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Decision

Matter of: Control Systems Research, Inc.

File: B-299546.2

Date: August 31, 2007

Hoke Smith, III, Esq., Richard H. Powell & Associates, PA, for the protester.
Joel H. McNatt, Esq., Cheek & Falcone, PLLC, for Atmospheric Technology Services Company, an intervenor.
Raymond M. Saunders, Esq., and Maj. Carla T. Peters, Department of the Army, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's technical and past performance evaluation is denied, where the agency evaluated the protester's proposal in accordance with the terms of the solicitation.

DECISION

Control Systems Research, Inc., (CSR) protests the award of a contract by the Department of the Army to Atmospheric Technology Services Company (ATSC) under request for proposals (RFP) No. W9113M-06-R-0001, for meteorological support services (MSS) at the U.S. Army Kwajalein Atoll/Reagan Test Site (USAKA/RTS).

We deny the protest.

The USAKA/RTS is located on Kwajalein, a remote atoll in the Republic of the Marshall Islands, 2,100 miles from Hawaii and 2,000 miles from Guam. The USAKA/RTS is located in an intertropical convergence zone (ITCZ).¹ The USAKA/RTS is a Major Range and Test Facility Base (MRTFB) of the Department of

¹ The ITCZ is the region that circles the earth, near the equator, where the trade winds of the Northern and Southern Hemisphere come together, which causes unique and varying weather patterns. See <http://earthobservatory.nasa.gov>.

Defense and a major subordinate element of the U.S. Army Space and Missile Defense command. The USAKA/RTS offers space tracking and launch operations and strategic and tactical missile testing with the world's most sophisticated suite of radar systems, optics, telemetry, and scoring sensors. RFP, Statement of Work (SOW) § 1.2. These critical and expensive tests rely on accurate and timely meteorological/weather information to ensure success. Approximately 40 major tests are scheduled during the contract period, and a lack of expert meteorological/weather information would result in unacceptable delays, mission failures and cost overruns in the range of \$5 million per mission. Contracting Officer's (CO) Statement at 3.

The solicitation was issued on June 14, 2006 as a section 8(a) set-aside, and provided for the award of a cost-plus-fixed-fee contract for a period of 3 years with two 2-year options. The RFP stated that the Army intended to award the contract without discussions on a "best value" basis, considering the evaluation factors of technical, management, past performance, and cost. RFP at 68. The management area was said to be slightly more important than the technical area; the past performance area was approximately equal to the technical area and slightly less important than the management area; and cost, although, a substantial evaluation factor, was less important than the technical, management, and past performance areas. RFP at 71. Each of the non-cost evaluation areas had evaluation factors; for example, the evaluation factors in the technical area were (1) technical approach and understanding of the statement work and (2) personnel experience.²

A site visit was held for the prospective offerors on July 17 to 19.³ On July 20, the RFP package was updated to address questions generated by the site visit. CO Statement at 2; RFP amend. 2. Proposals were due on July 31.

² The first of the technical factors was significantly more important than the second factor.

³ The protester argues that contrary to the terms of the RFP, when its representative arrived in Kwajalein for the site visit, he was informed by the contracting officer that discussions with the incumbent employees were not allowed. This argument is essentially a challenge to the terms of the solicitation that, according to the protester, the contracting officer assertedly modified prior to receipt of proposals. See AST Envtl., Inc., B-291567, Dec. 31, 2002, 2002 CPD ¶ 225 at 3. Protests based on alleged improprieties in a solicitation must be filed prior to the closing date for receipt of proposals in order to be timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2007). CSR raised this issue for the first time in its protest of the evaluation and award decision filed with our Office on March 12, 2007. While the protester asserts that it did not realize the ramifications of the agency's actions here until it was apprised of the award decision, this provides no excuse for the protester's failure to protest prior to the closing date for receipt of proposals.

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Three proposals were received in response to the RFP. CSR's proposal was evaluated as "acceptable" in the technical and management areas with an "unknown risk" past performance rating and a total evaluated probable cost of \$13,183,734.⁴ ATSC's proposal was evaluated as "exceptional" for the technical and management areas with a "low risk" past performance rating and a total evaluated probable cost of \$17,295,557.⁵ Based upon a cost/technical tradeoff, the agency concluded that ATSC's proposal represented the best value to the government and decided to make award to that firm.⁶ AR, Tab 12a, Source Selection Decision (Feb. 14, 2007).

CSR filed a pre-award protest with our Office on March 12, 2007, challenging the evaluation and award selection. Thereafter, on April 5, the agency advised that it intended to take the corrective action of setting aside the prospective award to ATSC and making a new best value determination. AR, Tab 3B, Agency Corrective Action Letter. We thus dismissed the protest.

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Interceptor Group Ltd., Inc., B-239490.3, Dec. 4, 1990, 90-2 CPD ¶ 451, recon. denied, B-239490.4, B-239490.5, Apr. 19, 1991, 91-1 CPD ¶ 386. Therefore, we will not consider this protest issue as it was untimely raised.

⁴ The solicitation advised offerors that adjectival ratings of "exceptional," "good," "acceptable," and "unacceptable" would be assigned for each evaluation area and factor. AR, Tab 9, Source Selection Evaluation Plan, at 7-8. The past performance area would receive an adjectival rating of either "low risk," "moderate risk," "high risk," and "unknown risk." Id. at 8. An "unknown risk" rating for past performance is "neither a negative or positive assessment," and is to be used when "[n]o relevant performance record is identifiable upon which to base a meaningful performance risk prediction." Id.

⁵ The high ratings for ATSC's proposal were in part based on the fact that the proposed key ATSC employees had performed all aspects of meteorological support services for USAKA/RTS while they were employed by a predecessor firm on this contract. Agency Report (AR), Tab 8, ATSC's Proposal, vol. V, at 10. While CSR questions ATSC's low risk past performance rating because that firm had limited meteorological experience, an agency can consider key personnel in evaluating past performance. Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii); Trailboss Enters., Inc., B-297742, Mar. 20, 2006, 2006 CPD ¶ 64 at 4.

⁶ The third offeror's proposal had a significantly higher total evaluated probable cost of [REDACTED]. This proposal was evaluated as "exceptional" for the technical area, and "good" for the management area, and received a "low risk" past performance rating.

The agency then reevaluated the source selection documents and issued a new source selection decision wherein ATSC was again selected for contract award. AR, Tab 12B, Amended Source Selection Decision (Apr. 24, 2007). The amended source selection decision found that “[n]one of CSR’s previous efforts have included preparing for or supporting ballistic missile defense and satellite launch customers” and none of CSR’s past performance references cited corporate experience in “operating and maintaining electronic instrumentation in a corrosive marine environment.”⁷ Id. at 1-2. In addition, the source selection decision found that none of CSR’s key personnel have experience in providing MSS support for ballistic missile defense and satellite launch customers, none have degrees in meteorology, only one has experience in forecasting near the ITCZ, and only one has experience in operating and maintaining equipment in a corrosive marine environment. Id. The source selection document concluded:

It is true that CSR is the lowest cost but that is where the benefit that CSR brings to the table ends. In a best value determination I am to perform a comparative cost/technical trade off and determine whether the non cost strengths of the higher priced offerors warrant the price premium. In this case ATSC is Technically and Managerially superior to CSR. Of the 11 personnel they provided resumes for, 10 have degrees in their field and 8 have experience either in forecasting in an ITCZ or maintaining equipment in a corrosive marine environment. The functional mix of employees ATSC proposed are qualified to perform the functions assigned to them and ATSC has expertise and past performance data directly relating to customers typically found at USAKA/RTS.

Id. at 2-3. The agency made award to ATSC on May 4.⁸

⁷ The agency acknowledged that CSR had a “wealth” of past performance with regard to meteorological forecasting and observation. AR, Tab 12B, Amended Source Selection Decision (Apr. 24, 2007). In this regard, CSR’s proposal cited numerous contracts for providing meteorological support services for various military facilities and airports in the continental United States. AR, Tab 7, CSR’s Proposal, vol. V, at 1-16.

⁸ CSR argues that the reevaluation was simply a “smokescreen” by the contracting officer to “complete negotiations and award this contract to ATSC unencumbered by the GAO.” CSR’s Comments at 23. CSR also makes a number of other allegations of bias and bad faith by agency officials in favor of ATSC. Government officials are presumed to act in good faith and any argument that contracting officials are motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or suppositions. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. Based on our review of the record, which as discussed below supports the
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After a debriefing, this protest to our Office followed.⁹

CSR first challenges its “unknown risk” past performance rating. As indicated above, CSR’s “unknown risk” past performance rating was assigned because the agency determined that it had no relevant performance history. CSR argues that the agency in evaluating past performance improperly restricted relevant past performance to meteorological support experience with MRTFB ranges conducting missile defense and space launch operations. CSR asserts that its proposal showed substantial relevant past performance in meteorological support for aviation operations, which, according to CSR, are similar to the mission support requirements required under this solicitation. Therefore, the protester contends that a rating of “unknown risk” for its past performance was inappropriate because CSR’s proposal reflected that the firm had a relevant past performance record.

We review agency determinations regarding whether past performance references are relevant for reasonableness and consistency with the RFP evaluation criteria. Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 14 at 6; MCS of Tampa, Inc. B-288271.5, Feb. 8, 2002, 2002 CPD ¶ 52 at 4-6.

The RFP provided with respect to the past performance area that the currency and relevance of the offerors’ past performance would be evaluated and called for offerors to provide a list of contracts during the last 3 years “for efforts similar to this MSS requirement.” RFP at 55, 70. The RFP explained that technical past performance would specifically include consideration of “corporate experience” in:

Providing meteorological mission support services; Providing meteorological data reduction and analysis services; and Operating and maintaining electronic instrumentation in a corrosive marine environment.

Id.

The MSS statement of work was to support comprehensive missile testing and space operations on remote islands in a corrosive marine environment. According to the

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reasonableness of the agency’s evaluation of CSR’s proposal, we conclude that CSR has failed to establish bad faith. See Innovative Commc’ns Techs., Inc., B-291728; B-291728.2, Mar. 5, 2003, 2003 CPD ¶ 58 at 10.

⁹ CSR complains about the content and scheduling of the debriefing. We will not consider these issues because the scheduling and conduct of a debriefing is a procedural matter that does not involve the validity of an award. The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2.

agency, meteorological support for ordinary aviation operations, such as CSR's, is significantly different in a number of respects from providing meteorological support for the missile and space operations, particularly in remote areas. First, according to the agency, aircraft run to 40,000 feet and require a wind profile at that height, while missile and space missions typically require wind profiles to 90,000 feet. The second difference noted by the Army is that aviation weather forecasting typically relies on an entire network of sensors "up-range" for predictions, as airports typically are not remote to populations, while MRTFBs are usually located in remote areas, where "up range" sensors are located too far away to help in mission forecasting.¹⁰ Third, the agency states that sensor packages differ greatly between meteorological support for aviation and for missile and space missions. Specifically, aviation weather suites have a relatively standard set of instruments, and can be automated and networked to provide data to a number of airports for weather prediction. Mission forecasting requires the use of these instruments, but requires other, more specialized, instruments as well, such as balloon and rocket launched instruments, unique radar operation, lightning prediction instrumentation, and a variety of customer provided cloud, rain and solar instruments that need to be maintained and understood. CO Statement at 25-27.

The record supports the agency's conclusion that the type of meteorological support needed for USAKA/RTS is different in a significant way than the meteorological support for ordinary CONUS aviation operations.¹¹ While CSR has expressed disagreement with the materiality of some of the agency's stated differences between these meteorological services, it has not, in our view, shown that these differences are not legitimate or immaterial; indeed, CSR did not rebut that the agency's point that additional sensor packages are necessary for the meteorological support services. CSR's Comments at 12-14. Additionally, none of CSR's past performance references cite corporate experience in operating and maintaining electronic instrumentation in a corrosive marine environment. We thus find the agency reasonably rated CSR's past performance as "unknown risk." MCS of Tampa, Inc., supra.

¹⁰ According to agency, there is no network of sensors outside of the Kwajalein Atoll, and the nearest sources of additional weather data are Wake Island, Midway Island, Guam and Hawaii. CO Statement at 26.

¹¹ CSR contends that requiring experience in providing meteorological support of missile testing and space operations is unnecessarily restrictive because such experience can only be acquired at the USAKA/RTS. CSR's Comments at 11. However, the agency maintains that similar experience could have been acquired at another MRTFB, such as Vandenberg Air Force Base, White Sands Missile Range or any MRTFB that supports missile defense and satellite launch customers. CO Statement at 28.

CSR's also challenges the agency's evaluation of its proposal under the management and technical areas. The evaluation of a technical proposal is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and the best methods of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation only to ensure that it was reasonable and consistent with the solicitation's evaluation criteria, and with procurement statutes and regulations. Valenzuela Eng'g, Inc., B-283889, Jan. 13, 2000, 2000 CPD ¶ 1 at 4. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5.

CSR argues that the considerable meteorological experience of its key personnel was not reasonably evaluated. The RFP stated the following with regard to the personnel experience factor of the technical area:

The Government will evaluate the educational and work experience of each offeror's key personnel to determine the extent to which they are relevant or related to:

- a. Providing meteorological mission support services;
- b. Performing meteorological measurements near the Inter-tropical Convergence Zone (ITCZ)
- c. Performing meteorological data reduction and analysis
- d. Operating and maintaining range weather instrumentation electronic instrumentation in a corrosive marine environment.

RFP at 68.¹²

As stated above, the agency deemed meteorological experience with missile mission support to be relevant to the meteorological work to be performed under this contract at USAKA/RTS, and the protester's proposal was downgraded because none of CSR's key personnel had such experience. AR, Tab 12B, Amended Source Selection Decision (Apr. 24, 2007), at 2. Moreover, CSR only offered one proposed key personnel with experience in forecasting near the ITCZ, which the evaluation factor expressly stated would be considered. While another proposed key personnel was a tropical meteorological expert with extensive experience on a naval base in

¹² These four subfactors were equally weighted. RFP at 71.

Florida, this individual's resume did not state that he had ITCZ experience. The agency also noted that only one of CSR's proposed key employees had experience in operating and maintaining range weather electronics instrumentation in a corrosive marine environment. Finally, the agency noted that none of CSR's key personnel are meteorologists with degrees. *Id.* at 2. While the protester is correct that the RFP did not specify any educational requirement for the key personnel positions, CSR's Comments at 15, the RFP did provide that the agency would evaluate the "education and work experience of each offeror's key personnel." RFP at 68. We find the agency's rating of "acceptable" for CSR's personnel experience was reasonable.

With regard to the remainder of the technical area as well as the management area, CSR essentially contends that the RFP work is simply for meteorological services and the agency's evaluation gave unreasonable weight to the alleged differences with respect to the solicited meteorological services. As stated above, we find the agency could find these differences significant. Thus, it could reasonably downgrade CSR's proposal for failing to recognize or address these differences in its proposal.¹³

Finally, CSR objects to the award selection decision. Where, as here, the RFP allows for a price/technical tradeoff, the selection official has discretion to select a higher-priced, but technically higher rated proposal, if doing so is reasonably found to be justified. *BTC Contract Servs., Inc.*, B-295877, May 11, 2005, 2005 CPD ¶ 96 at 6. While the agency noted that CSR is the lowest-cost proposal, as detailed above, it found and documented why ATSC's proposal is technically and managerially superior to CSR's. In so doing, the agency reasonably accounted for CSR's lack of relevant past performance in finding it "unknown risk" and did not rate it either favorably or unfavorably,¹⁴ but determined that ATSC's proposal strengths, including its "low risk" past performance, warranted award to that firm. See *Blue Rock Structures, Inc.*, B-287960.2, B-287960.3, Oct. 10, 2001, 2001 CPD ¶ 184 at 5. We have no basis to question the reasonableness of the source selection authority's decision to award to ATSC.¹⁵

¹³ For example, one of the reasons CSR's proposal was downgraded, which has not been contested by CSR, is that it appears that CSR has no familiarity with the Universal Documentation System used for all customers of USAKA /RTS. AR, Tab 12B, Amended Source Selection Decision, at 2.

¹⁴ FAR § 15.305(a)(2)(iv) provides, "In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance."

¹⁵ CSR made a number of other nonmeritorious contentions which we did consider but did not expressly discuss in this decision.

The protest is denied.

Gary L. Kepplinger
General Counsel