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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Bevilacqua Research Corporation

File: B-293051

Date: January 12, 2004

Andy Bevilacqua for the protester.

Jesse W. Nunn for Future Research Corporation, an intervenor.

Steven W. Feldman, Esq., Department of the Army, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the agency's evaluation of the protester's proposal was reasonable and consistent with the terms of the solicitation, and where the solicitation provided that the technical evaluation factors were significantly more important than price, the agency reasonably selected for award a firm submitting a higher technically rated, higher priced proposal.

DECISION

Bevilacqua Research Corporation (BRC) protests the award of a contract to Future Research Corporation (FRC) under request for proposals (RFP) No. DACA87-03-R-0008, issued by the Army Corps of Engineers for implementation of its next generation project management information system, known as the "P2 system." BRC, which submitted a significantly lower priced proposal, protests the evaluation of its proposal and the agency's decision to award to FRC, an offeror submitting a higher technically rated, higher priced proposal.

We deny the protest.¹

¹ This decision addresses the primary issues presented in BRC's protest. BRC raised a number of collateral issues that we have considered and find to be without merit; these collateral issues do not warrant detailed analysis or discussion.

BACKGROUND

The RFP, issued on March 14, 2003, described the P2 system as a group of commercial, off-the-shelf software application products (specifically, Oracle applications and Primavera P3e and Primavision applications) that will be modified as necessary to accommodate the Corps's newly standardized business process and to interface with the Corps's financial management and other legacy systems; the P2 system will be the Corps's sole project management business process automated information system and will support 20,000 users in the agency's core mission areas (*i.e.*, military programs, civil works, and environmental projects). Under the terms of the RFP, the contract will be performed at the Corps's Huntsville Engineering and Support Center in Huntsville, Alabama.

The RFP contemplated the award of an indefinite-delivery/indefinite-quantity contract (fixed-price and time-and-materials) for the base period and four 1-year option periods.² As relevant here, at the end of the pricing schedule and in clause 4.0, captioned "Minimum Ordering Obligation," the RFP included the estimated monetary value for each period of contract performance and the total estimated contract value, *i.e.*, the government estimate, which was \$11,258,750. (In the administrative report, the agency explains that the government estimate was calculated in large part using the most current (2001) Bureau of Labor Statistics (BLS) national occupational employment and wage estimates for labor categories that basically corresponded to the labor categories in the RFP. The BLS estimates reflected non-loaded, hourly rates paid to employees, to which the agency added amounts corresponding to general and administrative expenses, overhead, and fringe benefits; the agency also added a 3-percent inflation factor to the BLS estimates for each year past 2001. Contracting Officer's Statement, Nov. 7, 2003, at 21-22.) The RFP also included labor category descriptions that listed desired education/general experience qualifications for the particular labor category position. For example, the RFP's labor category description for the program manager position stated as follows:

Desired Education/General Experience: Should have a Bachelor's degree in Computer Science, Engineering, Business or related field. Should have a minimum of 12 years in software/system development/implementation or software/system maintenance.

Functional Responsibility: Provides day-to-day management of overall contract support operations, possibly involving multiple projects and groups of personnel at multiple locations. Organizes, directs and

² The RFP included the clause at Federal Acquisition Regulation (FAR) § 52.219-18, which limited the competition to small business concerns certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) program.

coordinates planning and production of all contract support activities. Demonstrates writing and oral communications skills. Establishes and alters (as necessary) corporate management structure to direct effective contract support activities. Negotiates and makes binding decisions for the company.

RFP § C, Labor Category Descriptions.

The RFP provided that the award would be made to the offeror whose proposal was determined to represent the best value to the government, considering technical evaluation factors and price. The RFP stated that the technical evaluation factors were significantly more important than price. The technical evaluation factors, in order of importance, were as follows: (1) past performance—most important; (2) personnel—somewhat less important than past performance, but significantly more important than project management or quality management; (3) project management—equal to quality management; and (4) quality management—equal to project management.³

As relevant here, for past performance, the RFP required offerors to identify up to five contracts performed within the past 3 years for work similar to the current procurement. The RFP stated that in evaluating an offeror's past performance, the agency would focus on information demonstrating the quality of an offeror's performance relative to the size and complexity of the current procurement. Among other things, the RFP required offerors to provide the awarded cost/price for each contract identified. The RFP advised that if an offeror lacked relevant past performance, the offeror would not be evaluated favorably or unfavorably, *i.e.*, a neutral past performance rating would be assigned. RFP § L, ¶ 2.1, Tab A—Past Performance. For personnel, the RFP stated that individuals proposed for particular labor category positions should meet the qualifications (*i.e.*, desired education/general experience) as set forth in the RFP's section C labor category descriptions. RFP § L, ¶ 2.1, Tab B—Personnel.

With respect to price, the RFP stated that the agency would evaluate an offeror's proposed price for reasonableness and realism. The RFP explained that a price realism review would be performed to determine if an offeror's proposed price was realistic for the work to be performed; if the offeror's proposal reflected a clear understanding by the firm of the RFP requirements; and if the offeror's proposal was priced consistent with the various elements of the firm's technical proposal. The RFP also included the clause at FAR § 52.222-46, which explained that the agency would evaluate an offeror's professional employee compensation plan (salaries and

³ According to the source selection plan, for each of the technical evaluation factors, proposals could receive one of the following adjectival ratings: excellent, very good, acceptable, marginal, or unacceptable.

fringe benefits) to ensure that it reflected a sound management approach and an understanding of the RFP requirements, including an assessment of the offeror's ability to provide uninterrupted, high-quality work and the plan's effect in terms of the offeror's ability to recruit and retain qualified personnel. The RFP emphasized that the agency was concerned with the quality and stability of the work force to be employed under the contract; accordingly, the RFP advised that professional compensation that was unrealistically low could be viewed as impairing the offeror's ability to attract and retain competent professional service employees and as evidencing the offeror's failure to comprehend the complexity of the requirements.

Finally, the RFP stated that the agency intended to award the contract without conducting discussions. In this regard, the RFP instructed that an offeror's initial proposal should contain the firm's best terms from a technical and price standpoint and that statements merely repeating, paraphrasing, or promising general performance would not be considered sufficient evidence of the offeror's ability to meet the RFP requirements.

Twenty-eight firms, including BRC and FRC, submitted technical and price proposals by the amended closing date of April 29. (BRC, FRC, and two other firms were based in Huntsville.) As relevant here, the final consensus ratings assigned to the proposals of BRC and FRC were as follows:

	BRC	FRC
Past Performance	Neutral	Excellent
Personnel	Marginal	Excellent
Project Management	Very Good	Excellent
Quality Management	Very Good	Excellent
OVERALL RATING	ACCEPTABLE	EXCELLENT

Agency Report (AR), Tab 10, Consensus Evaluation Summary, at 5.

As relevant here,⁴ in assigning a neutral rating to BRC's proposal for past performance, the agency determined that BRC had no past performance similar in scope and complexity to the requirements of the RFP. In assigning a marginal rating to BRC's proposal for personnel, the agency concluded that BRC's proposed program manager did not satisfy the desired general experience qualifications for the position, i.e., software/system development/implementation or software/system

⁴ BRC does not challenge the evaluation of its proposal in the areas of project management and quality management.

maintenance, and that overall, BRC's proposed personnel did not have experience with a system similar in complexity to the Corps's P2 system. Id. at 8.

With respect to price, BRC's price was approximately 30 percent below the government estimate, while FRC's price was approximately 7 percent below the government estimate. BRC's price was approximately 25 percent less than FRC's price. (The prices of the other two Huntsville firms submitting proposals (one was rated overall excellent and the other was rated overall marginal) were approximately 3 to 4 percent higher than FRC's price and approximately 3 to 4 percent below the government estimate. BRC's price was approximately 27 percent less than the prices of these two other Huntsville firms.) AR, Tab 10, Price Evaluation Report, at 5. The agency determined, based on a comparison of BRC's price to the government estimate and to the prices proposed by the other offerors, that BRC's price was unrealistically low and posed a risk to successful contract performance because of the likelihood of high personnel turnover that would affect BRC's ability to recruit and retain qualified personnel. Id. at 7-9.

The contracting officer, who served as the source selection authority, determined that FRC's higher technically rated, higher priced proposal represented the best value to the government. The contracting officer made her selection decision after considering BRC's significantly lower price versus FRC's higher technical rating. The contracting officer concluded that BRC's significantly lower price did not reflect a clear understanding by the firm of the RFP requirements. The contracting officer concluded that the advantages associated with FRC's proposal--solid past performance on similar large, complex projects, highly qualified personnel with, among other things, extensive software and system development experience, very strong and extensive project management experience (software development, hotline support, and overall maintenance process), and clearly defined quality performance measurement indicators (hotline and testing support)--justified the payment of a price premium to FRC. AR, Tab 11, Source Selection Decision, at 2-3.⁵

ISSUES AND ANALYSIS

Past Performance

BRC challenges the agency's assignment of a neutral rating to its proposal for past performance because the firm did not demonstrate past performance similar in size and complexity to the RFP requirements. In its proposal, BRC described five contracts (involving, for example, configuring and maintaining commercial software applications and providing user support) performed within the past 3 years for the

⁵ BRC does not challenge the agency's conclusions concerning FRC's proposal in these technical areas.

federal government, which were valued, according to BRC, at \$600,000, \$80,000, \$180,999, \$2.5 million (a specific task order), and \$446,107.

In evaluating BRC's past performance, we conclude that consistent with the terms of the RFP, the agency reasonably considered the value of BRC's prior contracts in determining whether these contracts were similar in size and complexity to the requirements of this RFP. In fact, we have recognized that dollar value is an objective measure of the size (or scale) and complexity of referenced contracts. American Artisan Prods., Inc., B-292559, B-292559.2, Oct. 7, 2003, 2003 CPD ¶ 176 at 6-7; Knightsbridge Constr. Corp., B-291475.2, Jan. 10, 2003, 2003 CPD ¶ 5 at 3. Here, in evaluating past performance, the RFP required offerors to identify up to five contracts performed within the past 3 years for work similar in size and complexity to the requirements of the RFP. Among other things, the RFP required offerors to provide the awarded cost/price for each identified contract. In our view, it is clear from the terms of the RFP that the dollar values of an offeror's prior contracts and their comparability to the estimated value of the current procurement reasonably could be evaluated.

As stated above, the RFP specifically advised that the total estimated contract value for this procurement was \$11,258,750. Since the value of each of BRC's prior contracts, as shown above, was significantly less than the estimated value of the current procurement, we believe the agency reasonably determined that BRC failed to demonstrate past performance under contracts similar in size and complexity to the requirements of the RFP. Accordingly, we have no basis to question the reasonableness of the agency's assignment of a neutral rating to BRC's proposal for the past performance evaluation factor which shows, consistent with the terms of the RFP, that the agency did not penalize BRC for failing to demonstrate past performance similar to that required by the RFP. See FAR § 15.305(a)(2)(iv).⁶

⁶ Apart from contract value, even if BRC's performance of the referenced five contracts may have included some elements in common with the requirements of this RFP, for example, configuring and maintaining commercial software applications and providing user support, the agency reasonably could determine that having elements in common was not sufficient to demonstrate past performance similar to the requirements of this RFP in terms of size and complexity. To the extent BRC now argues, after award, that the RFP requirement to demonstrate similar past performance was somehow ambiguous and/or too restrictive in light of the fact that the competitors were small 8(a), as opposed to large, businesses, this argument constitutes an alleged solicitation impropriety apparent from the face of the RFP that was not timely raised by the closing time for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2003).

Personnel

BRC next challenges the agency's assignment of a marginal rating to the firm's proposal for the personnel evaluation factor. More specifically, BRC contends that the agency improperly treated the RFP's personnel qualifications in education and general experience as if they were mandatory, not simply desired, qualifications, and, as a result, improperly downgraded its proposal for the personnel evaluation factor. For example, BRC complains that the agency improperly downgraded its proposal because its proposed program manager failed to meet the RFP's desired general experience qualifications, as set forth above. We disagree.

As explained above, the RFP contained labor category descriptions that included desired education/general experience qualifications that an individual proposed for a particular position should have. While we agree that the RFP did not require, or mandate, that the proposed individual meet any of the desired qualifications, we do not agree with BRC's apparent view that an offeror, like itself, was free to essentially disregard these desired qualifications without there being any evaluation consequence. With respect to the program manager position, the RFP stated that the individual proposed by an offeror for this position should have experience with software/system development/implementation or software/system maintenance. This RFP language certainly indicated that the agency was seeking an individual with the stated qualifications and we think the agency reasonably could downgrade an offeror, like BRC, whose proposed program manager did not meet the desired qualifications in material ways.

In any event, in this case, whether the RFP's stated general experience qualifications are characterized as desired or mandatory, the record shows that BRC's proposed program manager (a former Corps employee who, since March 2003, has been employed as a consultant/program manager with BRC) failed to demonstrate any experience whatsoever with software/system development/implementation or software/system maintenance. More specifically, the detailed resume submitted for BRC's proposed program manager shows that this individual has a bachelor's degree (civil engineering) and a master's degree (engineering) and over 20 years of management experience at the Corps's Huntsville Engineering and Support Center. This individual described, in reverse chronological order, three positions he previously held with the Corps. First, for a 10-year period from 1993 to 2003, this individual held the position of Chief of Design and Chief of Civil-Structures Division, Engineering Directorate, a 200-person engineering element at the Corps's Huntsville facility. In this position, this individual was responsible for technical adequacy and quality of all in-house and contract design for Army and Defense Department facilities managed by the Corps's Huntsville facility, including, for example, programs involving chemical demilitarization, missile defense, army range design, and ordnance and explosives; he also served on numerous advisory groups related to chemical weapons, blast effects, and explosive safety. Second, for a 5-year period from 1988 to 1993, this individual held the position of Chief of Structures Branch, Civil-Structures Division, at the Corps's Huntsville facility. In this position, this

individual was responsible for, among other things, all structural design, both in-house and contract, and he developed and maintained specialty structural engineering expertise in nuclear and conventional weapons effects, explosive safety, design of hardened structures, missile defense, and chemical demilitarization. Finally, for a 5-year period from 1981 to 1986, this individual held the position of lead structural engineer for the Federal Emergency Management Agency Key Worker Nuclear Shelter Program at the Corps's Huntsville facility. In this position, among other things, this individual jointly led the effort to develop new structural technologies to reduce the cost of shelters used to resist nuclear weapons. BRC's Technical Proposal, Resume of BRC's Proposed Program Manager, at 24-26.

While there is no dispute that the individual proposed by BRC for the program manager position had significant experience with the Corps's engineering programs, it is clear from this individual's resume that he did not describe any experience with software/system development/implementation or software/system maintenance, which reflects the general experience qualifications stated in the RFP. Moreover, although the RFP does not designate the program manager as a key personnel position, the RFP nevertheless describes the critical role the program manager will play in terms of providing overall daily contract management support and of being responsible for negotiating and making binding management and contractual decisions on behalf of the contractor.⁷ On this record, we have no basis to question the reasonableness of the agency's evaluation of BRC's proposed program manager.⁸

⁷ In the experience summary preceding the detailed resume for BRC's proposed program manager, there is a statement that this individual "has over 22 years of management experience in Corps of Engineers programs, which included many computer and software related projects . . . [and] is knowledgeable of Corps of Engineers rules and regulations, culture, management and people and is intimately familiar with the history of the P2 program. [He] is [a] valuable asset to the P2 Project team as a subject matter expert providing functional, institutional, and [program management business processes] knowledge." BRC's Technical Proposal, Resume of BRC's Proposed Program Manager, at 25. As discussed above, notwithstanding these general statements, BRC's proposed program manager's detailed resume does not identify experience with the P2 system or make reference to software-related experience.

⁸ With respect to BRC's other proposed personnel, the agency concluded that they lacked experience working with a system of the same breadth as the Corps's P2 system. Other than disagreeing with the Corps's assessment, BRC does not meaningfully rebut the Corps's position in this regard. Mere disagreement is not sufficient to render the evaluation unreasonable. Chant Eng'g Co., Inc., B-292140, May 29, 2003, 2003 CPD ¶ 110 at 4 n.6.

Price

BRC, whose price was based on wages it previously had paid to information technology professionals in the Huntsville area, challenges the agency's determination that its price was unreasonably low in comparison to the government estimate, which was based on higher BLS national occupational employment and wage estimates, as earlier described. BRC, which does not dispute that a government estimate may be used to assess the reasonableness of an offeror's proposed price, nevertheless contends that the agency "clearly erred in the first place by using . . . national average labor rates instead of Huntsville rates as the basis of [the government estimate]. The use of national labor rates as the basis of [the government estimate] was clearly misleading" where the RFP specifically stated that performance would be in Huntsville. Protester's Comments, Nov. 24, 2003, at 5. BRC maintains that if the government estimate had been based on lower Huntsville rates, BRC's rates would have been determined reasonable and in line with wages paid to information technology professionals in the Huntsville area where the contract will be performed.

The underlying premise for BRC's post-award argument is that the government estimate, as contained in the RFP, was materially flawed and overstated. Because the government estimate was set forth in the RFP, however, this argument involves an alleged solicitation impropriety apparent from the face of the RFP that was not timely raised prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1). In order to make this argument, it was not necessary for BRC to know the basis, or source, for the agency's calculation of its government estimate, *i.e.*, BLS numbers. Rather, in light of its own historical experience, if BRC believed that the government estimate, as contained in the RFP for work to be performed in Huntsville, was unreasonably high, BRC had to protest this matter in a timely manner prior to award.⁹

In any event, assuming the validity of BRC's argument that the appropriate reference should have been wages paid in the Huntsville area, we point out, as described above, that BRC's proposed price was substantially lower (by approximately 25 to 27 percent) than the prices proposed by the three other Huntsville-based offerors, including FRC. We conclude, based on this record, that BRC has not provided any meaningful basis for our Office to question the reasonableness of the agency's conclusion that BRC's price was unreasonably low not only with reference to the government estimate, but also in comparison to the prices proposed by the other offerors, including competitors from the same geographic area as BRC which

⁹ In its price proposal, BRC specifically acknowledged that the "[t]otal cost as proposed by BRC is lower than the Government estimated value." BRC's Price Proposal at 10.

presumably would be recruiting from the same local pool of information technology professionals.

Tradeoff

Finally, BRC believes that as a lower priced, technically acceptable offeror, it should have received the award, contending that the price premium associated with FRC's higher technically rated proposal was not justified.

In a negotiated procurement, where the solicitation does not provide for award on the basis of the lowest priced, technically acceptable proposal, an agency has the discretion to make an award to an offeror with a higher technical rating and a higher price where it reasonably determines that the price premium is justified and the result is consistent with the evaluation criteria. ACC Constr. Co., Inc., B-288934, Nov. 21, 2001, 2001 CPD ¶ 190 at 5-6.

Here, the RFP stated that the technical evaluation factors were significantly more important than price in determining the proposal representing the best value to the government. Where BRC does not challenge the agency's evaluation of FRC's technical proposal and where the record shows that the agency reasonably evaluated BRC's proposal as overall acceptable,¹⁰ we have no basis to question the agency's decision, consistent with the terms of the RFP, to pay a price premium to FRC in order to obtain a contractor which, among other things, had a strong record of past performance on similar large, complex projects, proposed highly qualified personnel, demonstrated very strong and extensive project management experience, and proposed clearly defined quality performance measurement indicators.

¹⁰ Contrary to BRC's position, BRC's proposal was not rejected as unacceptable and the firm was not determined nonresponsible. Accordingly, there was no basis for the agency to refer any matter to the SBA for certificate of competency review. See, e.g., Global Bus. and Legal Servs., B-290381.2, Dec. 26, 2002, 2002 CPD ¶ 222 at 4.

The protest is denied.¹¹

Anthony H. Gamboa
General Counsel

¹¹ Prior to this decision, GAO dismissed BRC's supplemental protest (docketed as B-293051.2 and filed in the same submission as BRC's comments on the initial administrative report) because BRC failed to file comments in response to the agency's supplemental administrative report and in accordance with the accelerated schedule established by GAO and conveyed in writing to all parties, including BRC. 4 C.F.R. §§ 21.3 (i), 21.10(e). GAO dismissed BRC's supplemental protest 6 days after the deadline established for filing supplemental comments.