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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: American Systems Consulting, Inc.

File: B-298033.4; B-298033.5

Date: March 28, 2007

Daniel A. Bellman, Esq., and William R. Wernet, Esq., Daniel A. Bellman Law Office, for the protester.

Paul F. Khoury, Esq., and Joseph E. Ashman, Esq., for ManTech Security Technology Corp., an intervenor.

James W. DeBose, Esq., Defense Information Systems Agency, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging technical and cost/price evaluation of proposals for systems and software engineering support services is denied, where evaluation record supports agency's findings and award was reasonably made to an offeror with a higher technically rated, lower priced proposal.

DECISION

American Systems Consulting, Inc. (ASCI) protests the award of a contract to ManTech Security Technologies Corp. (ManTech) issued by the Defense Information Technology Contracting Organization under request for proposals (RFP)

No. HC1013-05-R-2026 for systems and software engineering support services for the Defense Commissary Agency (DeCA). ASCI challenges the evaluation of proposals and requests reimbursement of the costs of filing and pursuing previous protests under this solicitation.

We deny the protest and request for costs.

BACKGROUND

DeCA manages commissary operations worldwide for the Department of Defense. These operations are supported with various systems using commercial-off-the-shelf, government-off-the shelf, and in-house applications. The DeCA Interactive Business

System (DIBS), the Computer Assisted Ordering (CAO), and Pick Management System (PkMS) are three legacy systems currently supporting DeCA.¹ RFP, Performance Work Statement, at 18. For the past 15 years, ASCI has been the primary support contractor for these DeCA systems and has been the sole contractor supporting DIBS and CAO for the past 3 years.

The RFP required systems and software engineering support services for the three legacy systems (DIBS, CAO, and PkMS) to “maintain the current baselines.” In addition, the RFP required the development of new business system applications to replace the legacy systems. RFP, Performance Work Statement, at 18. The RFP provided for award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract with firm-fixed-price and time-and-materials delivery orders. Contract performance was to occur over a 62-month period, consisting of a 2-month phase-in period, a 1-year base period, and four 1-year option periods. RFP at 2-13. The RFP identified three evaluation factors, listed in descending order of importance: technical and management capability, present and past performance, and cost/price. The technical and management capability factor included five equally ranked subfactors: technical approach, software development processes, technical workforce management, delivery order management, and phase-in plan. The present and past performance factor included three equally ranked subfactors: cost control, schedule, and quality of performance and customer satisfaction. RFP at 71.

The RFP stated that cost/price would be evaluated for the “discounted life cycle cost” (DLCC), which was to be determined based on proposed prices, hours, and travel entries that offerors were to list in six separate tables provided with the solicitation. For each table, the RFP identified an “estimated” period of time applicable to that table (which was associated with an estimated phase-in, base, or option period) and the number of hours estimated for various labor categories. Offerors were to input the location, hourly rate, and price for each of these labor categories, and sum the totals for all labor categories to obtain an overall price for the performance period. The total price for each period (phase-in, base, and option year) was then multiplied by “discount factors” identified in the RFP, and the sum of these totals resulted in the DLCC. RFP at 62-68, 76.

¹ DIBS and CAO are in-house developed and maintained systems that provide support for commissary business processes such as ordering, receiving, warehousing, and inventory management. PkMS is a commercial-off-the-shelf system that provides warehousing functions with DeCA distribution centers in Europe. RFP, Performance Work Statement, at 18.

The RFP was issued on June 16, 2005. Six offerors responded and four proposals, including ASCI's and ManTech's, were found to be in the competitive range. After conducting discussions and evaluating final proposal revisions from those offerors remaining in the competitive range, the agency selected ManTech for award in February 2006. On February 27, ASCI protested the award, raising numerous challenges to the evaluation. After submitting its report responding to the protests and participating in a conference call where GAO indicated that a hearing was necessary primarily because of a lack of evaluation documentation, the agency decided to take corrective action to include reevaluating the proposals. The notice of corrective action stated that the agency intended to:

- (1) establish a new Performance Risk Analysis Group (PRAG) to include at least one [Defense Information Systems Agency (DISA)] member,
- (2) perform new technical and management capability evaluations and present and past performance evaluations consistent with the terms of the RFP,
- (3) make a new source selection determination based on the offerors' re-evaluated proposals, and
- (4) retain all evaluation materials generated during the re-evaluation.

Protest, Tab A. Based on this notice of corrective action, our Office dismissed the protest on April 10. ASCI thereafter filed a request for entitlement to costs, which it later withdrew based on a "settlement agreement" with the agency that ASCI entered into after we dismissed the protest.

The agency reevaluated proposals without reopening discussions. The PRAG (which included a DISA member) evaluated present and past performance, and the source selection evaluation team (SSET) evaluated technical and management capability and cost/price. ASCI and ManTech were rated as follows:

	ASCI	ManTech
Technical & Management Capability	Green/Moderate Risk	Green/Low Risk
Technical Approach	Green/Low Risk	Green/Low Risk
Software Development Processes	Green/Low Risk	Green/Low Risk
Technical Workforce Management	Yellow/Moderate Risk	Green/Low Risk
Delivery Order Management	Green/Low Risk	Green/Low Risk
Phase-In Plan	Green/Low Risk	Green/Low Risk
Present and Past Performance	Very Good/ Significant Confidence	Very Good/ Significant Confidence
Cost/Price (DLCC)	\$16,355,447.29	\$16,089,317.38

Agency Report, Tab 29, Source Selection Authority (SSA) Decision, at 16.

The SSA agreed with the findings of the SSET and PRAG, which rated both offers similarly under all evaluation subfactors except for the technical workforce

management subfactor of the technical and management capability factor. Under this subfactor, the SSA identified two deficiencies that led to ASCI's yellow/moderate risk rating. First, the SSA found that ASCI's proposal failed to "adequately explain how the Offeror intends to integrate the appropriate [team members'] workforce into its [REDACTED]. In addition, the SSA found that ASCI's proposal provided only "minimal details on how they will manage the technical workforce," and did "not present[] an adequate plan to minimize the use of [its] direct workforce for management and administration." Id. at 6. ManTech's proposal, on the other hand, received a green/low risk rating with an identified strength under this subfactor for ManTech's [REDACTED]; ManTech's proposal received no identified weaknesses or deficiencies. Id. at 9.

Under various other technical and management capability subfactors, the SSA favorably recognized ASCI's 15 years experience with the DeCA business applications (which included experience with the legacy systems to be supported under the RFP), the availability of its incumbent workforce to support the legacy systems, and the shorter phase-in period that ASCI proposed. Id. at 6, 16. The SSA also favorably recognized ManTech's 14 years of experience with DeCA financial applications and Internet Technology (IT) support; the availability of its technical workforce, facilities, and equipment; a "well-defined" user support plan; a "comprehensive" training plan; and an "integrated" management plan and schedule. Id. at 9-10, 16-17.

The SSA found no meaningful discriminators between the two offerors' proposals under the present and past performance factor, and "[s]ince ManTech had the lowest proposed DLCC and no offeror submitted a proposal that exceeded ManTech's in either the Technical and Management Capability Factor or Past and Present Performance Factor," the SSA determined that there was "no basis for making a trade-off to a higher priced offeror." Id. at 19.

The SSA made award to ManTech in December 2006, and on December 28, ASCI protested this award to our Office. ASCI complained that the agency once again misevaluated proposals.² On January 29, 2007, ASCI reinstated its request for reimbursement of costs associated with the previously filed protests (B-298033.1 and B-298033.2) on the grounds that the agency did not fully implement the corrective action promised in its settlement agreement with ASCI.

² In its comments on the agency report, ASCI for the first time asserted that ManTech made a material misrepresentation in its proposal that should have disqualified the firm from competition. By decision dated March 9, 2007, we dismissed that protest allegation as untimely. ASCI has requested reconsideration of that dismissal, which will be the subject of a future decision.

DISCUSSION

ASCI challenges the evaluation of its and ManTech's proposals under three of the technical and management capability subfactors and under the cost/price factor.³ In reviewing such protests, our Office does not reevaluate proposals, but instead examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

ASCI asserts that its proposal should have been rated superior to ManTech's under the technical approach and phase-in plan subfactors. The primary thrust of ASCI's argument is that its proposal deserved more favorable ratings because ASCI is the long-term incumbent with 15 years of experience with the DeCA legacy systems, and no other offeror has similar experience or can conduct the phase-in as quickly or as efficiently.

With regard to the technical approach subfactor, the RFP provided that the agency would evaluate each proposal to determine whether it "demonstrate[d] a clear understanding of support requirements and a comprehensive approach to accomplishing tasks in all the technical areas identified in the Performance Work Statement," specifically listing the following five areas: (a) system and software analysis, evaluation, design, development, and testing; (b) quality improvement; (c) user support (help desk); (d) software configuration management; and (e) user training. RFP at 73.

As the agency reasonably explains, although the RFP requires support for the DeCA legacy systems that ASCI currently supports under its incumbent contract, the RFP contemplates replacing those systems. As such, the RFP incorporates "new software development needs, on site support requirements, performance measures, implementation of [Department of Defense] mandates and key personnel qualifications" that are "broader in scope" and "substantially different" from ASCI's incumbent contract. AR at 21-22. Recognizing the difference in scope, the evaluation criteria under the technical approach subfactor specifically calls out the system and software analysis, evaluation, design, development, and testing area as one of the five enumerated technical areas that were to be evaluated.

³ ASCI also initially challenged the evaluation of proposals under the present and past performance factor, and protested that the agency improperly weighted the evaluation criteria. Protest at 4-5, 8-9. However, ASCI abandoned these arguments when it failed to comment on these issues in response to the agency report, which fully addressed these issues. Knowledge Connections, Inc., B-297986, May 18, 2006, 2006 CPD ¶ 85 at 2 n.2.

Consistent with this evaluation scheme, the record shows that the SSA recognized as a strength under the technical approach subfactor ASCI's 15 years of experience at DeCA supporting its business applications, specifically noting ASCI's "substantial" knowledge of the "DIBS, CAO and PkMS day-to-day operations and DeCA infrastructure." AR, Tab 29, SSA Decision, at 6. However, the SSA also found that ManTech had 14 years of experience supporting and maintaining DeCA financial applications and operations support, including Internet Technology (IT) support, and, in addition to other notable strengths, ManTech demonstrated how the integration of certain processes would "enhance [ManTech's] ability to deliver quality software analysis and development." *Id.* at 9. ManTech's 14 years of experience supporting DeCA systems included providing "systems engineering, design, integration, deployment and training, operations, and systems maintenance activities," which are relevant to the activities required here. AR, Tab 5, ManTech Proposal, at 2. ManTech's proposal also demonstrated the firm's familiarity with the "data structures, programming languages, operating systems, interfaces and sources of malfunctions in the legacy systems."⁴ ManTech Comments (Feb. 22, 2007) at 8-9; AR, Tab 5, ManTech Proposal, at 17-21. In addition, ManTech has been instrumental in migrating other DeCA systems to a more modern architecture. *E.g.*, AR, Tab 5, ManTech Proposal, at 2, 4. Thus, while ASCI's more extensive legacy system experience was positively considered under this evaluation subfactor, ManTech's experience was also properly found to be relevant and was reasonably considered in a favorable manner such that both proposals were deserving of a green/low risk rating under the technical approach subfactor.⁵

Similarly, under the phase-in plan subfactor, both ASCI's and ManTech's proposal were reasonably evaluated. The SSA credited ASCI's proposal for offering a "shorter phase-in period"⁶ and the "use of currently available workforce to assume the

⁴ Thus, contrary to ASCI's assertions, it is not the only firm with relevant experience with the legacy systems.

⁵ ASCI asserts that ManTech has less experience in providing user support (help desk) and user training--two of the tasks considered under the technical approach subfactor--for the DeCA legacy systems, but the record shows that ManTech has user support and training skills sufficient to support its green/low risk rating under the technical approach subfactor. See AR, Tab 5, ManTech Proposal, at 13-16, 18-21. The record does not support ASCI's belief that its proposal was deserving of a higher blue rating.

⁶ The RFP required that the phase-in period be concluded "not later than 60 days after contract award." RFP at 74. ASCI asserts that "some portions" of ManTech's proposal extend beyond the 60 days. This mischaracterizes ManTech's proposal, which only indicates that some of the phase-in activities would also be "referenced or included in other segments of the operation" because certain areas identified in

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support of the legacy applications.” AR, Tab 29, SSA Decision, at 7. ManTech’s proposal was also reasonably assessed strengths for including the “use of [its] available technical workforce, office facility and equipment [which was] already in place” and for having “dedicate[d] corporate resources during the phase-in period.” Id. at 10. Although ASCI disagrees with the ratings assigned to each proposal, it has not shown that the rating assessments, or the rationale supporting these assessments, were unreasonable.

ASCI next complains that its proposal was unreasonably assessed two weaknesses under the technical workforce management subfactor of the technical and management capability factor, which led to the proposal’s yellow/moderate risk rating under this subfactor. The two “inadequacies/deficiencies” in ASCI’s proposal identified by the SSA were that

[ASCI] proposed the use of a [REDACTED] for the management of contract and technical work. The [REDACTED] attached as an appendix displays the [REDACTED], but does not adequately explain how the Offeror intends to integrate the appropriate [REDACTED] workforce into its [REDACTED].

and that

[ASCI] has provided minimal details on how they will manage the technical workforce but has not presented an adequate plan to minimize the use of this direct workforce for management and administration.

AR, Tab 29, SSA Decision, at 6. The SSA went on to say, in assessing risk, that “more than usual oversight” would be required to correct the inadequacies, specifically noting that

Program schedule delays could result from the lack of an integrated technical workforce and increased costs and schedule delays could result from use of technical workforce to perform administrative duties requiring additional government oversight.

Id. at 7.

(...continued)

the phase-in plan are also “critical to ongoing areas of support for the [systems and software engineering support services] contract.” AR, Tab 5, ManTech Proposal, at A5-20.

As the record shows, the agency raised both inadequacies with ASCI during discussions and fully considered ASCI's responses, but reasonably concluded from ASCI's responses that the proposal "did not convey an adequate clarification" to resolve the agency's concerns.⁷ AR, Tab 28, Final Evaluation Report, at 38; see also AR, Tab 6, Evaluation Notices, at 6, 10; Tab 8, ASCI Response, at 31, 35. Thus, the "lack of a clear plan" to integrate the proposed workforces and to minimize the use of direct support personnel for management and administration resulted in ASCI's proposal receiving a yellow/moderate risk rating for this subfactor. AR, Tab 28, Final Evaluation Report, at 38. Although ASCI disagrees with this assessment, it has not shown it to be unreasonable. UNICCO Gov't Servs., Inc., supra, at 7.

Next, ASCI protests the agency's cost/price evaluation. It asserts that an "ambiguity exists in the Solicitation as to what pricing applies" given the fact that "so much time has passed" from when offerors submitted their pricing proposals back in 2005. ASCI Comments (Feb. 5, 2007) at 18. ASCI argues that because some areas of the solicitation specifically associate dates with the phase-in, base, and option periods of performance, while other areas of the solicitation do not, it became unclear as time passed which contract year pricing should be considered in the evaluation. Accordingly, ASCI asserts, the agency should amend the solicitation and reopen discussions to allow for revised cost proposals.

It is true that schedule B of the solicitation described the phase-in period as being from "1 Aug 2005 thr[ough] 30 Sep 2005," the base period of performance as being from "1 Oct 2005 thr[ough] 30 Sep 2006," and the option periods as running from October 1 through September 30 of subsequent years. RFP at 2, 4, 6, 8, 10, 12; see also id. at 47 (incorporating FAR § 52.216-18, which specifies an end date of contract performance as "30 Sep 2010"). However, elsewhere in the solicitation, including in sections L and M, the RFP made clear that the cost/price evaluation was to be conducted based on estimated contract years. For example, the cost/price evaluation factor in section M refers to "Evaluation Tables 1-6" contained in section L of the RFP, and these tables all state that the dates associated with periods of performance are "estimated" dates only. Id. at 62-68. Section M also identifies the "discount factors" generically as "CY1," "CY2," etc. (which refers to contract years) and not specific dates. Id. at 76. In our view, the cost/price evaluation criteria was clear and not ambiguous in describing how proposal pricing would be evaluated, and

⁷ ASCI claims that ManTech received more specific guidance during discussions regarding workforce management concerns which, according to ASCI, evidences unequal treatment. Comments at 17-18. However, we find that the discussions held with each offeror were meaningful and not unequal or unfair. ASCI's other complaints of inadequate discussions under the technical management capability factor were abandoned when ASCI failed to comment on these issues in response to the agency report, which fully addressed these issues. Knowledge Connections, Inc., supra, at 2 n.2.

adequately informed offerors that the evaluation would be based on estimated and not fixed performance dates. The record shows that both offerors were evaluated in a fair manner, using this evaluation scheme. To the extent that ASCI asserts that offerors' pricing is now outdated, it has not demonstrated that it has been prejudiced as a result, since both offerors were evaluated using the same contract year pricing tables.⁸ McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102-F.3d 1577, 1681 (Fed. Cir. 1996).

In addition, ASCI asserts that the agency "amended" the solicitation requirements when it awarded the contract to ManTech because it extended the overall duration of the contract beyond the initial specified dates in the RFP. ASCI Comments (Feb. 5, 2007) at 19. We do not agree that the duration of the overall contract performance has been extended. The RFP included FAR § 52.211-9200 which identified the "Period of Contract" as commencing on the date of contract award and continuing for 62 months--which consists of a phase-in period, a base year, and four 1-year options--and ManTech's contract does not extend beyond this duration. RFP at 42. Furthermore, when the solicitation is read as a whole, we think it is clear that the dates of performance for each period are estimated dates based on the date of award, and not fixed dates as described by ASCI. Therefore, we find no basis to sustain the protest on this ground.

Finally, ASCI requests that we "reinstate" its request for reimbursement of protest costs incurred during the previous round of protests (B-298033.1 and B-298033.2). The bases for ASCI's request is that the agency did not conduct a "new" evaluation,⁹ and did not exert its "best efforts" to include a DISA representative on the SSET, which breached the settlement agreement that the parties entered into and resulted in ASCI accepting a reduction in costs.

⁸ ASCI asserts that had the agency reopened discussions, it would have kept its 2005 pricing as its 2007 pricing and that ManTech would not; however, ASCI's self-serving statements are not adequately supported by the record and do not demonstrate that ManTech's proposed pricing would have been higher than ASCI's.

⁹ ASCI complains that dates on the team summary reports show that "individual evaluators knew what they were going to do before they even started their individual evaluation on ASCI's proposal" and that the "agency appears to have simply created documents to support its earlier evaluation" instead of conducting a new evaluation. ASCI Comments (Feb. 5, 2007) at 22. This supposition and innuendo does not evidence a flawed evaluation or that the agency acted with improper motives. United Med. Sys.-DE, Inc., B-298438, Sept. 27, 2006, 2006 CPD ¶ 148 at 4. As discussed above, we find the agency's evaluation to be well reasoned and supported by the contemporaneous record.

Our Bid Protest jurisdiction is limited to deciding protests “concerning an alleged violation of a procurement statute or regulation.” 31 U.S.C. § 3552 (2004). Thus, in cases such as this, we will not consider an argument concerning compliance with a settlement agreement except to the extent that the protest asserts that the alleged breach resulted in a prejudicial violation of procurement law or regulation. U-Tech Servs. Corp.; K-Mar Indus., Inc., B-298418.3, B-2984183.4, Oct. 6, 2000, 2002 CPD ¶ 78 at 3. ASCI has not shown that the agency’s alleged breach resulted in such a violation.

In any event, there is no basis on the merits to provide ASCI with additional protest costs. Our Office may recommend reimbursement of protest costs if we sustain a protest, or where the agency unduly delays taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.8(d), (e) (2006). In this case, we did not sustain the protest, and even though the agency took corrective action in the previous bid protest proceedings after filing its agency report, that protest was not clearly meritorious. As our Office indicated at the time, a hearing was going to be necessary to further develop the record to decide the merits of the case. Thus, we believe that the protest was a close call and not clearly meritorious. Accordingly, ASCI has not met the standard of demonstrating entitlement to additional protest costs as a result of its earlier filed protests. Overlook Sys. Tech., Inc.–Costs, B-298099.3, Oct. 5, 2006, 2006 CPD ¶ 184 at 7.

The protest and request for costs are denied.

Gary L. Kepplinger
General Counsel