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Washington, DC 20548

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Decision

Matter of: Tele-Consultants, Inc.

File: B-413117; B-413117.2; B-413117.3

Date: August 12, 2016

James S. DelSordo, Esq., James S. Phillips, Esq., Julie M. Nichols, Esq., Argus Legal, PLLC, for the protester.

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Kathleen Barksdale, Esq., Federal Acquisition Service, for the agency.

Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest asserting that the agency's evaluation was improper is denied where the evaluation was reasonable, consistent with the stated evaluation criteria and adequately documented.

DECISION

Tele-Consultants, Inc. (TCI), of Chesapeake, Virginia, protests the issuance of a task order to Southeastern Computer Consultants, Inc. (SCCI), of Frederick, Maryland, under request for proposals (RFP) No. ID03150040 issued by the General Services Administration (GSA) for product support services to the Project Manager Mission Command (PM MC).¹ TCI challenges GSA's evaluation of proposals and its source selection decision.

We deny the protest in part and dismiss it in part.

¹ The PM MC is an organization under the United States Assistant Secretary for the Army for Acquisition, Logistics and Technology that develops, deploys, and sustains integrated mission command and situational awareness capabilities to the Army and Joint Forces. Contracting Officer's (CO) Statement at 1.

BACKGROUND

The RFP was issued on October 6, 2015, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to vendors holding indefinite-delivery/indefinite-quantity (ID/IQ) contracts under GSA's One Acquisition Solution for Integrated Services (OASIS), Small Business Pool 3. The RFP contemplated the issuance of a cost-plus-fixed fee task order for a base year and four one-year option periods, to provide support encompassing the development, delivery, publishing, and maintenance of data deliverables.² RFP at 1, 6-7. Award was to be made on a best-value basis considering the following four evaluation factors, listed in descending order of importance: (1) technical, (2) management approach, (3) past performance, and (4) cost-price.³ Id. at 1, 3-5. The RFP also stated that technical factors when combined would be considered more important than cost; but that the cost factor would rise in importance where technical merit among the proposals was found to be more equal. Id.

Offerors were instructed to submit separate technical and cost proposals and were cautioned to ensure that the two proposals were consistent in all respects. RFP at 2, 6. The RFP explained in this regard that the cost proposal would be used to assess cost realism and to determine the offeror's understanding of the technical requirements. Id. at 6. The instructions for the cost proposal stated that information from this proposal would be shared with the technical team in evaluating an offeror's understanding of the technical requirements, capability to successfully perform the work, and realism of the proposal when considered as a whole (technical and cost). Id.

As relevant here, the instructions for the cost proposal also required offerors to complete a spreadsheet providing a detailed cost breakdown for each contract line item (CLIN) for the base period and each option year. Id. at 5. Offerors were

² The record states that these requirements were previously acquired by the U.S. Army Contracting Command using internal contract vehicles, however, GSA, on behalf of PM MC, is now responsible for fulfilling the current requirements through the award of competitive task orders under the OASIS Small Business Pool 3 ID/IQ contract. AR, Tab 6, Award Memorandum, at 2.

³ The agency would also determine, on a go/no-go basis, whether an offeror had a SECRET facility clearance and whether an offeror had certain certifications required by the RFP (to be verified by DD Form 2345, the Military Critical Technical Data Agreement). RFP at 3. Additionally, although the RFP contemplated the issuance of a cost-plus-fixed fee task order, offerors were required to submit a cost-price proposal and the evaluation factor was designated "cost-price." Id. at 5. Hereinafter, we will refer to the cost-price factor and cost-price proposal as the cost factor and cost proposal, respectively.

required to address information such as indirect rates and their application to the direct labor; the fixed fee, as derived by applying the rate of the fee only to the burdened labor costs; and the government-provided amount for other direct costs and travel. Id. Additionally, the cost spreadsheet included sections in which an offeror could provide its labor category, skill level, labor hours, total cost, and the total cost-plus-fixed fee. RFP Attach. A, Cost Spreadsheet, at 1-6.⁴ The RFP also stated that cost reimbursable elements would be evaluated on the basis of cost realism. RFP at 6.

Six proposals were received from OASIS small business contractors. Legal Memorandum at 4. The technical evaluation was conducted by a GSA project manager, who served as the technical evaluation team lead, and other technical advisors. AR, Tab 6, Award Memorandum, at 4; CO Statement at 5.

Of the six offers submitted, only those from TCI and SCCI received the highest available overall technical ratings of “exceeds.”⁵ Id. As relevant here, information from the cost proposals, including labor categories with associated skill levels and hours was shared with the technical evaluation team lead, who conducted a level-of-effort analysis and determined that TCI’s information was sufficient for performing the proposed approach.⁶ AR, Tab 6, Award Memorandum, at 4; Tab 6c, Technical Evaluation of Labor Mix (TELM), at 1-16.⁷ Additionally, TCI’s cost proposal was determined to be realistic based on the agency’s examination of, inter alia, TCI’s direct labor and skill mix, labor hours and rates, and the proposed fee. AR, Tab 6b, Cost Proposal Evaluation, at 34.

After the agency’s evaluation, the ratings for the awardee and the protester were as follows:

⁴ The information provided in this tab did not include any numbered pages. Our Office assigned consecutively numbered pages to the unnumbered pages in this tab. The citations to this tab in this decision are to the page numbers assigned by our Office.

⁵ The remaining offers either did not meet the requirements or did not include all required information, see AR, Tab 6, Award Memorandum, at 4, and are not addressed here.

⁶ The agency also states that a pricing narrative and proposal assumptions were shared with the technical evaluation team lead. Legal Memorandum at 4-5.

⁷ The information provided in this tab included one numbered page and additional unnumbered pages. Our Office assigned consecutively numbered pages to the unnumbered pages in this tab. The citations to this tab in this decision are to the page numbers assigned by our Office.

Offeror	Facility Clearance	DD Form 2345	Technical Approach	Management Approach	Past Performance	Estimated Cost
TCI	Go	Go	Exceeds	Exceeds	Meets	\$32,550,418
SCCI	Go	Go	Exceeds	Exceeds	Meets	\$27,409,807

AR, Tab 6, Award Memorandum at 4, 7.

Summarizing the evaluation results for SCCI's and TCI's proposals, the CO, acting as the source selection authority (SSA), acknowledged that both proposals met or exceeded the requirements and proposed a technical and management approach offering many benefits to the government. Id. at 6-7. The CO identified the benefits of TCI's and SCCI's proposals, and noted that both offerors' technical ratings were the same, but that SCCI's estimated cost of performance was \$5.1 million lower than TCI's. Id. at 6-7. The SSA determined that TCI's proposal presented no significant technical superiority over SCCI's proposal that would justify the cost premium associated with TCI's proposal. Id. at 8. Accordingly, the CO determined that SCCI's proposal represented the best value to the government. Id. at 8.

On May 5, TCI was notified that SCCI was selected for award and requested a debriefing. After receiving a debriefing on May 6, TCI protested to our Office.⁸

DISCUSSION

TCI argues that the agency failed to follow the evaluation criteria established in the RFP when it allegedly failed to share cost information from the offerors' cost proposals with the technical evaluation team; and that the agency's cost realism analysis was defective. Protest at 4, 7. We have reviewed the protest issues raised by TCI, and find that none provides a basis to sustain the protest.⁹ We discuss several examples below.

⁸ The debriefing also provided TCI's and SCCI's technical rating and the amount at which the task order was awarded to SCCI. AR, Tab 7, Debriefing, at 1, 2. On May 10, TCI filed its initial protest and a supplemental protest the next day (B-413117.2). The agency provided a consolidated report to these protest grounds.

⁹ On June 1, 2016, our Office notified the parties of our intent to dismiss, for failure to state a valid basis of protest, allegations regarding the awardee's technical rating, disparate treatment of offers, and the cost evaluation, based on our conclusion that each ground lacked a detailed statement of the legal and factual grounds of protest as required by our Bid Protest Regulations, § 21.1(c)(4). See 4 C.F.R. § 21.5(f). We dismiss those claims here.

We first discuss the protester's contention that the agency improperly failed to share cost information with the technical team.

In reviewing protests of an agency's evaluation of an offeror's technical proposal, our Office does not reevaluate proposals; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Rocky Mountain Excavating, Inc., B-412879, June 22, 2016, 2016 CPD ¶ 172 at 5. An offeror's disagreement with the agency's evaluation, without more, does not establish that the evaluation was unreasonable. Research & Dev. Sols., Inc., B-410581, B-410581.2, Jan. 14, 2015, 2015 CPD ¶ 38 at 12.

As noted above, the RFP here stated that cost information would be shared with the technical evaluation team in evaluating the offeror's understanding of the technical requirements. RFP at 6. As part of the cost proposal, offerors were required to address such information as labor category, skill level, and labor hours. RFP Attach. A, Cost Spreadsheet, at 1-6. The record shows that the agency shared labor categories with associated skill levels and hours for each offer with the technical evaluation team lead. AR, Tab 6, Award Memorandum, at 4; AR, Tab 6c, TELM, at 1-16. The record further shows that the technical project manager concluded that TCI's level of effort was appropriate for the proposed organizational model. Id. at 1. To the extent TCI argues that the evaluation was unreasonable because it did not include a consideration of detailed metrics per CLIN, or a discussion of the cost narrative, we find this argument unavailing. See Comments at 19; Supp. Comments at 8. The protester has not provided any basis for its insistence that the agency was required to perform its evaluation in this manner, nor do we find anything in the RFP requiring that this specific information be included in the cost information that was to be shared with the technical team. Thus, based on the record, we find no basis to sustain the protest.¹⁰

¹⁰ We also find no merit to further arguments raised in a supplemental protest in this connection, i.e., that GSA either shared the information with only GSA's technical evaluation team lead (and not the team as a whole) or allegedly failed to share the information with the Army technical team. Supp. Protest at 24. The composition of a technical evaluation panel is within the discretion of the contracting agency, and in the absence of evidence of bad faith or actual bias, we have no reason to question the composition of the panel. EBA Eng'g, Inc., B-275818, Mar. 31, 1997, 97-1 CPD ¶ 127 at 4. Additionally, the protester has offered no basis to conclude that evaluation by only the technical evaluation team lead was unreasonable, or to show that an agency other than GSA--the agency responsible for conducting the procurement on behalf of PM MC--would be involved in the evaluation of proposals.

Next, TCI argues that the agency's cost realism analysis was defective. Protest at 7. The agency responded to this ground in its agency report, explaining the various cost elements that it examined to determine that the protester's cost was realistic. Legal Memorandum at 4-5, 8; CO Statement at 2-3, 6. In its comments, the protester failed to meaningfully respond to the specific information provided by the agency, instead providing a nearly verbatim recitation of the arguments raised in its original protest, including grounds that our Office previously dismissed.¹¹ See Protest at 7-8; Comments at 15-16, 20-21. Thus, we view the challenge to the agency's cost realism analysis to be abandoned and we will not address it.¹² InteriGuard, LLC d/b/a/ HMS Fed. --Protest and Reconsideration, B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5.

Finally, to the extent the protester attempts to challenge the best-value decision in its supplemental protest (B-413117.3), we dismiss this protest as untimely. 4 C.F.R. § 21.2(a)(2). The RFP notified offerors that award would be made on a best-value basis. RFP at 1. In the May 6 debriefing, the protester was informed of SCCI's selection for award, the amount of award, and the technical ratings for SCCI and TCI. AR, Tab 7, TCI Debriefing, at 1, 2. Therefore, on May 6, TCI knew, or should have known, that SCCI's proposal was determined to offer the best value to the government. However, TCI did not challenge the agency's best-value determination until its June 20 comments, nearly 45 days later. TCI's challenge--that its own proposal would have been found to represent the best-value offer if the agency had evaluated protests in accordance with the RFP--does not rely on any information that was not known to the protester at the time TCI filed its original protest. See Comments at 23. Moreover, as the agency recognized the benefits that both proposals offered and determined that TCI's proposal did not offer any technical superiority over SCCI's proposal that justified the cost premium associated with TCI's proposal, we find unobjectionable the agency's best-value determination.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel

¹¹ To the extent the protester argues that the cost realism analysis was defective based on the disparity between the protester's and awardee's costs, we found on June 1 that this argument failed to state a valid basis and dismissed it, as noted above. See supra n.9.

¹² To the extent the protester attempts to address its cost realism argument in its supplemental comments, these arguments--rather than provide a meaningful response to the agency's evaluation--rely on arguments related to its claim that the agency failed to share cost information with the technical team. Supp. Comments at 7-12.