



Decision

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Matter of: Target Media Mid Atlantic, Inc.

File: B-412468.8

Date: June 27, 2017

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DIGEST

Protest challenging agency's cost evaluation of professional compensation is denied where the agency reasonably evaluated the awardee's proposed compensation using the information available to the agency.

DECISION

Target Media Mid Atlantic, Inc., a small business located in Mechanicsburg, Pennsylvania, challenges the issuance of a task order by the Department of the Navy to Imagine One Technology & Management Ltd., of Colonial Beach, Virginia, pursuant to request for proposals (RFP) No. N00024-14-R-3125, for information technology support services. Target Media challenges the agency's evaluation of Imagine One's professional compensation plan.

We deny the protest.

BACKGROUND

The solicitation was issued on September 17, 2014, under the Navy's SEAPORT-e multiple-award contract, seeking a contractor to provide engineering and professional services in support of ship maintenance systems information technology for the Navy's maritime maintenance enterprise solution (NMMES). Contracting Officer's Statement

(COS) at 2. The RFP contemplated the issuance of a cost-plus-incentive-fee, level-of-effort task order with a 1-year base period, and four 1-year options. Id.

The solicitation anticipated issuance of the order to the offeror whose proposal demonstrated the best value to the agency considering the following factors: technical capability, past performance, and total evaluated cost. RFP at 83-84. The RFP stated that technical capability would be considered more important than past performance and that both would be considered significantly more important than the total evaluated cost. Id. at 84. As competing proposals approached parity in the first two factors, the importance of cost would increase. Id.

The solicitation stated that the agency would undertake a cost realism analysis and warned offerors that proposals that are “unrealistic in terms of technical or schedule commitments, or unrealistically high or low in terms of cost, may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity of risks of the proposed work and may be grounds for rejection of the proposal.” Id. at 89. The RFP further provided that if proposed costs, including direct and indirect rates, were considered unrealistic, the offeror’s proposed costs “will be adjusted upward in accordance with [Federal Acquisition Regulation (FAR)] 52.216-10 to reflect more realistic costs.” Id. at 89-90. The solicitation also anticipated that the agency would evaluate each offeror’s professional employee compensation plan in accordance with the provisions of FAR § 52.222-46 and warned offerors that “[i]f an acceptable plan that complies with these provisions is not provided, the proposal may be rejected.” Id. at 89.

On December 22, 2014, Target Media, along with 13 other offerors, submitted timely proposals in response to the solicitation. The Navy conducted a comparative analysis of proposals and determined that Imagine One’s proposal provided the best value to the agency. COS at 1. On August 17, 2016, the agency issued a task order for the requirement to Imagine One.

On August 28, Target Media filed a protest with our Office challenging the agency’s cost and technical evaluation. On December 6, we sustained the protest in part, concluding that the agency had failed to evaluate the realism of the awardee’s cost proposal in accordance with its proposed technical approach and had failed to evaluate the awardee’s professional employee compensation plan in accordance with the requirements of the solicitation. See Target Media Mid Atlantic, Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 4-7. With regard to the agency’s cost evaluation, our decision concluded that the agency had failed to properly account for the technical approach proposed by Imagine One. Id. at 5. Specifically, Imagine One had proposed to staff a substantial portion of its personnel from external sources (including new hires and incumbent hires), but, despite this, the agency had limited its cost realism analysis to internal cost data provided by Imagine One and its proposed subcontractor, CACI Enterprise Solutions, Inc. Id.

Our decision also noted that the agency had not compared Imagine One's direct labor rates to those paid to incumbent personnel on the NMMES requirement or to the prevailing market rate. Id. at 6-7. We found that the agency, therefore, had not reasonably evaluated whether Imagine One offered "lower compensation for essentially the same professional work" as envisioned by FAR § 52.222-46. Id. at 7.

Following our decision, the agency's cost evaluation team (CET) reevaluated Imagine One's cost proposal and professional compensation. COS at 3.¹ The CET concluded that, for personnel not specifically named in the proposal, Imagine One's proposed approach to hiring new personnel included recruiting from the marketplace and from the incumbent contract. Id. at 4. In evaluating the costs resulting from this approach, the agency's cost realism evaluation evaluated Imagine One's proposed rates for three levels of personnel: associate, intermediate, and lead. Id. For associate-level personnel, the Navy concluded that Imagine One and CACI had proposed to hire many personnel from colleges and universities. Id. at 5-6. The agency therefore compared the direct, unburdened rates proposed by Imagine One and CACI for associate-level personnel to the market rates for comparable labor categories in the same geographic market, as provided by the website salary.com. Id. at 6. For intermediate- and lead-level personnel, the Navy concluded, based on the awardee's proposal, that Imagine One and CACI would likely hire these personnel from the incumbent staff. Id. at 5. The agency therefore compared the rates for these personnel to the rates proposed, for the same labor categories, by [DELETED], the incumbent prime contractor for the requirement. Id. at 7.²

Where the Navy found that Imagine One or CACI's proposed direct labor rates fell below the applicable benchmark, the agency adjusted the evaluated cost of the applicable labor category to the benchmark level. Based on these adjustments, the CET upwardly adjusted Imagine One's proposed cost by \$13,215,300, resulting in a total evaluated cost of \$188,190,461. Id. at 8.

The CET also evaluated Imagine One's proposed professional compensation plan and concluded that it was "reasonable based on its technical approach and the cost realism adjustments" made by the agency. Agency Report (AR), Tab 6, CET Report Addendum, at 11. The CET's report stated that the plan "reflects a sound technical approach and demonstrated ability to provide uninterrupted high-quality work." Id. The CET noted that some of the awardee's proposed rates were lower than the rates proposed by [DELETED] but concluded that, nonetheless, Imagine One "will be able to

¹ As an initial matter, the CET decided to keep in place the Navy's upward adjustment, made during the agency's initial cost evaluation, to [DELETED] unnamed labor category rates found in Imagine One's proposal. COS at 4. The CET's reevaluation started from this adjusted level rather than the base level proposed by Imagine One. Id.

² [DELETED]

maintain program continuity, provide uninterrupted high-quality work, and have the required competent professional service employees available.” Id. at 12.

Based on the cost reevaluation, the agency’s final ratings of Imagine One’s and Target Media’s proposals were as follows:

| | Target Media | Imagine One |
|----------------------------------|-----------------------------------|-----------------------------------|
| Technical Capability | Good | Outstanding |
| Technical Knowledge & Capability | Good | Outstanding |
| Management Approach | Acceptable | Good |
| Staffing Approach | Good | Outstanding |
| Past Performance | Relevant/ Satisfactory | Relevant/ Satisfactory |
| Cost | \$201,492,928 | \$188,190,461 |

COS at 9.

The source selection advisory council (SSAC) conducted a new best-value tradeoff and concluded that Imagine One’s proposal represented the best value to the agency. AR, Tab 8, SSAC Report Addendum, at 11. The source selection authority reviewed the SSAC report and concurred with its recommendation. AR, Tab 10, Source Selection Decision Document Addendum, at 1-2.

On March 8, 2017, the agency reconfirmed its decision to issue the task order to Imagine One. This protest followed.³

DISCUSSION

Target Media challenges the Navy’s evaluation of Imagine One’s professional compensation plan. The protester argues that the agency failed to evaluate the direct labor rates proposed by the awardee in relation to the incumbent rates. The protester also asserts that the agency unreasonably evaluated Imagine One’s proposed associate-level, unnamed personnel using a comparison to salary.com rates. Target Media additionally challenges the Navy’s evaluation of Imagine One’s fringe rate. The

³ The awarded value of the task order at issue here exceeds \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under Department of Defense multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e).

protester asserts that these errors resulted in a flawed cost evaluation and best-value determination.⁴

The solicitation here instructed offerors that their professional employee compensation plan and supporting documentation would be evaluated by the agency, as part of its cost evaluation, “to determine if the [o]fferor’s plan and supporting documentation demonstrate the [o]fferor’s ability to meet the provisions of the FAR 52.222-46 ‘Evaluation of Compensation for Professional Employees’ provision.” RFP at 89 (advising that “[i]f an acceptable plan that complies with these provisions is not provided, the proposal may be rejected.”). FAR § 52.222-46 calls for a cost evaluation of each offeror’s compensation plan that considers the realism of the professional compensation proposed as well as its impact on recruiting and retention and its consistency with the total plan for compensation. FAR § 52.222-46(a). The provision cautions offerors that “lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.” FAR § 52.222-46(b).

In conducting such a cost realism analysis, 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. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Additionally, an agency’s cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 6. Our review of an agency’s cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Target Media asserts that the agency’s evaluation of professional compensation was flawed because the agency compared the awardee’s proposed labor rates for unnamed intermediate and lead personnel to the rates proposed by [DELETED], the incumbent prime contractor, for unnamed personnel under the same categories. The protester argues that [DELETED]’s proposed rates did not match the rates incumbent personnel

⁴ While we do not address every argument raised by Target Media in its protest, we have reviewed each issue and do not find any basis to sustain the protest. For example, the protester argued that the agency’s technical evaluation was flawed because it failed to take into consideration the impact of Imagine One’s alleged underbidding of its proposed staffing. We dismissed this argument as untimely, because it was based on information that was known to Target Media in its prior protest, yet the protester failed to raise this argument in that protest. See Loyal Source Gov’t Servs., LLC, B-407791.5, Apr. 9, 2014, 2014 CPD ¶ 127 at 5-7 (dismissing protest of agency’s failure to evaluate compensation plans where the protester could have and should have raised protest grounds during a prior protest).

are actually being paid under the requirement. In this regard, the protester asserts that since [DELETED] knew the identities of the incumbent personnel, such personnel would have been listed in the [DELETED] proposal as named personnel, not as unnamed personnel. Moreover, the protester asserts there were at least [DELETED] other contractors beyond [DELETED] and CACI that were performing, in some capacity, under the incumbent contract. Accordingly, the protester argues that the agency failed to compare Imagine One's proposed rates to the rates being paid to incumbent personnel, despite the awardee's dependence on recruiting incumbents to fill positions for the requirement.

Based on our review of the record, we do not find the agency's use of [DELETED]'s proposed rate as a comparison metric to be objectionable. In this regard, the agency explained that, while it attempted to look at the rates being paid to incumbent personnel on the current contract covering the requirement, it was not able to do so because the categories were "not a one-for-one match because the title, description and skill level of the labor categories differ between the two efforts." AR, Tab 6, CET Report Addendum, at 3-4. The CET was therefore unable to conduct a meaningful comparison between Imagine One's proposed rates and the incumbent rates. *Id.* Additionally, the agency was unable to conduct a comparison using [DELETED]'s proposed rates for named personnel, because the agency only had access to the fully burdened rates for [DELETED]'s named personnel. See Supp. Memorandum of Law at 2.⁵

In light of the cost information available to the agency, we find that it was reasonable for the Navy to use [DELETED]'s proposed rates in the agency's cost evaluation of unnamed personnel at the intermediate and lead level. In this regard, while the protester seems to suggest that the agency should have compared Imagine One's rates to the rates of other contractors that have performed on the incumbent contract, the protester has not explained why such other incumbents would be a better yardstick than [DELETED]. Indeed, [DELETED] has been the incumbent, prime contractor for the NMMES requirement for the past eight years and therefore is presumably very aware of what the prevailing rates are for personnel on the NMMES requirement. While [DELETED]'s proposed rates for unnamed personnel may not precisely match the rates currently being paid to incumbent personnel, the record indicates that the actual, incumbent personnel rates were not reasonably ascertainable to the agency. As discussed above, our Office does not require an agency's cost realism evaluation to achieve scientific certainty; rather, the methodology employed must be reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., supra.

⁵ We note that our Office has previously found an agency's evaluation of professional compensation to be unreasonable where the agency compared unburdened labor rates to burdened labor rates and also failed to document that its evaluation of professional compensation compared matching labor categories in evaluating the awardee's rates. See MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 8-10, 13.

Target Media also challenges the agency's use of the website salary.com to evaluate the awardee's proposed rates for unnamed, associate-level personnel. In support of this point, the protester argues that the agency improperly assumed that all of Imagine One's proposed associate-level personnel would be hired from colleges or universities, and therefore used the wrong metric to compare proposed associate-level labor rates.

Here again, we do not find the agency's methodology to be unreasonable. In this regard, the CET based its use of salary.com on Imagine One's proposal, which stated that the awardee intended to "hire directly from colleges and universities for many of these positions," and intended to "take advantage of new technological and software process innovations being taught in universities today." AR, Tab 6, CET Report Addendum, at 6 (quoting AR, Tab 4, Imagine One Proposal, at 219, 320). While the protester argues that this proposal language was only made in reference to two labor categories, the agency points out that its use of salary.com did not assume that all of the associate-level positions would come directly from colleges or universities. Instead, the agency compared Imagine One's and CACI's rates to the 50 percent median values found on salary.com for similar skill level workers in the relevant geographic area. Such median values thus did not represent the very lowest salary paid to entry-level personnel, but instead represented what the average worker, located in the same geographic market with skills that matched the RFP labor category requirements, would be paid. We find the use of this methodology reasonable.

Finally, the protester contends that the agency's evaluation of the awardee's professional compensation plan failed to adequately evaluate Imagine One's proposed fringe benefits. In this regard, Target Media contends that while the agency did note "a handful of conclusory statements about Imagine One's proposed fringe benefits," the agency failed to conduct a more diligent assessment. Comments at 10. The protester argues that "something more" was required of the agency, "given the admitted generally lower labor rates that Imagine One proposed." *Id.* The protester additionally asserts that it was prejudiced by the agency's failure to adequately evaluate fringe benefits, because a proper cost realism evaluation would have resulted in further adjustments to Imagine One's proposed cost and also would have resulted in the assessment of risks to Imagine One's technical proposal.⁶

As discussed above, FAR provision 52.222-46 provides that the agency will evaluate an offeror's proposed compensation plan "to assure that it reflects a sound management approach and understanding of the contract requirements," and further states that the evaluation "will include an assessment of the offeror's ability to provide uninterrupted high-quality work." FAR § 52.222-46(a); AT&T Gov't Solutions, Inc., B-413012, B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 21. The provision also states that an

⁶ To the extent that Target Media's assertion of prejudice relies on its argument that the agency should have assessed technical risks in Imagine One's proposal based on the awardee's low labor rates, we find this argument to be untimely as detailed infra note 4.

offeror's compensation plan "will be considered in terms of its impact upon recruitment and retention, its realism, and its consistency with a total plan for compensation." Id. The provision defines compensation to include "salaries and fringe benefits" and states that "lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement." Id. In evaluating an offeror's fringe benefits, our Office has explained that an agency need not ensure that offerors match the exact fringe rate of the incumbent, so long as the agency reasonably concludes that the offeror's overall compensation package is realistic. See AT&T Gov't Solutions, supra, at 23; MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 9 (noting that "[n]othing in FAR provision 52.222-46 requires the agency to find that both an offeror's proposed fringe benefits and salary are, independently, realistic. Instead, the provision requires agencies to assess whether an offeror's proposed 'total compensation' is realistic.").

Here, we conclude that the agency's overall evaluation of total compensation, which included an assessment of the awardee's fringe benefits, was reasonable. In this regard, as discussed above, the CET conducted a reasonable assessment of Imagine One's proposed direct labor rates via comparison with the rates proposed by [DELETED], market salary data, and Imagine One's internal company salary rates. Additionally, as part of the agency's assessment of total compensation, the CET specifically examined the effect of Imagine One's benefits on the awardee's recruitment and retention efforts. Ultimately, the Navy concluded that these benefits, "such as a total compensation package, employee bonus plans, paid time off, 401(k) matching and retirement programs, employee stock ownership plan, tuition assistance, health insurance and long term career paths" would not have a negative impact on recruitment and retention. AR, Tab 6, CET Report Addendum, at 12.⁷ These benefits were comparable to, or in excess of, those offered by the incumbent and the protester. Agency Supp. Resp. at 2-3.

With regard to the specific fringe rate proposed by the awardee, the agency examined this rate in relation to the company's historical fringe rates and concluded that both Imagine One and its subcontractor CACI had proposed fringe rates that were within five percentage points of their historical fringe rates. See AR, Tab 5, CET Report, at 21. This assessment was consistent with the solicitation requirements, which envisioned that the agency would review each offeror's indirect rates relative to the offeror's historical rates billed in the last five years. See RFP at 77. The RFP anticipated that the agency would provide additional scrutiny to any offeror that proposed indirect rates that were more than 5 percent lower than that offeror's historical rates, with the solicitation requiring such offerors to provide "a derivation--including assumptions,

⁷ In addition, the CET concluded that Imagine One had detailed a "thorough recruitment, training, and retention plan" which demonstrated a "sound management approach to recruiting and training professional employees to ensure the Navy receives high-quality uninterrupted work." Id. at 11.

calculations, and substantiating evidence--of its estimation of that rate's annual cost pools and base volumes for each year of contract performance." Id.

While the agency's cost evaluation did not include a comparison of Imagine One's fringe rate to the incumbent fringe rate, our Office has noted that a separate cost realism determination of the fringe rate is not required. See MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 9. Furthermore, even if such an analysis had been required, the protester has not demonstrated that it was prejudiced by the agency's failure to conduct that analysis. Prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. edCount, LLC--Protest and Costs, B-407556.3 et al., Aug. 15, 2013, 2013 CPD ¶ 195 at 6.

Here, our review of the record does not lead us to conclude that a cost realism determination of Imagine One's proposed fringe rate would have had a meaningful impact on the agency's source selection determination. In this regard, we note that Imagine One's proposal was rated superior to Target Media in the significantly more important non-cost factors and was more than \$13 million less expensive. Additionally, the fringe rates proposed by Imagine One and its subcontractor CACI ([DELETED]% and [DELETED]% respectively) were not substantially lower than those proposed by Target Media ([DELETED]%). See Agency Supp. Brief at 2 n.1, AR, Tab 5, CET Report, at 21; AR, Tab 4.1, CACI Proposal, at 43. While the protester argues that these lower rates, when coupled with Imagine One's "low ball" salaries, would result in adjustments to the evaluated cost of Imagine One's proposal, the protester did not demonstrate, or even assert, that these adjustments would ultimately lead to Imagine One's evaluated cost exceeding the protester's.⁸ Accordingly, we conclude that the protester has failed to demonstrate competitive prejudice resulting from any alleged error in the agency's evaluation of Imagine One's fringe benefits.

The protest is denied.

Susan A. Poling
General Counsel

⁸ We note that the SSAC Report contained a "sensitivity analysis," that examined whether the agency would make award to Target Media if Imagine One's evaluated cost was upwardly adjusted to the point where it was equal to Target Media's proposed cost. AR, Tab 8, SSAC Report Addendum, at 6-7. The agency concluded that, even in this circumstance, Target Media would still not be in line for award. Id. at 7.