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Decision

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Matter of: American Technology Solutions International Corporation

File: B-412442; B-412442.2

Date: February 12, 2016

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Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's assessment of a weakness to protester's proposal under staffing approach factor is denied where record reflects assessment was reasonable and consistent with solicitation's evaluation criteria.

2. Protest challenging agency's selection of higher-technically-rated, higher-priced proposal for award under solicitation that established price as equally important to non-price factors is denied where solicitation permitted tradeoffs and where agency reasonably determined that technical superiority of awardee's proposal warranted the associated price premium.

DECISION

American Technology Solutions International Corporation (ATSI), of Fredericksburg, Virginia, protests the issuance of a task order to Epsilon, Inc., of Weaverville, North Carolina, by the United States Marine Corps, Marine Corps Systems Command, under task order request for proposals (TORFP) No. N00024-15-R-3296 for information technology (IT) services to support the agency's training and education command. ATSI alleges that the agency's evaluation of its proposal was unreasonable and that its best-value tradeoff decision was flawed.

We deny the protest.¹

¹ As the value of this task order is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under

(continued...)

BACKGROUND

On April 7, 2015, the agency issued the solicitation as a small business set-aside to firms holding ID/IQ contracts under the Department of the Navy's SeaPort-e multiple award contract program. See TORFP at 2, 26.² The solicitation contemplated the issuance of a one-year, fixed-price task order, with two one-year options. Id. at 2, 17. A performance work statement (PWS) outlining the needed services was included with the solicitation. Id. at 3-13. The services generally related to IT, including, for example, systems and network integration, administration, and engineering. See id.

The award was to be made on a best-value tradeoff basis, considering price and the following three factors, listed in descending order of importance: staffing approach, management approach, and past performance. TORFP at 32. The non-price factors, when combined, were stated to be approximately equal to price. Id. With regard to the tradeoff process to be employed, the solicitation stated: "The Government anticipates award . . . on the basis of best value with tradeoffs similar to the process described in FAR [Federal Acquisition Regulation] 15.101-1." Id.

Evaluation criteria were provided for each evaluation factor. TORFP at 32-33. Adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable were to be assigned under the staffing approach and management approach factors, and definitions were provided for these ratings. Id. at 34. The solicitation also included definitions for what would be evaluated as proposal strengths, weaknesses, significant weaknesses, and deficiencies. Id. at 33.

The agency received a number of proposals by the solicitation's May 21 closing date, including proposals from ATSI and Epsilon. AR at 5. A technical evaluation team (TET) convened and began evaluating the proposals under the non-price factors in the order in which the proposals were received. Id. After evaluating four proposals, including those of ATSI and Epsilon, the TET submitted its draft evaluation report to the contracting officer. Id. Soon after, the TET, contracting officer, and the contracts specialist met and discussed the draft report. Id. At the meeting, the contracting officer and the contracts specialist provided "additional direction in regard to what should be evaluated as a strength or weakness." AR at 6.

(...continued)
multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contracts. 10 U.S.C. § 2304c(e)(1)(B) (2012).

² Citations to the solicitation refer to the "conformed" version issued under solicitation amendment No. 2. Agency Report (AR), Tab 4, TORFP, amend. No. 2.

After the meeting, the TET reevaluated the first four proposals, and then evaluated the other proposals. AR at 6. At the conclusion of the evaluation process, ATSI's proposal was assigned two strengths, one weakness, and no significant weaknesses or deficiencies under the staffing approach factor, while Epsilon's proposal was assigned five strengths and no weaknesses, significant weaknesses, or deficiencies under this factor. AR, Tab 5, TET Rep., at 6-9, 12-13. Under the management approach factor, both proposals were assessed as having no strengths, weaknesses, significant weaknesses, or deficiencies. Id. at 9, 13. The final evaluation ratings for ATSI's and Epsilon's proposals, as well as the firms' total evaluated prices, are shown in the table below.

	ATSI	Epsilon
Staffing Approach	Acceptable	Outstanding
Management Approach	Acceptable	Acceptable
Past Performance--Relevancy	Relevant	Relevant
Past Performance--Confidence	Satisfactory	Satisfactory
Price	\$8,011,944	\$10,569,750

AR, Tab 7, Source Selection Decision Memorandum (SSDM), at 1.

The contracting officer--who also served as the source selection authority in this procurement--reviewed all proposals, the TET report, and other evaluation materials.³ AR, Tab 7, SSDM, at 2. He then documented a best-value tradeoff analysis. Id. at 12-13. In the analysis, he first noted the difference between ATSI's evaluated price and Epsilon's, but then commented that there was "a significant degree of difference between the technical merit of [the two] proposals." Id. at 12. He next discussed evaluation findings that he viewed as distinguishing Epsilon's proposal as technically superior to ATSI's. Id. at 12-13. He also discussed ways in which he thought Epsilon's proposed approach could "save money, management resources, and time" for the agency, as well as reasons why he thought the weakness assigned to ATSI's proposal under the staffing approach factor could "cause disruptions in the program office's schedule." Id. at 13. Ultimately, he concluded that "Epsilon's superior approach, especially its Staffing Approach, the highest factor, justifies a price delta of \$2,557,806 based on the efficiencies and time saved [that] the strengths [of Epsilon's approach] will provide." Id. at 13.

³ Two different individuals served as contracting officers in this procurement. AR at 6. The first contracting officer participated in the above-discussed meeting with the TET. Id. The second contracting officer performed the best-value tradeoff analysis and made the award decision. Id.

Based on this, he found that Epsilon's proposal represented the best value to the government. AR, Tab 7, SSDM, at 13.

After the task order was awarded to Epsilon, ATSI received a written debriefing, and then filed a protest with our Office.

DISCUSSION

ATSI alleges that the agency's evaluation of its proposal was unreasonable in various respects and that the best-value tradeoff determination was flawed. We have considered all of ATSI's claims, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest. Below we discuss the firm's principal contentions.

Before addressing ATSI's claims, we observe that in reviewing protests of an agency's evaluation and source selection decision, even in a task or delivery order competition as here, we do not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. See Ball Aerospace & Techs. Corp., B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. Id.

ATSI first challenges the weakness assigned to its proposal under the staffing approach factor. By way of additional background, the solicitation provided that under the staffing approach factor, the agency would evaluate, among other things, the extent to which a proposal "clearly demonstrates a successful approach to execute each individual PWS task." TORFP at 32. Additionally, the solicitation stated that the agency would evaluate how thoroughly a proposal "articulates the processes and resources that will be utilized--in terms of labor, tools and technology--to successfully accomplish each individual PWS task." Id. As relevant to ATSI's claim, PWS section 2.1.3.8 specified the following task: "The contractor shall review Commercial off the Shelf (COTS)/Government off the Shelf (GOTS) systems/software applications and provide recommendations and implementation plans supporting the integration into a virtualized IT architecture environment." Id. at 6-7. ATSI's proposal addressed this task as follows:

[DELETED].

AR, Tab 9, ATSI Proposal, at 11-12.

In the evaluation of ATSI's proposal, the TET considered the above-quoted proposal language and documented the following weakness:

[ATSI's proposal] does not specify recommendations and implementation plans supporting [systems/software] integration into a virtualized IT architecture environment. By not providing recommendations and implementation plans, the Government will not have a viable solution or oversight for implementation of a virtual environment which increases the risk of unsuccessful performance.

AR, Tab 5, TET Rep., at 12-13. In other words, the TET documented its concern that ATSI's proposal did not include an approach for providing recommendations and implementation plans for COTS and GOTS systems and software, as required under PWS section 2.1.3.8.

ATSI challenges this weakness, arguing that the agency "unreasonably focused" only on the above-quoted portion of its proposal. Comments at 5. ATSI further argues that the agency ignored other portions of its proposal that, in ATSI's words, "clearly stated that [ATSI] would identify potential issues and provide recommendations for resolution [of] potential issues with COTS/GOTS." Id. In support of this argument, ATSI first points to text within its proposal stating that ATSI's proposed technical lead would provide "[DELETED]" that would discuss "[DELETED]." Id. at 5 (quoting AR, Tab 9, ATSI Proposal, at 4).

We see no merit in this argument. The proposal section relied on by ATSI does not reference PWS section 2.1.3.8 or set forth an approach for providing recommendations and implementation plans for COTS and GOTS systems. As stated above, the solicitation provided that the agency would evaluate the extent to which a proposal demonstrated a successful approach for executing each PWS task, including the degree to which the proposal described the processes and resources to be used to perform the PWS task. TORFP at 32.

As its next example of proposal content that the agency allegedly ignored, ATSI points to a staffing matrix included with its proposal that showed [DELETED] hours for a particular labor category would be allotted to PWS section 2.1.3.8. Comments at 5 (citing Protest, exh. 3, ATSI Staffing Matrix). Again, we see no merit in this argument. The staffing matrix cited by ATSI includes labor hour assignments and labor category descriptions, but no narrative regarding the PWS tasks themselves. Thus, while the matrix shows the hours and the labor category that ATSI assigned to PWS section 2.1.3.8, it does not present an approach or process for meeting the requirements under that PWS section. As previously discussed, the solicitation specifically provided that the agency would evaluate the extent to which a proposal demonstrated a successful approach for executing each PWS task. TORFP at 32.

As a final example of ATSI's arguments regarding the weakness, the firm points to text from the past performance section of its proposal that discusses its experience with researching and implementing technologies. Comments at 5-6 (citing AR, Tab 9, ATSI Proposal, at 31, 36). Aside from the fact that this text relates to the

past performance factor, and not the staffing approach factor under which the weakness was assessed, the text does not reference PWS section 2.1.3.8 or present an approach to performing the task under that PWS section. In sum, we see no merit in ATSI's allegation regarding the weakness assigned to its proposal under the staffing approach factor. This basis of protest is denied.

ATSI next alleges that the contracting officer and/or contracts specialist improperly interfered with the TET's evaluation of proposals. See Comments at 10-11; Supp. Protest at 7-9, 14. ATSI's allegation relates to the preliminary evaluation meeting--discussed above--between the initial contracting officer, the contracts specialist, and the TET. ATSI asserts that during the meeting, the contracting officer and/or contracts specialist "verbally questioned and criticized" the TET's evaluation of proposals. See Supp. Protest at 7. ATSI further asserts that the contracting officer and/or contracts specialist questioned the TET's "independent assignment of strengths and weaknesses and direct[ed] them to change their evaluation of the first four proposals, including ATSI's proposal." Id. Finally, ATSI asserts that the procurement process was flawed because there is no documentation of the meeting. Comments at 10-11; Supp. Protest at 12-13. ATSI's allegations furnish no basis on which to sustain the protest.

As an initial matter, ATSI's allegations overstate what is contained in the record. In this regard, the only part of the record that concerns the meeting is a paragraph in the background section of the contracting officer's statement in response to the protest. There, the contracting officer states that during the meeting, the initial contracting officer and contracts specialist provided "additional direction in regard to what should be evaluated as a strength or weakness." AR at 6. The contracting officer also states that after the meeting, the TET "realized that it had been too liberal in assigning strengths and weaknesses, and using the verbal feedback [from the meeting], reevaluated the first four proposals using an approach based on a better understanding of what constituted a strength or weakness." Id.

These statements do not convey that the initial contracting officer or contracts specialist "directed" the TET to change its initial evaluation findings, as ATSI alleges.⁴ Rather, given that the solicitation included definitions of what constituted a strength and weakness, TORFP at 33, the statements reasonably are read to convey that the initial contracting officer and contracts specialist provided the TET with guidance regarding the terms of the solicitation. Providing such guidance would have been consistent with the source selection plan for this procurement, which stated that the contracting officer's responsibilities included providing the TET

⁴ In response to ATSI's allegation, the agency states that the TET undertook the reevaluation "on its own initiative." Agency Request for Dismissal of Supp. Protest at 5.

“with appropriate guidance and special instructions as may be necessary to conduct the evaluation and selection process.” See AR, Tab 11, SSP, at 2.

In any event, the relevant inquiry here is not what the contracting officer and contracts specialist may have done, but rather, whether the agency’s ultimate evaluation findings were reasonable. ATSI has not shown that the evaluation was unreasonable; indeed, the only aspect of the evaluation specifically challenged by ATSI is the weakness assigned to its proposal under the staffing factor. As discussed above, the reasonableness of that weakness is supported by the record. Under these circumstances, we see no basis to further consider ATSI’s claim regarding the meeting between the initial contracting officer, the contracts specialist, and the TET.

Finally, ATSI challenges the agency’s best-value tradeoff analysis on various grounds. Protest at 8-9; Comments at 7, 12-13; Supp. Protest at 6. As relevant to the firm’s primary allegation in this area, and as discussed above, the solicitation provided that the non-price factors, when combined, were of approximately equal importance to price. TORFP at 32. As also discussed above, the contracting officer documented a best-value tradeoff analysis under which Epsilon’s higher-technically-rated, higher-priced proposal was selected over ATSI’s lower-technically-rated, lower-priced proposal. AR, Tab 7, SSDM, at 12-13. Based on the approximately \$2.6 million price difference between the two proposals, ATSI argues that the agency improperly “disregarded the Solicitation’s directive to place **equal** weight on price as compared to all other non-price evaluation factors.” Comments at 8-9 (emphasis in original). This claim is without merit.

Although the solicitation provided that price was “approximately equal” to the other factors combined, it did not preclude award to an offeror with a higher-priced proposal. Rather, it stated that the award would be made “on the basis of best value with tradeoffs.” TORFP at 32. Thus, the solicitation expressly contemplated that the award could be made on the basis of a higher-technically-rated, higher-priced proposal. Under this type of solicitation--i.e., one where price and technical factors are of approximately equal weight and a price/technical tradeoff may be made--we will not disturb an award based on a proposal with higher technical merit and a higher price so long as the award is consistent with the evaluation factors and the agency reasonably determined that the technical superiority of the higher-priced proposal outweighs the price advantage of the lower-priced proposal. See Financial & Realty Services, LLC, B-299605.2, Aug. 9, 2007, 2007 CPD ¶ 161 at 5; Structural Preservation Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7. As discussed below, the record here shows that the agency’s determination in this regard was reasonable.

In his tradeoff analysis, the contracting officer first acknowledged the approximately \$2.6 million price difference between the proposals. AR, Tab 7, SSDM, at 12. He then compared the strengths and weakness that the TET assigned to ATSI’s and

Epsilon's proposals. Id. at 12-13. Based on this comparison, he concluded that Epsilon's higher-technically-rated, higher-priced proposal represented a better value to the government because it included technical features that could save the agency money, management resources, and time. Id. at 13. In reaching this conclusion, the contracting officer also noted that the above-discussed weakness assigned to ATSI's proposal under the staffing approach factor could result in a need for increased agency oversight. Id. On this record, and given that ATSI has not shown the underlying evaluation to be unreasonable, we see no basis to question the agency's best-value determination. See Bay Area Travel, Inc. et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 9-10 (tradeoff decision under solicitation establishing price as approximately equal to non-price factors was unobjectionable where agency documented a reasonable basis for selecting the higher-technically-rated, higher-priced proposal for award); Structural Preservation Sys., Inc., supra (same).

ATSI also challenges the agency's best-value tradeoff on the basis that the agency improperly followed the procedures of FAR § 16.505 instead of those of FAR § 15.101-1. Comments at 12-13; Supp. Protest at 6. In this regard, ATSI points out that the agency, in response to the protest, states that the procurement was conducted in accordance with FAR § 16.505. Comments at 7 n.3, 13 (citing AR at 13). ATSI asserts that the agency's use of FAR § 16.505 was a "substantial flaw" because the solicitation stated that the award would be made "on the basis of best value with tradeoffs similar to the process described in FAR 15.101-1." Id. at 12-13 (citing TORFP at 32). We disagree.

FAR § 16.505 prescribes procedures for issuing orders under ID/IQ contracts. As stated above, the procurement here involved the placement of an order under the agency's SeaPort-e multiple award ID/IQ contract vehicle. Accordingly, the agency's general use of the procedures in FAR § 16.505 was appropriate. Returning to ATSI's claim, the firm is correct that the solicitation provided that a tradeoff process "similar" to that described in FAR § 15.101-1 would be employed. As discussed below, however, the record shows that the agency did precisely that.

FAR § 15.101-1 describes the best-value tradeoff process in the context of negotiated procurements under FAR part 15. FAR § 15.101-1(b) provides that when an agency uses a tradeoff process, the solicitation must state all evaluation factors and significant subfactors and their relative importance. FAR § 15.101-1(c) provides that while the tradeoff process allows an agency to accept an other-than-lowest-priced proposal, the perceived benefits of the higher-priced proposal must merit the additional cost, and the rationale for tradeoffs must be documented. Consistent with these tenets, and as previously discussed, the record here shows the agency's rationale for selecting an other-than-lowest-price proposal for award to be reasonable and well-documented.

Finally, ATSI argues that the agency's best-value tradeoff analysis was flawed because it allegedly was "[d]evoid [of] any actual assessment of the purported savings in efficiency and effectiveness the Awardee's proposal promised or how these purported savings compared to the significant and real increase in cost associated with the approach." Comments at 9. ATSI's argument has no merit because, as discussed below, it is at odds with the policy set forth in the relevant authorities.

As stated above, FAR § 16.505 prescribes procedures for agency orders under ID/IQ contracts, such as the one here. FAR § 16.505(b)(7)(i) provides that while the contracting officer shall document the rationale for any tradeoffs among price and non-price considerations, the "documentation need not quantify the tradeoffs that led to the decision." Accordingly, there was no need for the sort of quantification of tradeoffs that ATSI claims the agency should have performed.⁵ See Gen. Dynamics Info. Tech., Inc., B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 4 (no requirement to quantify value of tradeoff when selecting higher-rated, higher-priced proposal for award in procurement under FAR subpart 16.5).

The protest is denied.

Susan A. Poling
General Counsel

⁵ FAR § 15.308 similarly provides that "[a]lthough the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision." Although FAR § 15.308 is not applicable here, see FAR § 16.505(b)(1)(ii) (stating the policies of FAR subpart 15.3 do not apply to orders under multiple award ID/IQ contracts, such as the one here), we nevertheless raise this point because ATSI claims that the agency's actions here should be reviewed under FAR part 15 instead of FAR subpart 16.5. Comments at 7 n.3, 12-13.