactory, and unsatisfactory. AR, Tab 29, Best Value Recommendation, at 3.

AR, Tab 29, Best Value Recommendation, at 36.

The SSAC's best-value recommendation report found that "the CACI solution is clearly the technically superior offer." Id. at 37. The SSAC noted that CACI received higher ratings as compared to GCE under every evaluation factor, other than the small business plan.⁶ Id. Based on CACI's higher technical ratings and lower price as compared to GCE, the SSAC recommended award to CACI. The SSAC further stated that "[e]ven if an analysis of both offerors' non-price proposals found the two to be equal, CACI still offered a proposal that was approximately \$[deleted] million lower than GCE's proposal 'as proposed' and \$[deleted] million lower than GCE's proposal 'after adjustments' for realism." Id. The SSA accepted the SSAC's recommendation, and selected CACI for award on June 22, 2010. AR, Tab 31, Source Selection Decision (SSD), at 1. DHS, however, did not award the contract at that time.

On June 28, 2010, the Office of Management and Budget (OMB) issued guidance for executive branch agencies concerning financial services [information technology (IT)] projects, which "requires all [Chief Financial Officer] Act agencies to immediately halt the issuance of new task orders or new procurements for all financial systems projects pending review and approval from OMB." AR, Tab 44, OMB Memorandum Re: Immediate Review of Financial Systems IT Projects (June 28, 2010), at 1. The OMB memorandum stated that all financial system modernization projects with \$20 million or more in planned spending must be halted, pending an OMB review and approval for proceeding. Id. at 3. Agencies were instructed to submit reports to OMB concerning planned and ongoing financial system projects. Id. After initial approval by OMB, agencies would then be required to report on projects and task orders, and receive OMB approval to undertake additional efforts. Id. at 4; see AR, Tab 53, TASC Executive Steering Committee (ESC) Minutes, (July 28, 2010), at 3.

In July 2010, OMB recommended that DHS migrate "a large service Component with a critical business need that poses minimal risk." AR, Tab 53, TASC Steering Committee Meetings (July 27, 2010), at 3. On August 11, 2010, DHS selected the Federal Emergency Management Agency (FEMA) to be the first component agency to be migrated to TASC. AR, Tab 55, DHS TASC ESC Minutes (Aug. 11, 2010), at 3. Information provided in the RFP indicated that the number of FEMA end-users represents approximately 1.5 percent of total DHS financial service end-users. RFP § L.4.5.8; Agency Response to GAO Questions (Feb. 14, 2011), at 4. The record reflects that DHS expected the FEMA task order will take approximately 24 months to complete. Agency Response to GAO Questions (Feb. 14, 2011), at 2; AR, Tab 62,

⁶ As a small business offeror, GCE was not evaluated under this factor. AR, Tab 29, Best Value Recommendation, at 35.

TASC ESC Minutes (Nov. 18, 2010), Notional Milestone Schedule. The record also shows that DHS intends to follow OMB's recommendation to complete the single migration of FEMA before undertaking any additional migrations. AR, Tab 53, TASC ESC Minutes (July 28, 2010), at 3; see also Supp. AR at 15 n.19.

On November 18, OMB granted DHS approval to proceed with the TASC award. AR, Tab 47, OMB Approval Email. On November 19, DHS awarded the contract to CACI, with a contract ceiling of \$450 million. The agency provided a debriefing to GCE on November 24. These protests followed.

DISCUSSION

GCE and Savantage each argue that DHS evaluated proposals and awarded the contract to CACI under a competition based on assumptions set forth in the solicitation that were no longer valid at the time of award. In addition, GCE argues that the agency's evaluation of CACI's and GCE's technical proposals was flawed. For the reasons discussed below, we sustain GCE's protest. We also find that Savantage is not an interested party and dismiss its protest.

Savantage's Protest

Savantage argues that the agency's award to CACI was based on a scope of work that was materially reduced as compared to the scope of work anticipated under the solicitation. Although, as discussed below, we sustain GCE's protest concerning essentially the same issue, Savantage does not demonstrate that it is an interested party eligible to challenge the award to CACI.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2006), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2010). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id.

Here, Savantage does not dispute the agency's assertion that Savantage cannot meet the requirement to provide an integrated financial solution currently in use in the federal government; thus Savantage is ineligible for award under the RFP. See Savantage Response to Agency Request to Dismiss, at 4. Even though we find, as discussed below, that the award to CACI was improper because it was based on a scope of work materially different from that anticipated under the solicitation, Savantage is not in line for award. In this regard, GCE, and not Savantage, would be in line for award because there is no dispute in the record that GCE meets the

“currently operational” requirement.⁷ See DynCorp Int’l LLC, B-294232, B-294232.2, Sept. 14, 2004, 2004 CPD ¶ 187 at 9-10. We dismiss Savantage’s protest. We next turn to the GCE’s protest arguments.

Changed Scope of Agency Requirements

GCE argues that DHS’s award to CACI was improper because the agency knew, prior to award, that its intended approach to the TASC migration would depart from the assumptions set forth in the solicitation upon which offerors were required to submit their proposals. In this regard, GCE argues that the agency’s announced approach for the FEMA migration departs from the solicitation’s assumption that 20 percent of all DHS end-users would be migrated by the end of the second year of the contract. Moreover, GCE argues that the agency’s approach to the FEMA migration was inconsistent with the RFP, which contemplated multiple, simultaneous migrations of DHS component agencies to TASC.

Where an agency’s requirements materially change after a solicitation has been issued, it must issue an amendment to notify offerors of the changed requirements and afford them an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.206(a); Murray-Benjamin Elec. Co., L.P., B-400255, Aug. 7, 2008, 2008 CPD ¶ 155 at 3-4. Amending the solicitation provides offerors an opportunity to submit revised proposals on a common basis that reflects the agency’s actual needs. Multimax, Inc., et al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 6. Where an agency’s estimates for the amount of work to be ordered under an ID/IQ contract changes significantly, prior to award, the agency must amend the solicitation and provide offerors an opportunity to submit revised proposals. Symetrics Indus., Inc., B-274246, Aug. 20, 1997, 97-2 CPD ¶ 59 at 6. For example, in Symetrics, our Office concluded that the agency should have amended a solicitation for an ID/IQ contract because although the solicitation initially estimated the agency would require 3,755 sequencers, the agency subsequently learned—prior to award—that the agency no longer had a requirement for 3,219 of the sequencers. Id. Similarly, in Northrop Grumman Info. Tech., Inc., et al., B-295526 et al., Mar. 16, 2005, 2005 CPD ¶ 45 at 13, our Office sustained a protest where the Department of the Treasury, prior to award, negotiated a memorandum of understanding with OMB and the General Services Administration that significantly changed the approach set forth in the solicitation and the FAR for determining whether to exercise contract options, making it significantly less likely that the options, which were part of the evaluation, would be exercised.

⁷ As discussed below, we conclude that the agency’s evaluation of whether CACI’s proposal met the “currently integrated requirement” was unreasonable. Nonetheless, in light of the fact that there is no challenge to the acceptability of GCE’s proposal under this requirement, GCE, and not Savantage would be in line for award.

As discussed above, the RFP stated that offerors were required to propose an integrated financial management, asset management and acquisition management solution for all DHS component agencies, and also propose for the transition of those component agencies to the new solution. RFP attach. J-1, SOO at 1-2; attach. J-2, TASC Solutions Process Overview, at 5-7. Section L of the RFP required offerors to base their price proposals on the assumptions set forth in the implementation plan in RFP section L, *i.e.*, 20 percent of end-users must be migrated by the end of base year 2, with an additional 20 percent each year through the end of option year 1. RFP § L.7.2, Tab C.

DHS received and evaluated offerors' proposals, and selected CACI for award on June 22, 2010. AR, Tab 31, SSD, at 1. Subsequent to this decision, however, OMB issued guidance that required agencies to halt ongoing financial services procurements, and obtain OMB's approval to proceed with those projects. *See* AR, Tab 44, OMB Memorandum Re: Immediate Review of Financial Systems IT Projects (June 28, 2010), at 1. In accordance with OMB's guidance, DHS selected FEMA to be the first component agency to be migrated to TASC, with the understanding that the task order would take 24 months to complete and that no other DHS agency would be migrated until FEMA's migration was complete.⁸ AR, Tab 53, TASC ESC Minutes (July 28, 2010), at 3; AR, Tab 62, TASC ESC Minutes (Nov. 18, 2010), Notional Milestone Schedule. Only then did DHS proceed to award.

GCE argues that DHS's decision to only migrate FEMA—which represents between 1.5 percent and 2.9 percent of DHS's end-users⁹—during the first 2 years of contract performance is a material change to the RFP's assumption that 20 percent of DHS's end-users should be migrated during that period of time. GCE contends that the agency required offerors to base their proposals on the assumptions in RFP section L, but knew, prior to award, that it would not issue task orders in a manner consistent with those assumptions.

We agree with GCE that the reduced anticipated scope of work for the first 2 years of contract performance occasioned by only migrating FEMA during that period represents a material departure from the assumptions set forth in the solicitation. In

⁸ DHS states that the proposed FEMA task order has not been issued, and is suspended until the resolution of this protest. Agency Response to GAO Questions, (Feb. 14, 2011) at 6.

⁹ Information provided in the RFP indicated that the number of FEMA end-users represents approximately 1.5 percent of total DHS users. In its response to the protest, however, the agency now contends that there may be more FEMA end-users, representing approximately 2.9 percent of all DHS end-users. Agency Response to GAO Questions (Feb. 14, 2011) at 4.

this regard, the agency acknowledges that the FEMA task order will require migrating end-users who represent between 1.5 percent and 2.9 percent of all DHS end-users. Agency Response to GAO Questions (Feb. 14, 2011), at 1-2. Further, the agency acknowledges that if FEMA is the only agency component migrated during that period, the 20 percent assumption set forth in the solicitation would not be met.¹⁰ Id.

DHS argues, however, that the assumptions set forth in section L should not have been understood by offerors to reflect the agency's actual requirements for the migration of component agencies. We disagree. The RFP required offerors to base their proposals on the assumptions set forth in the implementation plan in RFP section L, i.e., that 20 percent of end-users must be migrated by the end of the second base year, with an additional 20 percent each year through the end of the first option year. Offerors were required to use those assumptions in preparing their BOEs, which were required to "identify the solution price's limitations and assumptions." RFP § L.7.2, Tab C. The RFP further instructed that the "Solution Price and BOE shall be consistent with the offeror's proposed [performance work statement], [contract work breakdown structure] and data migration plan, and should include labor categories and hours by [work breakdown structure] element, for the base period and all option periods." Id.

In support of its position, DHS references language contained in the RFP pricing templates, which stated that "the assumed implementation schedule . . . was

¹⁰ During the course of this protest, the agency asserted that the FEMA task order might only take 12 to 18 months, instead of 24 months, as the agency anticipated prior to award. For this reason, the agency contends that the FEMA task order might be completed in less time, and therefore the agency might be able to perform additional migrations that could bring the performance requirements more in line with the assumptions in section L of the RFP. Agency Response to GAO Questions (Feb. 14, 2011) at 1. Not only is this position inconsistent with the agency's prior position, the agency acknowledges that the duration of the FEMA task order depends on the completion of other contract work. In this regard, based on the agency's estimates of the likely duration of those task orders, it appears that completion of the FEMA task order would likely approach 24 months. See Agency Response to GAO Questions (Feb. 14, 2011) at 2; AR, Tab 62, TASC ESC Minutes (Nov. 18, 2010), Notional Milestone Schedule. DHS also argues that if the Coast Guard, which involves more than half of the overall DHS end-users, were the next agency migrated, the RFP section L assumption of migrating 60 percent of end-users by the end of year 4 could be satisfied. Agency Response to GAO Questions (Feb. 14, 2011) at 2-3. However, the agency does not state that it has actual plans to make the Coast Guard the second migration. In any event, the potential timing of the Coast Guard migration does not affect the fact that the FEMA task order will represent, at most, the migration of 2.9 percent of end users by the end of second contract year.

constructed to provide a standard for comparison purposes only.” RFP attach. J-5, Pricing Templates-Contract Lifecycle Cost Summary Tab. Similarly, the agency notes that Q&A No. 89 stated that “[t]he assumptions in the implementation schedule provide a standard for proposal evaluation purposes only.” RFP amend. 2, Q&A No. 89. The agency also references a statement contained in both Attachment J-5 and Q&A No. 89 that the “assumed implementation schedule . . . does not represent any preference on the part of the government for a particular implementation schedule.” The agency contends that because the solicitation did not commit the agency to any particular migration schedule, the approach of migrating only FEMA and no other DHS agency during the first 2 years of the contract does not represent a departure from the terms of the RFP. See AR at 9, 11, 18.

This argument has no merit. While the agency focuses on the “comparison purposes only” language in Attachment J-5, the agency also confirmed in this Q&A that “RFP Section L.7.2 – Tab C provides assumptions for an implementation schedule offerors must use in proposal preparation.” RFP amend. 2, Q&A No. 89 (emphasis added). Thus, the agency clearly advised offerors that the terms of the competition would be based on those assumptions.

Moreover, the agency’s statement that the assumptions did not “represent any preference on the part of the government for a particular implementation schedule” was in provided response to a question posed by an offeror in Q&A No. 89, “will the Government disclose what agencies DHS will be focusing on first?” We think it is reasonably understood that this statement refers to the order, rather than the pace of migration, *i.e.*, the anticipated number of end-users to be migrated. Thus, this statement provides no support for the agency’s argument that the assumptions in the RFP are immaterial for purposes of determining whether the agency’s requirements changed prior to award.

Additionally, DHS argues that the 20 percent assumptions in the RFP were “notional,” and were merely intended to provide offerors with a common basis for submitting proposals. The agency thus contends that the assumptions set forth in the ID/IQ contract did not commit the agency to provide any level of orders above a guaranteed minimum amount. For this reason, the agency contends, any variance from those assumptions in the agency’s issuance of task orders would not constitute a material change requiring reopening the competition.

We think that DHS’s arguments conflate the agency’s discretion to issue or not issue task orders during contract performance with its obligation to provide a meaningful basis to compare offerors’ proposals.¹¹ Although agencies have discretion in the

¹¹ Our Office has recognized that in the context of awarding an ID/IQ contract, the evaluation of cost or price often is difficult because of uncertainty regarding what ultimately will be procured through the issuance of task and delivery orders. See CW Gov’t Travel, Inc.-Recon.; CW Gov’t Travel, Inc. et al., B-295530.2 et al., July 25, (continued...)

issuance of orders under an ID/IQ contract, DHS's actions here relate to a pre-award change in its requirements. As discussed above, the agency required offerors to submit proposals based on a specific set of assumptions concerning the pace and volume of work to be performed. The agency then evaluated those proposals and selected CACI for award. Subsequent to that evaluation and award selection—but prior to the actual contract award—the agency's requirements for the pace and volume of work was reduced. Specifically, in response to OMB direction, DHS adopted a migration approach that was expected to take place over the first 2 years of the contract, and that required migration of a significantly smaller volume of end users as compared to the RFP assumptions upon which offerors were required to base their proposals. Thus, contrary to the agency's arguments, the material change arose here based on a pre-award change to the agency's requirements; the material change did not arise from the agency's exercise of its discretion to issue or not issue a task order during performance of an ID/IQ contract.

On this record, we think that DHS's proposed approach of migrating only FEMA over the course of a 24-month period is a material departure from the assumptions set forth in the RFP, upon which offerors were required to base their proposals, such that the agency was required to amend the solicitation and obtain revised proposals. See Symetrics, *supra*; Northrop Grumman Info. Tech., *supra*.

Moreover, the record evidences that the RFP could be reasonably read as contemplating that offerors would perform either multiple, simultaneous migrations of DHS component agencies, or, alternatively, serial migrations at a rapid pace in order to meet the assumptions set forth in section L of the RFP.¹² As GCE notes, the RFP anticipated migrating all DHS component agencies to an enterprise-wide, integrated system, and offerors were required to address their "proposed approach for managing multiple task orders simultaneously." See RFP § L.7.1. The agency also advised that there was no "preference on the part of the government for a

(...continued)

2005, 2005 CPD ¶ 139 at 4-5. Nonetheless, agencies must consider cost to the government in evaluating proposals, 41 U.S.C. § 253a(c)(1)(B) (2006), and while it is up to the agency to decide upon some appropriate and reasonable method for evaluating offerors prices, it may not use a method that produces a misleading result. See Bristol-Myers Squibb Co., B-294944.2, Jan. 18, 2005, 2005 CPD ¶ 16 at 4; AirTrak Travel et al., B-292101 *et al.*, June 30, 2003, 2003 CPD ¶ 117 at 22. The method chosen must include some reasonable basis for evaluating or comparing the relative costs of proposals. PlanetSpace, Inc., B-401016; B-401016.2, Apr. 22, 2009, 2009 CPD ¶ 103 at 15.

¹² Contrary to the GCE's contention, however, there was no express requirement under the RFP for offerors to perform multiple, simultaneous migrations of DHS component agencies.

particular implementation schedule,” and that offerors were free to propose migrations as they thought best. RFP amend. 2, Q&A No. 89. We note, however, that migrating 16 DHS components over the course of 6 years without any simultaneous migration efforts would require sequential migrations to be completed, on average, every 4.5 months. We also note that such a schedule stands in marked contrast to the 24-month schedule for the FEMA migration, which represents only 1.5 percent to 2.9 percent of DHS end-users. Thus, in our view, the solicitation invited offerors to propose migrations at a very different pace than DHS now envisions.¹³

In sum, because the solicitation required offerors to submit proposals based on the assumptions set forth in RFP section L, because the selection decision relied on the agency’s evaluation of the offerors proposed prices and technical solutions that were based on those assumptions, and because these assumptions were no longer valid at the time of award, we think that the agency’s award to CACI was improper. See Symetrics, supra; Northrop Grumman Info. Tech., supra. Because of the significant changes to the RFP assumption, the agency was required to amend the solicitation to reflect the agency’s revised requirements, and provide offerors with an opportunity to submit new proposals. See Symetrics, supra; Northrop Grumman Info. Tech., supra.

We further conclude that GCE was prejudiced by DHS’s failure to amend the solicitation. GCE contends that it would have taken a different approach to its price and technical approach had it not been required to assume that 20 percent of all end-users would be migrated by year 2 of the contract. GCE’s Comments at 22; see GCE Protest, exh. 4, Decl. of GCE Chief Strategy Officer, at 4-7. Because the work contemplated for the first 2 years is materially different from that indicated by the assumptions on which offerors were required to prepare their proposals, we think that there was a reasonable possibility that GCE was prejudiced because it did not have an opportunity to revise its proposed technical approach and costs. We sustain GCE’s protest on this basis.

¹³ Indeed, GCE’s proposal stated that it would perform multiple simultaneous migrations, and anticipated that it would migrate [deleted] DHS component agencies and begin the migration process for [deleted] additional agencies by the end of the second contract year. AR, Tab 24, GCE Revised Proposal, vol. 2, at 67. Similarly, CACI’s proposal indicated that the awardee would perform [deleted] simultaneous migrations that would result in the migration of [deleted] DHS component agencies within [deleted] years. AR, Tab 25, CACI Revised Proposal, at C-6/7. In addition, the record shows that the agency evaluated offerors’ proposed approaches to perform multiple, simultaneous migrations of DHS. In this regard, the agency concluded that CACI’s proposed approach merited a very good rating under the management and change management approach factor based on the awardee’s ability to “manage multiple, simultaneous task orders with a view across the entire organization.” AR, Tab 29, Best Value Recommendation, at 24.

Evaluation of CACI's Proposed Solution

Next, GCE argues that CACI did not meet the RFP's requirements to propose an "integrated solution that is currently fully operational in the Federal government." RFP § B-1; see also RFP attach. J-1, SOO, at 2. For the reasons discussed below, we think the record does not support the agency's conclusion that CACI's proposal met this solicitation requirement.

The RFP required offerors to demonstrate that their proposed solutions met the requirements of the SOO, which includes proposing an integrated solution that is currently fully operational in the Federal government. RFP § L.6, Tab B. Additionally, as relevant here, the RFP required offerors to provide a demonstration of their proposed solution, which was required to show that the solution met "the objectives and requirements contained in the solicitation," including the requirement that it was integrated and currently in use by the government. RFP § M.2.2.1; attach. J-1, SOO, at 2.

CACI's proposal stated that it was providing a solution that was "[b]ased on a proven, integrated capability that is currently operational at [deleted]." AR, Tab 14, CACI Initial Proposal, at B-1; see also Tab 25, CACI Revised Proposal, at B-26. CACI stated that "our solution relies on [deleted] to support the financial management, acquisition, and asset management lines of business (LoBs) within DHS." *Id.* The work at [deleted] was performed by CACI's proposed team member, [deleted].

GCE argues that the [deleted] financial solution identified in CACI's proposal was not integrated, as evidenced by the fact that [deleted] subsequently solicited proposals to achieve an integration of that system. See [deleted] Solicitation [deleted]. This solicitation was issued by [deleted] on [deleted]—after CACI submitted its proposal for TASC and performed its solution demonstration—and sought proposals to provide upgrades to [deleted]'s financial management solution, including the addition of [deleted] capabilities, and the integration of certain aspects of that solution that were not currently integrated. [deleted] Solicitation, Performance Work Statement, ¶¶ [deleted]. These issues represented "a long-standing audit finding regarding deficiencies in funds control at [deleted]." *Id.* ¶ [deleted].

DHS has not responded to GCE's arguments concerning the [deleted] procurement. Instead, the agency points to three areas of the record where CACI represented that the [deleted] solution was both integrated and currently operational. As discussed below, GCE argues, and we agree, that the record does not support DHS's conclusions concerning CACI's proposal.

First, DHS contends that CACI's proposal stated that it was proposing an integrated system currently in use by the government, and that the agency reasonably relied on the awardee's representations. The agency's initial evaluation noted that CACI had

stated that its TASC solution was based on a solution used by [deleted]. AR, Tab 20, CACI Initial Evaluation, at 17. The agency also noted, however, that “CACI states that it will integrate [deleted] using [service-oriented architecture (SOA)]. DHS anticipates a significant risk associated with building of this integration.” Id. During discussions, the agency asked CACI to address its concerns regarding the integration of [deleted] using SOA. AR, Tab 23, Discussion Letter to CACI (Feb. 24, 2010), at 2. The agency also asked CACI to address “the apparent conflict” between the offeror’s statement that it was offering a system that was currently operational, but that was also based on an integration that appears not yet to have been performed. Id. CACI responded to the discussion questions as follows:

Team CACI does not perceive these statements to be in conflict. As stated in Section B.1.7, we have integrated and supported [deleted] within [deleted] separate deployments for [deleted] different Federal agencies. In each case, we have improved upon the solution based on lessons learned, evolving policies and standards within the Federal environment, and customer driven enhancements.

* * * * *

Team CACI’s solution is based on the latest of these deployments currently running at the [deleted]. As with our prior implementations, our proposed solution for TASC includes a number of functional and technical improvements from that baseline which includes . . . as highlighted in this discussion item, a SOA-based integration infrastructure.

Specifically, based on our prior experience and understanding of the required integration points among these products, Team CACI has incorporated SOA-based integrations between [deleted] which were demonstrated within our solution on July 27-29, 2009.

AR, Tab 25, CACI Discussions Response, at 23. The agency concluded that CACI’s proposed solution met the integration requirements. AR, Tab 26, TEP Consensus Report, at 19.

GCE argues that the CACI’s response to DHS’s discussions questions confirms that CACI’s proposed solution was not integrated. Specifically, GCE notes that CACI’s response states that its proposed solution was “based on the latest of these deployments currently running at” [deleted], but that the system also “includes a number of functional and technical improvements from that baseline.” See AR, Tab 25, CACI Discussions Response, at 23. Moreover, even though DHS asked CACI to address “the apparent conflict”--between its representation that CACI had proposed the solution in use at [deleted] and its proposal to provide an “improvement” of an integration of the [deleted] applications using SOA--CACI’s response indicated that the SOA integration was part of the improvements to the [deleted] baseline. Id.

Finally, DHS's final evaluation of CACI's proposal found a significant risk based on the apparent lack of a currently produced integration between the [deleted] applications as follows:

CACI stated that the interface between [deleted] (required for CACI's [deleted] approach) was not currently in production; it is currently in the business requirements analysis phase and has not been built. This impact is significant on construction-in-progress, where the solution is dependent on a [deleted] implementation and configuration.

AR, Tab 29, Best Value Recommendation, at 20. On this record, we think that the agency's evaluation failed to reasonably recognize or address the apparent differences between the solution that the awardee stated was in use at [deleted], and the apparent improvements to that system that would be provided in its proposed TASC solution for DHS.

Next, DHS states that, during the solution demonstration, the contracting officer asked CACI to confirm whether the proposed integrated solution was currently operational in the government. In response, the agency was advised by CACI that the solution was integrated, specifically, that the [deleted] applications were integrated with the [deleted] applications. AR, Tab 15, CACI Solution Demonstration Q&A, Overview #5.

As discussed above, however, CACI's response to DHS's discussions response stated that the solution presented during the demonstration was based on the upgrades to the [deleted] baseline. Specifically, CACI stated that it "has incorporated SOA-based integrations between [deleted] which were demonstrated within our solution on July 27-29, 2009." AR, Tab 25, CACI Discussions Response, at 23. Additionally, in its revised proposal, CACI explained as follows:

During our demonstration preparation, Team CACI further expanded the [deleted] baseline to support a comprehensive set of . . . business processes that will sustain the needs of the entire DHS using a [Common Government-Wide Accounting Classification]-compliant line of accounting.

AR, Tab 25, CACI Revised Proposal, at B-7. Thus, here too the record indicated that DHS had not adequately or reasonably considered the apparent conflicts in CACI's proposal.

Finally, the agency states that its past performance evaluation confirmed that CACI's proposed subcontractor, [deleted], had provided an integrated financial solution at [deleted]. The agency stated the following in its past performance evaluation:

At [deleted], [deleted] indicated on its past performance statement that it has operated a fully integrated financial, asset and acquisition

system. This quality of [deleted]'s work was validated during a telephone interview with [deleted]. The system is comparable to the TASC program in scope and complexity, and reflects desirable performance that will assist in reducing the risk of unsuccessful contract performance.

AR, Tab 27, Past Performance Evaluation Team (PPET) Report, attach. 2, CACI Evaluation, at 18.

As noted by GCE, however, this reference merely stated that CACI's subcontractor had described its work as integrated. Further, the reference addressed only the quality of the performance, and did not clearly indicate that the [deleted] reference validated that the solution was integrated. In light of the other information in CACI's proposal and responses to discussions questions, we think that this reference did not provide an adequate basis for the agency to conclude that the [deleted] system, as operated by [deleted], was in fact integrated, and, more importantly, that the [deleted] solution was the same as the solution proposed by CACI for the TASC procurement.

In sum, we think that the record does not support the agency's conclusion that CACI proposed an integrated solution that was currently in use in the federal government. In light of CACI's multiple references to its improvement or modification of the solution in use at [deleted], we think the agency was on notice that there was significant doubt as to whether CACI met the integrated solution requirement. The record does not show, and the agency does not otherwise address, how DHS resolved these conflicting references.

We further conclude that GCE was prejudiced by this error because the protester states that had this requirement been relaxed, it would have proposed a different solution that was comprised of different elements in use at different government agencies, but which had not been fully integrated. Protest at 28-29. On this record, we sustain this basis for protest.

Evaluation of GCE's Technical Proposal

Finally, GCE argues that DHS unreasonably evaluated its technical proposal in a number of respects. Specifically, GCE was assessed significant weaknesses under the technical solution evaluation factor, based on DHS's conclusion that the protester had not adequately demonstrated the functionality of its proposed solution during its demonstration and in the video submitted in response to discussions questions. AR, Tab 29, Best Value Recommendation, at 9. In the selection decision recommendation, the agency concluded that GCE merited a "good" rating under this evaluation factor, but noted there were "significant weaknesses" related to its solution demonstration. Id. at 7-10.

GCE contends that the agency's assessment of significant weaknesses was unreasonable because its proposal in fact addressed several of the concerns identified by the agency. In its debriefing, GCE states that DHS identified 11 individual significant weaknesses concerning GCE's solution demonstration. With its protest, GCE submitted a declaration by its program manager, detailing where GCE's solution demonstration and discussions response video addressed each of the significant weaknesses identified in the debriefing. See Protest, exh. 16, Decl. of GCE Program Manager at 2-3.

In its response to GCE's protest, DHS concedes that it had failed to notice five references to features of GCE's solution that the agency had previously identified as missing from the protester's solution demonstration and video. The agency contends, however, that the agency's evaluation of GCE's solution demonstration in fact found 30 individual significant weaknesses, as well as numerous other weaknesses, arising from information missing from the demonstration and video. The agency thus argues that even if the five errors in the agency's evaluation were corrected, GCE's solution demonstration would still contain 25 significant weaknesses, which would justify the overall rating of "good."¹⁴ AR at 30; Supp. AR at 23-24. We give little weight to this assessment made in the heat of litigation. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Nevertheless, in view of our recommendation below, we need not discuss this admitted evaluation error further, and sustain GCE's protest on this basis.¹⁵

RECOMMENDATION

We recommend that the agency reevaluate its requirements with regard to the estimated scope of work covered by this solicitation, including the anticipated pace and scope of the scheduled migration for DHS component agencies. After doing so, the agency should revise the RFP to appropriately reflect its actual requirements and obtain revised proposals. We also recommend that DHS reevaluate its requirement that offerors propose an integrated solution that is currently in use in the federal government, and revise the RFP to address this issue if necessary. The agency should also conduct discussions with the offerors if appropriate, particularly in the evaluation areas discussed above, and reasonably evaluate the revised proposals in accordance with the solicitation requirements. If as a result of the agency's corrective action, CACI's proposal is not found to offer the best value to the government, the agency should terminate CACI's contract and make award to the offeror whose proposal is determined to represent the best value.

¹⁴ The agency does not clearly explain, and it is not otherwise apparent, how it calculated its total of 30 individual significant weaknesses.

¹⁵ GCE makes a number of other allegations, which we do not discuss here, none of which provide a basis to sustain its protest.

We also recommend that GCE be reimbursed the costs of filing and pursuing this protest, including reasonable attorney fees. 4 C.F.R. § 21.8(d)(1). GCE should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

GCE's protest is sustained and Savantage's protest is dismissed.

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General Counsel