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Decision

Matter of: Paladin Data Systems Corporation

File: B-405995

Date: January 18, 2012

James F. Nagle, Esq., Anne Marie Tavella, Esq., and Kate H. Kennedy, Esq., Oles Morrison Rinker & Baker LLP, for the protester.

Justin M. Ganderson, Esq., and Jason A. Carey, Esq., McKenna Long & Aldridge LLP, for Phacil, an intervenor.

Robert M. Jusko, Esq., Department of the Navy, Naval Sea Systems Command, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of issuance of a task order to a lower-cost, lower-rated firm was reasonable and consistent with evaluation scheme in which cost/price was the least important evaluation factor, where the agency reasonably determined that payment of cost premium associated with a higher-rated firm was unwarranted.

2. Protest challenging cost realism analysis is denied, where agency performed an analysis of major cost elements utilizing the Defense Contract Audit Agency, the Defense Contract Management Agency, and relevant cost information available to the agency as of the time of its evaluation.

DECISION

Paladin Data Systems Corporation, of Poulsbo, Washington, protests the issuance of a task order to Phacil, Inc., of Arlington, Virginia, by the Department of the Navy, Naval Undersea Warfare Center, Division Keyport, under solicitation No. N00024-11-R-3344, a task order competition set aside for small business firms under the Navy's Seaport-Enhanced (Seaport-e) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, for software development and support services.

We deny the protest.

BACKGROUND

The Navy issued the solicitation on July 11, 2011, to acquire software development and support services for the Navy's Advanced Skills Management program, as well as other products. The solicitation anticipated the award of a cost-plus-fixed-fee (CPFF) task order for one base year and two option years. The procurement is for a successor order to a previous CPFF task order, also issued under the Seaport-e IDIQ contract, which was performed by Raytheon Technical Services Company, LLC. Paladin served as a subcontractor to Raytheon on the predecessor contract. Under the current solicitation, Raytheon, the incumbent contractor, was proposed as a subcontractor by the awardee, Phacil.

The solicitation set forth a best value evaluation scheme with three evaluation factors: technical, past performance, and evaluated cost/price. The solicitation advised that the technical factor was more important than the past performance factor and that, when combined, the technical and past performance factors were "significantly more important" than the evaluated cost/price factor. Solicitation at 54. However, the solicitation stated that in making the award decision, "the Government is concerned with striking the most advantageous balance between Factors 1 through 3." Id. at 55. The solicitation also advised that:

Irrespective of assigned technical and past performance [ratings], if the Contracting Officer's best value analysis, based on integration of the technical impact assessment and cost evaluation results, concludes that award to the higher evaluated cost/price superior Offeror is not in the best interest of the Government, the Contracting Officer reserves the right to award to a lower technically rated, lower evaluated cost/price Offeror.

Id. at 59.

The technical evaluation factor included four sub-factors: technical approach and capability, key personnel and resumes, management approach, and organizational structure and staffing plan. The solicitation provided that the technical factor and sub-factors would be evaluated using a combined technical/risk adjectival rating system consisting of outstanding, good, acceptable, marginal and unacceptable. Id. at 60. According to the solicitation, only technical submissions receiving an unacceptable rating were technically unacceptable and unawardable. Id.

The solicitation provided that past performance would be evaluated using a performance confidence assessment composed of the following ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral). Id. at 62. As relevant, the substantial confidence rating applied to past performance that gave the agency a "high expectation that the offeror will successfully perform the required effort," while the satisfactory

confidence rating applied to past performance that gave the agency a “reasonable expectation that the offeror will successfully perform the required effort.” Id.

Concerning the evaluated cost/price evaluation factor, the solicitation required each firm to submit cost information including cost summaries discussing the proposed labor hours, labor costs, labor mix, labor rates, and supporting rate documentation. The solicitation explained that the evaluation of cost submissions would be “based on compliance with the Solicitation, an analysis of the realism and completeness of the cost data, the traceability of the cost to the offeror’s capability data, and the proposed allocation of man hours and labor mix.” Id. at 58. The solicitation advised that “[p]ertinent cost information, including but not limited to [Defense Contract Audit Agency (DCAA)] recommended rates for such costs as direct labor, overhead, G&A, indirect costs, and all supporting information . . . will be considered in arriving at the Government determination of the most probable estimated cost to be incurred in the performance of this task order.” Id.

The Navy received responses from Paladin, Phacil, and one other firm, in response to the solicitation. The contract specialist prepared an abstract of all responses received, and segregated the responses’ cost and technical components. The technical responses were then submitted to a source recommendation evaluation board (SREB), which graded the responses in accordance with the source selection plan.¹

The SREB concluded that Paladin’s submission was the highest rated, and warranted outstanding ratings under the technical approach and key personnel sub-factors, good ratings under the management approach and organizational structure sub-factors, and an outstanding technical rating overall. The SREB rated Paladin’s past performance as providing substantial confidence. The contracting officer determined that Paladin’s total evaluated cost/price was \$24,890,911.26.

The SREB concluded that Phacil’s submission was the next highest rated, but that it warranted only marginal ratings under the technical approach and key personnel sub-factors, and acceptable ratings under the management approach and organizational structure sub-factors. The SREB considered Phacil’s technical submission marginal overall, but rated its past performance as providing satisfactory confidence, indicating a “reasonable expectation that the offeror will successfully perform the required effort.” The contracting officer determined that Phacil’s total evaluated cost/price was \$17,859,146.89.

¹ The SREB determined that the response from the third firm was technically unacceptable.

In her source selection decision, the contracting officer conducted a thorough review of the technical evaluation--including all assigned strengths and weaknesses--and the past performance evaluation--including each past performance reference submitted by the firms. The contracting officer then reviewed a subset of Paladin's technical strengths and Phacil's technical weaknesses, which she considered to be technical discriminators between the two submissions. Concerning evaluated cost/price, the contracting officer considered that Phacil proposed a level of effort that was [DELETED] percent lower than that proposed by Paladin, but that Paladin's evaluated cost/price was 39.37 percent higher. The contracting officer also noted that substantially all of the difference between Paladin and Phacil's evaluated cost/price was attributable to [DELETED]. See Business Clearance Memorandum (BCM) at 54. Ultimately, the contracting officer concluded that:

The \$7,031,764.37 cost saving associated with Phacil's proposal outweighs the technical and past performance superiority of Paladin's proposal. Even taking into consideration the higher weighting of [the technical and past performance evaluation factors] the Contracting Officer cannot justify paying 39.37% more for an award to Paladin, as the strengths associated with Paladin's proposal do not warrant this significant price premium.

Id.

On September 29, 2011, Paladin was informed of the contracting officer's decision to issue the task order to Phacil. Paladin filed an agency-level protest on October 5, and requested a debriefing, which it received on October 7. Paladin then filed this protest on October 12. Paladin's agency-level protest was denied on October 26.

ANALYSIS

Paladin protests that the contracting officer made an arbitrary and capricious award decision (given the wide disparity in technical ratings between its own submission and that of Phacil) by improperly converting a best-value solicitation into one based on low-cost and technical acceptability. Paladin also asserts that the best-value determination was critically flawed because the contracting officer failed to conduct a realism analysis of Phacil's cost submission. We conclude that Paladin is incorrect on both counts.

The record in this case clearly demonstrates a well-reasoned best-value determination--not an award decision based on low-cost and technical acceptability. It is well-settled that an agency properly may select a lower-rated, lower-priced proposal, even where price is a less important evaluation factor than technical merit, where it reasonably concludes that the cost premium involved in selecting the higher-rated proposal is not justified in light of the acceptable level of technical

competence available at a lower cost. See, e.g., Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. A protester's disagreement with the agency's determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

The tradeoff and source selection decision in this procurement was reasonable. The contracting officer fully understood the technical advantage of the Paladin submission as demonstrated by her thorough review of the technical evaluation results. The contracting officer isolated specific weaknesses in the Phacil submission and strengths in the Paladin submission that she independently determined to constitute technical discriminators. However, despite the contracting officer's comprehensive understanding of the technical superiority of Paladin's submission, she concluded that award to Paladin at a cost premium of nearly 40 percent did not represent the best value to the government, when compared to Phacil's marginally rated, but significantly lower-cost submission.

In performing the tradeoff the contracting officer noted that although Phacil's marginally-rated submission contained risks, "the risks associated with the weaknesses in Phacil's proposal can be off-set with aggressive contract administration and Government oversight," and "the Government has a reasonable expectation that Phacil will be able to successfully perform the required effort based on their past performance." BCM at 54. The contracting officer also noted that Phacil's subcontractor, Raytheon, "is the incumbent contractor and brings a high level of experience, skill, and technical expertise to Phacil's team." *Id.* at 49. On the basis of these considerations, and in light of the substantial cost premium associated with the Paladin submission, the contracting officer's decision that Phacil's marginally-rated response was the best value to the government was not unreasonable, given that the contracting officer anticipated an acceptable level of performance at Phacil's considerably lower evaluated cost.

Paladin's argument that the contracting officer failed to conduct a cost realism analysis of Phacil's submission is also incorrect. When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed costs are not considered controlling because, regardless of the costs proposed, the government is bound to pay all actual, allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d); Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103 at 4. Consequently, an agency must perform a cost realism analysis to evaluate the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(2); Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9. However, an agency is not required

to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Similarly, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7; Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11.

As discussed below, the cost realism analysis in this case is well-documented in the agency's BCM. Specifically, in the BCM, the contracting officer evaluated the cost realism of the firms' (and subcontractors') direct labor costs, indirect costs, other direct costs, cost escalation and level of effort. Concerning Phacil's direct costs, the contracting officer compared the direct rates for each labor category to the national industry average from the Bureau of Labor Statistics (BLS). The contracting officer found that for [DELETED] labor categories, Phacil's rate was [DELETED], however, the contracting officer determined that these labor categories appeared in line with the "required level of knowledge, skill, experience, and education required." BCM at 39. For [DELETED] other labor categories, the contracting officer concluded that Phacil's rates were [DELETED] and were acceptable. Finally, there were [DELETED] labor categories that the contracting officer determined were [DELETED]. For [DELETED] of these categories, the contracting officer concluded that the rates appeared [DELETED], and were acceptable. For the remaining [DELETED] labor categories, the contracting officer concluded that [DELETED], and that "[DELETED] rate is deemed reasonable for the purpose of the cost realism analysis." Id.

With regard to Phacil's indirect rates, the agency requested a rate check from DCAA and DCMA. DCAA did not have any audited rates for Phacil, but provided the current "approved provisional billing rates." Id. at 40. DCMA reviewed Phacil's response and found that the proposed rates were in accordance with the approved provisional billing rates. As a result, the agency found the proposed indirect rates realistic. The agency also examined that indirect rates for Phacil's subcontractor, Raytheon, and found the rates realistic on the basis of historical data and Raytheon's rate justifications.

The agency also examined Phacil's escalation rates in comparison to the published Global Insight escalation rates for "Wages and Salary for Management, Scientific, and Technical Consulting Services," and examined Phacil's other direct costs in comparison to a government estimate. BCM at 45-46, 48. The agency found both the escalation rates and other direct costs realistic. Finally, the agency examined Phacil's level of effort in the context of the price realism analysis, and determined that it was "acceptable to perform the task." Id. at 47.

In sum, the agency BCM and award decision demonstrate a thorough cost realism analysis of Phacil's price submission. As stated above, an agency's price realism methodology need only be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information available to the agency as of the time of its evaluation. See SGT, Inc., supra; Metro Mach. Corp., supra. Further, because the contracting agency is in the best position to make this determination, we review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Env'tl. Health Found., supra, at 10. Here, the agency's cost realism analysis--utilizing DCAA, DCMA, as well as other contract information available to the agency--was well-documented, and in no way arbitrary.²

We deny the protest.

Lynn H. Gibson
General Counsel

² In its comments on the agency report, Paladin further asserts that the agency's cost realism analysis was unreasonable, because the agency did not adjust Phacil's evaluated cost in light of its marginal technical rating. Paladin argues that the realism analysis failed to consider whether Phacil demonstrated an accurate understanding of the requirements, or whether Phacil's cost submission was consistent with its technical approach. As reviewed, an agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism. See Cascade Gen., Inc., supra. Here, the record shows that the agency evaluated specific elements of each offeror's proposed costs, and reasonably concluded that none was unrealistic. To the extent that the protester contends that the agency's analysis should have examined the offerors' proposed costs in more depth, this argument does not provide a basis to sustain the protest. See DPK Consulting, B-404042, B-404042.2, Dec. 29, 2010, 2011 CPD ¶ 12 at 12. Further, although the agency identified numerous weaknesses in Phacil's technical submission, there was no indication that the agency was concerned about Phacil's ability to provide an acceptable level of performance with the aggressive contract management that "would be expected" from the agency for any non-incumbent contractor, and in light of the fact that Phacil's subcontractor was the incumbent contractor, and could off-set Phacil's learning curve. BCM at 53-54.