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Decision

Matter of: AB International Services, LLC

File: B-419727.2

Date: August 25, 2022

John J. O'Brien, Esq. and David Cohen, Esq., Cordatis LLP, for the protester. Colonel Frank Yoon and Isabelle P. Cutting, Esq., Department of the Air Force, for the agency. Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's corrective action is denied where the record shows that the agency's decision to reopen discussions and seek revised proposals as part of its corrective action was reasonable and within the agency's broad discretion in this area.

DECISION

AB International Services, LLC (ABIS), of Vienna, Virginia, protests the corrective action taken by the Department of the Air Force in response to a prior protest with our Office under request for proposals (RFP) No. FA2263-20-R-0002, for metrology and technical writing services in support of the Air Force Metrology and Calibration (AFMETCAL)¹ program. Agency Report (AR), Tab 3, RFP at 3-46; AR, Tab 4, Performance Work Statement (PWS) at 2. The protester contends that the agency has unreasonably allowed offerors to revise their entire proposals as part of the agency's corrective action.

We deny the protest.

¹ The AFMETCAL program acquires and sustains precision measurement capabilities and operates a worldwide calibration network to help ensure Air Force systems and equipment are accurate, uniform, reliable, and safe. *Air Force Metrology and Calibration*, AIR FORCE LIFE CYCLE MGMT. CENTER, <https://www.afllcmc.af.mil/WELCOME/Organizations/Agile-Combat-Support-Directorate/Air-Force-Metrology-and-Calibration/> (last visited August 24, 2022).

BACKGROUND

On February 26, 2020, the Air Force issued the solicitation in accordance with the procedures under Federal Acquisition Regulation (FAR) part 15, seeking proposals to provide metrology and technical writing services, including the operation of the Air Force Primary Standards Laboratory (AFPSL) at the Central Ohio Aerospace and Technology Center in Heath, Ohio.² RFP at 1; PWS at 2. The solicitation contemplated the award, on a best-value tradeoff basis, of a contract with fixed-price, fixed-price with incentive, and cost-reimbursement contract line items, for a 3-month base period and ten 1-year option periods. RFP at 3-46. The deadline for submission of proposals was March 31, 2020 at 2:00 p.m. RFP at 1.

The solicitation advised offerors that the agency would evaluate proposals considering price and two non-price factors, technical, and past performance. AR, Tab 21, RFP, Section M at 3. The technical factor included five subfactors: staffing approach; recruitment, training, and retention; quality plan; calibration technical orders quality plan; and measurement area assurance. *Id.* As relevant here, the RFP required that an offeror's staffing approach include "the quantity of personnel" and their "US Department of Labor labor category." AR, Tab 18, RFP, Section L at 8. The RFP provided that the agency was to evaluate offerors' "approach for the quantity, knowledge, skills, abilities, and experience of personnel required for each organizational unit . . . in accordance with PWS requirements" under the staffing approach subfactor. AR, Tab 21, RFP, Section M at 4.

With regard to price, the solicitation provided that the agency would evaluate proposals for completeness, reasonableness, unbalanced pricing, and total evaluated price. *Id.* at 8. The RFP provided that the technical factor was significantly more important than the combined past performance and price factors. *Id.* at 3. Also, the past performance factor was more important than the price factor. *Id.*

² The Air Force Life Cycle Management Center website describes the AFPSL as:

the highest echelon metrology and calibration laboratory in the Air Force. It provides a critical link between the National Institute of Standards and Technology (NIST) and Air Force Base Precision Measurement Equipment Laboratories (PMELs) and houses a measurement capability in practically every measurement discipline . . . The AFPSL complex consists of laboratories with rigid environmental controls necessary for precise measurements.

AFMETCAL – Air Force Primary Standards Laboratory, AIR FORCE LIFE CYCLE MGMT. CENTER, <https://www.aflcmc.af.mil/NEWS/Factsheets/Article/1935608/afmetcal-air-force-primary-standards-laboratory/> (last visited August 23, 2022).

The RFP contained FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. RFP at 123. This provision of the FAR requires an agency to review offerors' proposed compensation for professional employees in order to evaluate each offeror's ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention. FAR 52.222-46(a), (b).

The RFP also incorporated by reference FAR clause 52.222-41, Service Contract Labor Standards, which provides that the resultant contract is subject to the Service Contract Act (SCA).³ RFP at 73. This clause mandates that each service employee performing this contract must be paid not less than the minimum wages and fringe benefits either determined by the Department of Labor in any attached wage determination or contained in a predecessor contractor's collective bargaining agreement (CBA). FAR 52.222-41(c), (f). Included with the RFP were the applicable wage determination and the current CBA for the incumbent contract. AR, Tab 17, Wage Determination No. 2015-4730, Revision No. 13; AR, Tab 16, Wage Determination No. CBA-2019-12790, Revision No. 2.

The Air Force received timely proposals from five offerors in response to the solicitation, including ABIS. Contracting Officer's Statement (COS) at 3. After evaluating initial proposals, the agency entered into discussions with the offerors and later requested final proposal revisions. *Id.* After evaluating final proposals, the Air Force awarded a contract to ABIS in the amount of \$177,655,292. *Id.*

On April 5, 2021, a disappointed offeror, The Bionetics Corporation, filed a protest with our Office challenging various aspects of the Air Force's evaluation of proposals and award decision. *The Bionetics Corp.*, B-419727, July 13, 2021, 2021 CPD ¶ 259 at 4-5. On July 13, 2021, our Office sustained Bionetics's protest on the basis that the Air Force failed to compare the incumbent professional compensation to the offerors' proposed professional compensation as required by FAR provision 52.222-46. *Id.* at 7-9.

On October 14, 2021, the Air Force notified the offerors that it intended to take corrective action by conducting the required evaluation of compensation for professional employees. See, e.g., AR, Tab 35, ABIS Corrective Action Letter at 1. The Air Force's corrective action notice requested additional information regarding each offeror's compensation plan and specified that the additional information provided must be consistent with each offeror's previously evaluated proposal. *Id.* The notice also stated that the agency would "not consider additional proposal changes" at that time, but would

³ The SCA is an abbreviation commonly used to refer to the "Service Contract Labor Standards" statute codified at 41 U.S.C. chapter 67, also known as the McNamara-O'Hara Service Contract Act of 1965. The SCA applies to federal contracts exceeding \$2,500 or having the principal purpose of using service employees to provide services to the government. See 41 U.S.C. § 6702(a).

issue a new request for final proposal revisions at a later date. *Id.* at 2. The notice did not specify the scope of proposal revisions that would be allowed. *Id.*

On February 3, 2022, the incumbent contractor and the union representing service employees on the incumbent contract entered into an updated CBA. AR, Tab 86, AFPSL CBA Effective February 3, 2022. Notably, the updated CBA eliminated the Radiation Detection, Indication, and Computation (RADIAC) Technician and Transportation Specialist occupational classifications. *Compare* AR, Tab 16, Wage Determination No. CBA-2019-12790, Revision No. 2 at 23, 30, *with*, AR, Tab 86, AFPSL CBA Effective February 3, 2022. On March 15, the Department of Labor issued a new SCA wage determination applicable to services provided at the AFPSL. AR, Tab 97, Wage Determination No. 2015-4729, Revision No. 19.

On May 9, the Air Force informed the offerors that it had completed its evaluation of compensation for professional employees and requested final proposal revisions. COS at 6-7; AR, Tabs 83, 147, 210, 277, 313, Requests for Final Proposal Revisions. The Air Force's request for final proposal revisions allowed offerors to revise any aspect of their proposals and indicated that it would make a new award decision based on these final proposal revisions. *See, e.g.*, AR, Tab 83, ABIS Request for Final Proposal Revision at 1-3. Notably, the Air Force's requests included as an attachment the updated CBA. *Id.* at 1, 3.

On May 18, the Air Force amended its request for final proposal revisions to replace the outdated wage determination from the original solicitation with the current applicable SCA wage determination. *See, e.g.*, AR, Tab 96, Amended ABIS Request for Final Proposals; AR, Tab 97, Wage Determination No. 2015-4729, Revision No. 19. On May 19, ABIS filed the instant protest with our Office.

DISCUSSION

ABIS asserts that the agency's decision to permit unrestricted final proposal revisions is unreasonable.⁴ Protest at 12-17; Comments at 4-9. The protester objects to the agency's allowing offerors to revise their technical proposals, and specifically their staffing approaches, after the agency disclosed certain pricing and staffing information about ABIS's proposal to other offerors during the debriefing process. Comments at 6-8. ABIS argues that the agency could address the errors identified in the previous evaluation without seeking revised proposals or by limiting proposal revisions to changes to price proposals to address the new CBA and wage determination. *Id.* at 7-8.

⁴ ABIS also initially protested the agency's decision to allow offerors to revise only their bottom-line pricing proposals without revising other aspects of the proposals that supported the pricing proposals. Protest at 17-20. ABIS later withdrew this ground of protest. Notice of Withdrawal of Certain Protest Grounds at 1.

The Air Force responds that its decision to allow offerors to change any aspect of their proposals as part of obtaining final proposal revisions is reasonable notwithstanding the disclosure of the protester's information during the debriefing process. Memorandum of Law (MOL) at 9-11. The agency contends that changes in applicable labor classifications and wage rates in the updated CBA could result in both price changes and potential changes to the offerors' staffing approaches and retention efforts. *Id.* at 10-11. The agency argues that the latter category of changes would be contained in offerors' technical proposals, so the agency's decision to allow non-price updates to final proposal revisions was reasonable. *Id.* at 11. For the reasons set forth below, we agree with the agency.

In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. *MayaTech Corp.*, B-400491.4, B-400491.5, Feb. 25, 2009, 2009 CPD ¶ 55 at 3. The details of implementing corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. Where the corrective action taken by an agency is otherwise unobjectionable, a request for revised proposals is not improper merely because the awardee's price has been exposed. *Laducer & Associates, Inc.*, B401735.3, Feb. 23, 2010, 2010 CPD ¶ 57 at 4.

Further, where a contracting agency receives a modification to an SCA wage determination before award that increases any wage rates, the contracting officer is required to amend the solicitation to incorporate the new determination, furnish the wage rate information to all offerors that submitted proposals, and allow offerors reasonable opportunity to submit revised proposals. FAR 22.404-6(c); FAR 22.404(5)(c)(3); *see also M.E.E., Inc.*, B-265605.3, B-265605.4, Feb. 22, 1996, 96-1 CPD ¶ 109 at 3.

The RFP here was first issued almost two and a half years ago, with an initial closing date of March 31, 2020. The agency notes that over 18 months have passed between its receipt of final pre-corrective action proposals and the most recent deadline for post-corrective action proposal revisions. MOL at 9. Since pre-corrective action proposals were submitted, the Department of Labor has issued a new wage determination applicable to the contract and agency has updated the applicable CBA wage rates and labor classifications. AR, Tab 97, Wage Determination No. 2015-4729, Revision No. 19; AR, Tab 86, AFPSL CBA Effective February 3, 2022. Based on the above, the contracting officer determined that it was appropriate to allow revised proposals, including both price and non-price revisions, because "revisions to offerors' professional employee salaries and/or benefits could potentially impact the offerors' staffing approaches." COS at 11.

The protester has not demonstrated that the agency's actions here are unreasonable. As noted above, the RFP required offerors to submit staffing approaches that specified

the labor classifications for proposed personnel and specified that the agency would evaluate the proposed approach for the quantity and abilities of personnel required to meet PWS requirements. AR, Tab 18, RFP, Section L at 8; AR, Tab 21, RFP, Section M at 4. During the course of this protest, the protester's filings have acknowledged that the RFP's updated staffing requirements do not align with what offerors proposed. Specifically, the protester indicated that that the RFP requires the successful contractor to provide RADIAC calibration services and that it was a "near certainty" that offerors would have proposed to meet that requirement with the now-eliminated RADIAC Technician labor classification. Protest at 20; PWS at 7. In light of the above, the protester demonstrates the reasonableness of the agency's decision to allow for revised technical proposals where it states that the agency cannot "rationally evaluate pricing proposals based on occupational classifications and rates that are no longer effective as being complete and accurate." Protest at 19.

Given the extended period of time since the prior receipt of proposals, the changes to the labor classifications and rates applicable to this contract, and the FAR requirement to seek revised proposals when there is an updated wage determination before award, we find the agency's actions here to be reasonable. While ABIS would clearly prefer that the agency limit proposal revisions to price changes that address the new CBA and wage determination, on this record, we see no basis on which to question the Air Force's exercise of the broad discretion it is afforded to determine the permissible scope of proposed revisions.

The protest is denied.

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General Counsel