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Decision

Matter of: APT Research, Inc.

File: B-409780

Date: August 8, 2014

JJ. Dale Gipson, Esq., Lanier Ford Shaver & Payne PC, for the protester.
John McCarthy, Esq., James G. Peyster, Esq., and Olivia L. Lynch, Esq., Crowell & Moring LLP, for a.i. solutions, Inc., the intervenor.
Scott N. Flesch, Esq., and CPT Tyler L. Davidson, Department of the Army, for the agency.
Charles W. Morrow, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's past performance is denied where the record shows that the evaluation was reasonable and consistent with the past performance evaluation criteria.
2. Protest challenging the agency's cost-realism evaluation is denied where the record shows that the agency reasonably considered the awardee's proposed costs.
3. Protest alleging that the agency conducted an unequal technical evaluation is denied where the record shows that the agency evaluated the offerors' proposals in an equal manner.

DECISION

APT Research, Inc., of Huntsville, Alabama, protests the issuance of a task order to a.i. solutions, Inc., of Lanham, Maryland, under request for task order proposals (RTOP) No. QS-02-13, issued by the Department of Defense, Missile Defense Agency (MDA), for advisory and assistance services.¹ The protester asserts that

¹ The value of this task order is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task
(continued...)

the agency's evaluation of its proposal was unreasonable and unequal, and asserts that the agency improperly evaluated the realism of the awardee's cost proposal.

We deny the protest.

BACKGROUND

MDA issued the RTOP on April 12, 2013, to three contractors holding multiple-award indefinite-delivery, indefinite-quantity (IDIQ) small business set-aside contracts with the agency.² Id. The RTOP contemplated the issuance of a cost-plus-fixed-fee task order for a one-year base period and a two-year option period. RTOP at 1. The purpose of the order was to provide advisory and assistance services to identify effective mission assurance requirements and products for MDA's Quality, Safety, and Mission Assurance Directorate to increase confidence in the agency's Ballistic Missile Defense System (BMDS) mission. RTOP, Performance Work Statement (PWS), at 1.³

The RTOP provided for award on a best-value basis considering five evaluation factors: technical, past performance, small business utilization past performance, cost, and small business utilization. RTOP at 10. The technical factor was comprised of four subfactors listed in descending order of importance: program management, labor mix and hours, key personnel, and task order transition. Id. at 12. For purposes of award, the technical factor was significantly more important than the other factors. Id. at 10. Past performance and small business utilization past performance were equal in weight and more important than cost and small business utilization. Cost and small business utilization were equal in importance. Id.

As relevant here, the RTOP stated that the agency's evaluation of the program management subfactor would consider, among other things, the extent to which an

(...continued)

orders under multiple-award indefinite-delivery, indefinite-quantity contracts.
10 U.S.C. § 2304c(e)(1)(B).

² In September 2010, MDA awarded three IDIQ contracts to: APT Research, Inc., a.i. solutions, Inc., and Bastion Technologies, Inc. Contracting Officer's Statement at 1.

³ The specific requirements of the RTOP included supporting the development, implementation, and execution of both BMDS and program level mission assurance policies, requirements, and functional areas such as: parts, materials and processes; configuration management; manufacturing; and supporting successful conduct of system demonstration activities, to include flight and ground tests at BMDS and program levels. RTOP, PWS, at 1.

offeror's proposal demonstrates that the contractor has fostered a stable workforce and maintained low employee turnover rates. Id. at 12. MDA's evaluation was to consider an offeror's employee retention program; awards and recognition programs; and education and training opportunities, to include any other professional development programs that foster a stable workforce and reduce employee turnover rates. Id. Under the labor mix and hours subfactor, the RTOP stated that the evaluation would consider an offeror's staffing, including the labor mix and hours proposed to accomplish the PWS requirements. Id.

With respect to past performance, the RTOP stated that the evaluation would consider the extent to which an offeror's proposal demonstrates the contractor's past performance in managing and executing similar efforts. Id. at 13. The agency's assessment of an offeror's past performance was to consider the recency, relevancy, and quality of each effort.⁴ The solicitation further stated that the agency would evaluate the prime contractor's record of contract compliance that included performance, costs, and schedule. Id. at 13.

Under the cost factor, the RTOP stated that the agency would evaluate an offeror's total cost and fee for reasonableness, realism, and completeness. Id. at 15. This analysis was to consist of an integrated assessment of an offeror's proposed labor rates (direct and indirect), labor hours/mix, proposed travel cost and/or other direct costs above the provided ceiling amount, and prime/subcontractor fees. Id. The RTOP explained that a cost realism analysis would be performed to determine whether the offeror's proposed costs were realistic, reflected a clear understanding of the requirements, and were consistent with the various elements of the offeror's technical volume. Id.

APT, the incumbent contractor, and a.i. solutions responded to the RTOP by the closing date of April 26.⁵ Contracting Officer's Statement at 2. The offerors' proposals were evaluated by a technical evaluation team, a past performance evaluator, and a cost/price evaluation team. After evaluating proposals, the teams provided their results to the task order decision authority (TODA). On November 7, MDA awarded the task order to a.i. solutions. APT protested the award to our Office on November 22. We dismissed the protest as academic on December 17, after the agency decided to take corrective action by reevaluating proposals and issuing a new source selection decision.

⁴ The RTOP stated that the agency's evaluation of recency, relevancy, and quality would be based upon past performance information sheets and past performance questionnaires about an offeror's prior efforts. RTOP at 13. The RTOP also stated that the government may utilize other available data, to include, but not limited to, MDA task order performance data, performance assessment reporting system information, and past performance information retrieval system data. Id. at 8.

⁵ Bastion submitted a "no bid" notice. Contracting Officer's Statement at 2.

As relevant here, the results of the agency’s corrective action reevaluation were as follows:

| | | a.i. solutions | APT |
|-----------------------------|-----------------|-------------------------------|------------------------------|
| Technical | | Excellent | Excellent |
| Program Management | | Exceptional | Excellent |
| Labor Mix and Hours | | Excellent | Satisfactory |
| Key Personnel | | Excellent | Excellent |
| Task Order Transition | | Excellent | Satisfactory |
| Past Performance | | Satisfactory Confidence | Satisfactory Confidence |
| SBU Past Performance | | Satisfactory | Satisfactory |
| Cost | Proposed | \$12,747,106 | \$15,442,998 |
| | Probable | \$12,747,106 | \$15,442,998 |
| SBU | | 1 st (100 percent) | 2 nd (91 percent) |

Agency Report (AR), Tab 9, Technical Evaluation, at 2.⁶

The TODA independently reviewed the reevaluation results of the technical and cost evaluations and, based on an integrated assessment of the five evaluation factors, affirmed that a.i. solutions’ proposal was the best value. AR, Tab 11, Award Decision, at 1, 14. In making this assessment, the TODA found a number of discriminators between the two technical proposals and concluded that, even though both proposals received excellent overall ratings for the technical factor, a.i. solutions’ one exceptional and three excellent ratings represented a better technical approach than APT’s two excellent and two satisfactory ratings. Id. at 12. In this regard, the TODA concluded that a.i. solutions thoroughly explained its approach and method to meeting the tasks, and demonstrated that it understood the PWS requirements whereas APT failed to provide the same level of detail in portions of its proposal. Id.

With regard to the past performance factor, the TODA acknowledged that the protester and the awardee received the same satisfactory confidence rating. The TODA did not find any discriminators between the two proposals. However, the TODA noted that even if APT was assigned a substantial confidence rating rather than a satisfactory confidence rating, a.i. solutions would remain the best value

⁶ The agency’s technical evaluation document contained a summary of the re-evaluation results for both the technical and cost re-evaluations.

because a.i. solutions' advantage in the technical, cost, and small business utilization factors would outweigh any advantage of APT's past performance. Id. at 14. Finally, the TODA concluded that a.i. solutions' lower proposed/probable cost gave it a significant advantage in the cost factor. Id. The TODA selected a.i. solutions for an award on April 16, 2014. Id. This protest followed.

DISCUSSION

APT challenges the agency's evaluation of its proposal and contends that MDA unreasonably evaluated the realism of the awardee's proposed costs. Specifically, APT argues that MDA unreasonably evaluated its proposal under the past performance factor by discounting its record of performance under the incumbent task order; alleges that a.i. solutions' proposed costs, which were based on performing the requirements with APT's incumbent workforce, were unrealistic; and contends that the agency unequally evaluated the proposals under the program management subfactor with regard to employee retention rates. For the reasons discussed below, we find no basis to sustain the protest.⁷

Past Performance

Here, the record reflects that APT submitted information about three prior contracts/task orders to demonstrate its past performance. The first task order was the incumbent task order with MDA for mission assurance; the second task order was awarded by MDA for system safety and occupational health; and the final contract was awarded by the National Aeronautics and Space Administration for safety, reliability, and quality. AR, Tab 9, Technical Evaluation, at 23. Based on the agency's review of past performance information sheets (PPIs), CPARs (contractor performance assessment reports), MARs (monthly assessment reports), and agency interviews, MDA assigned the incumbent task order a very relevant relevancy rating and a satisfactory quality rating. Id. at 25. The other two efforts received relevant relevancy ratings and very good quality ratings. Id. The agency assigned APT's past performance an overall quality rating of satisfactory because the agency concluded that the two very good ratings on the relevant efforts did not overcome the effect of the satisfactory rating that APT received on the very relevant incumbent task order. Id. In this regard, MDA believed that APT's performance on the incumbent task order would be the best indicator of how APT would perform since the incumbent task order was the only effort submitted by APT that encompassed the same magnitude, scope, and complexity as the RTOP. Id.

⁷ APT withdrew a number of its protest allegations in its comments to the agency report. See APT Comments at 2. For example, APT withdrew its challenge to the agency's evaluation of its technical labor mix and hours subfactor, and its technical task order transition plan subfactor. Id.

APT argues that the agency's satisfactory quality rating for its performance on the incumbent task order was arbitrary and unreasonable. APT asserts that its history of exceptional and very good performance, as documented in its CPAR and MAR ratings, demonstrate the unreasonableness of the agency's satisfactory quality assessment. In this regard, APT contends that it received MAR ratings of very good or better in 30 of the 38 months of incumbent performance; exceptional ratings in 13 of the MAR reports; never received a MAR rating of less than satisfactory; and exceeded the satisfactory rating in each monthly assessment subsequent to and including July 2011. Protest at 7.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Since the agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for reasonably-based past performance ratings. See MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

As noted, MDA's quality rating of APT's performance on the incumbent task order was based on the agency's assessment of APT's PPIs, APT's CPAR ratings, APT's MAR ratings, and interviews with agency personnel. AR, Tab 9, MDA Technical Evaluation, at 23. The record reflects that the agency found APT's CPAR and MAR to have quality ratings of exceptional, very good, and satisfactory.⁸ Based upon the CPAR and MAR, the agency identified two issues of concern: (1) difficulties with planning and managing costs, and (2) a five month delay in filling a vacant position for a MDA program. Id. at 24. These concerns led the agency to conduct interviews with MDA representatives.

The evaluators interviewed five MDA representatives to gain further insight into the severity and causes of the identified issues. Id. Based on these interviews, the agency concluded that although APT eventually met all technical requirements, it had difficulty planning and managing resources on several occasions that led to

⁸ The agency reviewed two CPARs and nine MARs for the incumbent task order. AR, Tab 9, MDA Technical Evaluation, at 23. APT's initial CPAR ratings for the incumbent task order were exceptional (quality of product/service and utilization of small business), very good (schedule), and satisfactory (cost control, business relations, and management of key personnel). AR, Tab 16, Initial CPAR, at 1. APT's final CPAR ratings for the incumbent task order were exceptional (quality of product/service, schedule, management of key personnel, and utilization of small business), very good (business relations), and satisfactory (cost control). AR, Tab 17, Final CPAR, at 1. Six of the nine MAR had overall ratings of exceptional and three had overall ratings of very good. AR, Tab 9, Technical Evaluation, at 24.

missing or delayed coverage of critical mission assurance activities, and that the nature and scope of the problems, and the length of time it took APT to resolve these issues, was a relevant part of its past performance record. Id. at 25. For this reason, the MDA found APT's performance to be consistent with the solicitation's definition of a satisfactory quality rating.⁹ Id.

APT does not dispute the accuracy of the information that the agency used to determine the quality rating of APT's performance of the incumbent task order. See Protest Comments at 3-7. Instead, APT argues that it was unreasonable for the agency to assign its proposal a satisfactory quality rating, given that the overall ratings it achieved on the various CPAR and MAR were exceptional or very good. APT asserts that its CPAR and MAR ratings should have resulted in at least a very good past performance quality rating.¹⁰ Id. at 5-7. Based upon our review of the past performance information and the agency's evaluation, we find no basis to object to MDA's evaluation of APT's past performance.

First, the solicitation's evaluation criteria for the past performance factor did not obligate the agency to assign the same quality rating that was reflected in an offeror's CPARs and MARs. Rather, the RTOP permitted the agency to consider the offeror's CPARs and MARs along with other data in arriving at the task order quality rating. Moreover, the solicitation stated that the agency's quality rating would be based upon the PPQ definitions, not the definitions in the CPAR or MAR. See RTOP at 13-14; RTOP, attach. 13, PPQ, at 2. Second, the record here reflects that the evaluators found that--despite APT's record of very good and exceptional performance--the quality of its performance was more consistent with the PPQ rating of satisfactory because of the nature and scope of the problems in its past performance record and the length of time it took APT to resolve the issues. See AR, Tab 9, MDA Technical Evaluation, at 24. We find nothing unreasonable about this conclusion. We conclude that APT has only raised arguments that reflect its disagreement with the agency's evaluation. Such disagreement is insufficient to

⁹ The RTOP stated that quality would be rated based upon definitions in the RTOP's past performance questionnaire (PPQ), which was attached to the solicitation. See RTOP at 13-14. The following quality ratings were provided in the PPQ: exceptional, very good, satisfactory, marginal, unsatisfactory, and not applicable. RTOP, attach. 13, PPQ, at 2. As relevant here, the PPQ defined a satisfactory rating as "[q]uality of performance met contractual requirements. The contract scope of work was accomplished with some problems for which corrective actions taken by the contractor that were satisfactory." Id. at 2.

¹⁰ The RTOP PPQ defined a very good rating as "[q]uality of performance met contractual requirements and exceeded many expectations. The contract scope of work was accomplished with some minor problems for which corrective actions taken by the [contractor] were effective." RTOP, attach. 13, PPQ, at 2.

render the agency's evaluation unreasonable. See Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7. For these reasons, we conclude that the record supports the reasonableness of the agency's evaluation.

Cost Realism

Next, APT argues that MDA conducted an unreasonable cost realism evaluation. APT argues that a.i. solutions' proposed costs were unrealistically low and posed a substantial risk to task order performance. The protester points to the fact that a.i. solutions' proposal was based on hiring at least [DELETED] percent of APT's personnel. APT alleges that the agency's cost realism analysis failed to consider a.i. solutions' ability to hire the incumbent personnel at its lower proposed labor rates.

A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. Federal Acquisition Regulation (FAR) § 15.404-1(d)(1); Advanced Commc'n. Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An offeror's proposed costs should be adjusted, when appropriate, based on the results of the cost realism analysis. FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6. For the reasons discussed below, we find no basis to sustain the protest.

To evaluate costs, the record reflects that the cost evaluation team evaluated a.i. solutions' and APT's proposed total costs and fee for reasonableness, realism, and completeness, which included an integrated assessment of the offerors' proposed labor rates (direct and indirect), labor hours/mix, and prime/subcontractor fees. AR, Tab 10, Cost Evaluation, at 1. With regard to the offerors' proposed labor mix and hours, the evaluators considered each offeror's unique approach to staffing as proposed in their technical proposals relative to the solicitation requirements. Id. at 3-4. The evaluators also assessed whether any adjustments to labor mix and/or hours were warranted. Id. at 4.

The following were the key cost components considered by the evaluators:

| | Hours | Labor Cost | Fixed Fee | Travel, ODC & Surge | Total Proposed/ Probable |
|-----------------------|-----------|------------------|-------------|---------------------------|--------------------------------|
| IGE | 101,115 | \$11,746,60 3 | \$1,409,698 | \$1,404,400 | \$14,560,701 |
| a.i. solutions | | | | | |
| Proposed | [deleted] | [deleted] | [deleted] | [deleted] | \$12,747,106 |
| Probable | [deleted] | [deleted] | [deleted] | [deleted] | \$12,747,106 |
| APT | | | | | |
| Proposed | [deleted] | [deleted] | [deleted] | [deleted] | \$15,442,998 |
| Probable | [deleted] | [deleted] | [deleted] | [deleted] | \$15,442,998 |

Id.

Based on an analysis of each of these costs elements, with consideration given to each offers unique technical approach, the evaluators determined that both offerors' proposed costs were reasonable and realistic. The agency did not adjust a.i. solutions' or APT's proposed hours or costs. Id. at 4-14.

With respect to labor rates, the cost evaluators conducted a direct labor rate analysis to determine if either offeror had proposed artificially low rates. Id. at 6. In this regard, the agency compared the offerors' proposed labor categories to each other, and to a Huntsville/Madison County Alabama Chamber of Commerce wage survey that reflected labor categories that were the same or similar to the labor required to perform the RTOP.¹¹ Id. at 7. The evaluators then compared the offerors' proposed direct labor rates to each other, and to the wage survey average minimum and maximum rates. Id. at 7-8. The evaluators found that both a.i. solutions' and APT's proposed labor rates were above the wage survey and were not considered to pose a risk to task order performance. Id. at 8-9. The evaluators also found that a.i. solutions' proposed labor rates were higher than APT's for every labor category, except three: [DELETED]. Id. at 8.

APT argues that a closer analysis of the direct labor rates in the three categories where a.i. solutions proposed lower rates reflects that there is a substantial risk that

¹¹ a.i. solutions and APT proposed the same personnel/positions for seven labor categories: contract program manager, engineer (advanced), engineer (intermediate), analyst (advanced), analyst (intermediate), analyst (basic), and subject matter expert (SME) (advanced). APT proposed to perform the RTOP with two additional labor categories: SME (intermediate) and SME (basic). See AR, Tab 10, Cost Evaluation, at 8.

a.i. solutions will not be able to hire the incumbent personnel. In this regard, APT alleges that 88 percent of a.i solutions' total labor hours were proposed at direct labor rates lower than those proposed by APT. See Supplemental Protest Comments at 5-6. Thus, the protester argues that a.i. solutions' proposed costs were unrealistic. Id.

We find that the protester has not shown that the agency's cost realism analysis of a.i. solutions' proposed costs was unreasonable. An agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide a measure of confidence that the agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of the cost information reasonably available to the agency at the time of its evaluation--including the information provided by the offeror in its proposal. Metro Machine Corp., supra.

Here, the record evidences that the agency conducted a thorough evaluation of the offerors' labor rates. The agency concluded that a.i. solutions' direct labor rates were within the minimum and maximum rates of the wage survey, and comparable to APT's labor rates. The agency also concluded that in the labor categories where a.i. solutions proposed direct labor rates lower than APT's rates, these rates exceeded or were within range of the wage survey, and were not significantly lower than APT's rates.¹² See AR, Tab 10, Cost Evaluation, at 8; Supp. AR (June 30, 2014) at 16-17. In this regard, the record does not demonstrate that a.i. solutions would not have been able to hire personnel at the labor rates contained in its proposal, or that the agency should have adjusted a.i solutions' proposal relative to these specific labor categories. APT's disagreement with the agency's evaluation does not render it unreasonable.

Moreover, even if the agency had upwardly adjusted the rates in the three categories alleged to be unrealistically low by APT, there is no basis on this record to conclude that APT's proposal would have had a lower probable cost than a.i. solutions. We note that APT has not shown that its costs would have been lower than a.i. solutions in light of (1) APT's higher fee and (2) APT's higher indirect billing rates. See AR, Tab 10, Cost Evaluation, at 4, 10-11. We also note that the protester has not presented any evidence calculating what a.i. solutions' costs would have been had the agency upwardly adjusted a.i. solutions' rates in these

¹² A comparison of direct labor rates are as follows:

| | [DELETED] | [DELETED] | [DELETED] |
|-----------------------|------------------|------------------|------------------|
| a.i. solutions | [deleted] | [deleted] | [deleted] |
| APT | [deleted] | [deleted] | [deleted] |

AR, Tab 10, Cost Evaluation, at 8.

three labor categories to APT's higher proposed rates. For this reason, we find no basis to sustain the protest.

Unequal Treatment

Finally, APT argues that the agency unequally evaluated the offerors' proposals under the program management technical subfactor. APT alleges that the agency unequally credited a.i. solutions with an exceptional feature for its employee retention program based on its [DELETED] percent overall retention rate, and its [DELETED] percent retention rate for MDA task orders; whereas, APT was only credited with an excellent feature for its employee retention rate, even though it has maintained a [DELETED] percent employee retention rate over the last twenty years, and a [DELETED] percent retention rate for MDA task orders. Supp. Protest at 9-10.

We find no merit to the protester's contention that the proposals were rated unequally with regard to employee retention. The record reflects that the evaluators rated a.i. solutions more favorably than APT under the program management subfactor because a.i. solutions more thoroughly explained its approach and method to meeting the tasks, and demonstrated that it understood the PWS requirements. See AR, Tab 11, Award Decision, at 12. Our review confirms that APT included more detail in its proposal related to employee retention. In this regard, the record shows that a.i. solutions' proposal included a specific discussion devoted to employee retention, along with two tables: one reflecting its turnover rates, and the other showing how its employee retention programs achieve high retention rates. See AR, Tab 5, a.i. solutions Proposal at 19-20. In contrast, APT's proposal only devoted one paragraph to employee retention. See AR, Tab 7, APT Proposal, at 2. Although APT argues that its proposal included essentially the same substantive information, we agree with MDA that a.i. solutions' proposal contained more detail with regard to employee retention. An offeror bears the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably where it fails to do so.¹³ Tetra Tech Tesoro, Inc.,

¹³ We note that even if APT was credited with an exceptional employee retention feature, this still would not increase its program management rating to exceptional (or its overall technical rating) because the agency did not find this portion of APT's proposal to contain multiple exceptional features and because it also found a weakness, which is contrary to an exceptional rating. See RTOP at 11 (exceptional rating appropriate where "[t]he proposal clearly contains exceptional features that meet or exceed the highest expectations of the Government. There are no weaknesses or the weaknesses are so minor as to be considered inconsequential."); AR, Tab 9, MDA Technical Evaluation at 16-17.

B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 5; Int'l Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Accordingly, we find no reason to sustain the protest on this basis.

The protest is denied.

Susan A. Poling
General Counsel