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Decision

Matter of: Specmat Technologies, Inc.

File: B-414331.5

Date: November 29, 2017

Isaias Alba, IV, Esq., Julia Di Vito, Esq., Kathryn M. Kelley, Esq., and Samuel S. Finnerty, Esq., Piliero Mazza PLLC, for the protester.

Paul F. Khoury, Esq., and George E. Petel, Esq., Wiley Rein LLP, for Signal Engineering, Inc., the intervenor.

Lieutenant Colonel Kevin P. Stiens, and Jason R. Smith, Esq., Department of the Air Force, for the agency.

K. Nicole Willems, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of past performance evaluation is denied where the evaluation was reasonable, consistent with the terms of the solicitation, and thoroughly documented.
 2. Protest that agency failed to assess the awardee's proposal for risk following a reduction in the awardee's proposed price is denied where the solicitation did not require such an analysis.
 3. Protest that the agency failed to conduct a price realism analysis is denied where the solicitation contemplated the award of a contract on a fixed-price basis, the solicitation did not contain an express price realism provision, and the solicitation lacked the types of express statements that would support a conclusion that a price realism analysis was contemplated.
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DECISION

Specmat Technologies, Inc., located in Rockford, Tennessee, protests the award of a contract to Signal Engineering, Inc., located in San Diego, California, under request for proposals (RFP) No. FA8606-16-R-6397 issued by the Department of the Air Force for personnel locator beacons (PLB). Specmat challenges the agency's evaluation of Signal's past performance and price.

We deny the protest.

BACKGROUND

The RFP, which was issued on March 24, 2016, contemplated the award of a fixed-price contract for a total of 14,616 PLBs based on technical, past performance, and price factors.¹ RFP at 85. The solicitation provided for award to the responsible offeror with (1) acceptable technical capability, (2) low or moderate technical risk, (3) acceptable past performance, and (4) the lowest value adjusted total evaluated price (VATEP).² Id.

As relevant here, the RFP provided that each proposal would be rated as acceptable or unacceptable under the past performance factor based on the offeror's recent and relevant record of performance in supplying locator beacons and similar devices.³ Id. at 93. For each past performance effort reviewed, the RFP provided that the quality of the work performed would be assessed by taking into account all available information, regardless of its source.⁴ Id. The quality assessment could result in positive or adverse findings.⁵ Id. For adverse information identified, evaluators would consider the number

¹ The technical factor was composed of two subfactors: (1) performance capability, and (2) production plan. RFP at 87. The RFP advised offerors that technical capability ratings of acceptable or unacceptable would be assigned for each subfactor based on an assessment of the quality of the offeror's solution for meeting the government's requirements. Id. The second subfactor was also to be assigned a technical risk rating, based on the identification of weaknesses and consideration of potential for disruption of schedule or degradation of performance that might result in the need for increased oversight and/or the likelihood of unsuccessful contract performance. Id. Possible technical risk ratings were low, moderate, or high. Id. at 88.

² The VATEP is the offeror's total proposed price minus a value adjustment. RFP at 95. The amount of the value adjustment is determined by multiplying an offeror's proposed price by its trade space factor. Id. at 96. The trade space factor is the difference between an offeror's demonstrated system reliability and the RFP's threshold reliability requirement of 90 percent. Id. The RFP provided that the VATEP would be used for evaluation purposes only. Id. at 95.

³ To be considered recent, an effort must have been ongoing or performed during the five years prior to the issuance of the solicitation. RFP at 93. An effort would be considered relevant if it involved Cosmicheskaya Sistyema Poiska Avariynich Sudov/Search and Rescue Satellite-Aided Tracking (COSPAS/SARSAT) certified, aircraft devices that aid in recovery of downed military aircrew, and the scope and magnitude of effort and complexity were similar to that required by the RFP. Id. at 94. If an effort involved little or none of the scope and magnitude of effort and complexities required by this solicitation, it would not be considered relevant. Id.

⁴ Potential quality assessment ratings were satisfactory, unsatisfactory, or not available. RFP at 95. A satisfactory rating was defined as:

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and severity of problems, mitigating circumstances, and the effectiveness of corrective actions that resulted in sustained improvements. Id.

With regard to price, the RFP advised offerors that price proposals would be evaluated for reasonableness, unbalanced pricing, and VATEP. Id. at 95. The RFP also advised that offerors whose prices were determined to be unreasonable might not be considered for award, and an offer might be rejected if the contracting officer determined unbalanced pricing posed an unacceptable risk to the government. Id.

The agency received three proposals in response to the RFP, including proposals submitted by Signal and Specmat. Combined Memorandum of Law and Contracting Officer's Statement of Fact (MOL/COSF) at 4. After conducting discussions with the offerors, the agency requested and received final proposal revisions (FPR) from the offerors on January 3, 2017. Id. at 10. The agency evaluated the FPRs and selected Specmat for award. Id. Subsequently, the unsuccessful offerors filed protests with our Office challenging the award to Specmat, and the agency responded by taking corrective action. Id. We dismissed those protests as academic on February 23. See Signal Engineering, Inc., B-414331, Feb. 23, 2017 (unpublished decision); ACR Electronics, Inc., B-414331.2, Feb. 23, 2017 (unpublished decision).

As part of its corrective action, the agency reopened discussions and subsequently requested and received new FPRs from all three offerors on June 7. Id. at 11. The agency then selected Signal for award. Id. The unsuccessful offerors challenged the award to Signal in protests filed with our Office on July 10 and July 11, and the agency

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During the contract period, contractor performance is substantially meeting (or substantially met) contract requirements. For any problems encountered, contractor took effective corrective action.

Id. An unsatisfactory rating was defined as:

During the contract period, contractor performance is not substantially meeting (or did not substantially meet) contract requirements. For problems encountered, corrective action appeared only marginally effective, not effective, or not fully implemented. Customer involvement was required.

Id.

⁵ Adverse was defined as:

[P]ast performance information that supports a less-than satisfactory rating on any evaluation element or any unfavorable comment received from sources without a formal rating system.

RFP at 94.

once again elected to take corrective action. Id. Specifically, the agency indicated that it would reevaluate offerors' past performance and make a new award decision. Id. The protests were dismissed by our Office as academic on July 21. See ACR Electronics, Inc., B-414331.3, July 21, 2017 (unpublished decision); Specmat Techs., Inc., B-414331.4, July 21, 2017 (unpublished decision).

As part of its most recent corrective action, the agency assigned a new chief for the past performance evaluation team (PPET), as well as a new PPET member. Id. The PPET reviewed all past performance references and reassessed the recency and relevancy of each reference. Id. The final evaluation of the protester's and intervenor's proposals was as follows:

| | Specmat | Signal |
|---|------------------------|-------------------|
| Performance Capability Technical Rating | Acceptable | Acceptable |
| Production Plan Technical and Risk Rating | Acceptable Moderate | Acceptable Low |
| Past Performance Rating | Acceptable | Acceptable |
| Reasonable Pricing | Yes | Yes |
| Unbalanced Pricing | No | No |
| Proposed Price | \$20,373,600 | \$19,876,973 |
| Demonstrated System Reliability | 93.6% | 97.8% |
| VATEP | \$19,640,151 | \$18,326,569 |

Agency Report (AR), Tab 10, Source Selection Decision Document (SSDD) at 3.

Following this evaluation, the agency reaffirmed its prior decision to award the contract to Signal. MOL/COSF at 12. The contracting officer (CO) notified offerors of the decision, and provided a debriefing to Specmat on September 13. Id. at 13. This protest followed.

DISCUSSION

Specmat alleges that the agency should have rated Signal's past performance unacceptable. The protester asserts in this regard that Signal's poor performance on a previous contract for PLBs does not support an acceptable rating. Specmat also alleges that the agency failed to properly evaluate Signal's final proposal because the agency did not perform a risk assessment of Signal's technical proposal after Signal reduced its final proposed price. Finally, Specmat contends that the agency failed to conduct a price realism analysis of Signal's proposal despite language requiring the agency to perform such an analysis. As discussed below, we find that none of the protester's arguments provides a basis for sustaining the protest.

Past Performance

Specmat challenges the agency's evaluation of Signal's past performance, alleging that Signal's poor performance on a prior PLB contract should have resulted in the assignment of an unsatisfactory rating for that effort and an unacceptable past performance rating to Signal's proposal. Specifically, Specmat argues that the agency failed to properly consider whether Signal met its contractual requirements under the PLB contract. In this regard, Specmat contends that the agency did not evaluate Signal's past performance in accordance with the stated evaluation criteria, which provided for the assignment of a satisfactory rating where a contractor substantially met contract requirements and took effective corrective action for any problems encountered. Comments at 2-3; RFP at 95. Specmat alleges that, during the performance of the PLB contract, Signal delivered faulty beacons that failed to meet contract specifications and had to be repaired or replaced such that Signal did not substantially meet the contract requirements. Comments at 3. In response, the agency argues that, while it recognized that there were some problems with the PLB contract, its conclusion is based on a reasoned analysis of Signal's performance that was thoroughly documented in the record. The agency maintains that our Office should not substitute our judgment for that of the agency. MOL/COSF at 14.

As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. Huntington Ingalls Indus., Inc.; VT Halter Marine, Inc., B-409541 et al., June 2, 2014, 2014 CPD ¶ 167 at 13. Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6; Falcon Eenvtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's judgment concerning the merits of an offeror's past performance does not establish that the evaluation was unreasonable. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3.

Here, the record shows that the agency's evaluation of Signal's performance on the PLB contract was reasonable. The SSDD includes a thorough discussion of the performance of that contract noting, for example, that while there were issues identified by the Air Force following delivery of beacons under that contract, the issues were due to government actions or government articulations of requirements, and were not the result of Signal's design or manufacturing failures. SSDD at 2. Additionally, the agency identified an upward trend in operational effectiveness and concluded that Signal adequately responded to performance failures with effective corrective action. Id. at 2-3. Further, the agency found that the test failures often involved tests that went beyond contract specifications such that those failures did not indicate a failure to perform to contract specifications. Id. at 3.

While the protester argues that Signal's failure to consistently deliver beacons meeting contract specifications should have resulted in an unsatisfactory rating for Signal's performance of the PLB contract, the protester's arguments amount to nothing more than disagreement with the agency's assessment. In order to receive a satisfactory rating, a contractor need only have demonstrated that it substantially met contract requirements and took effective corrective action for any problems encountered. RFP at 95. Here, the agency recognized that there were issues with the prior contract, and performed a comprehensive evaluation of Signal's performance considering events both leading up to the award of the PLB contract and events occurring after performance was complete. AR, Tab 8, Past Performance Consensus Evaluator Worksheets at 14-21. Among other things, the PPET concluded that Signal adequately responded to performance failures with effective corrective action. SSDD at 3. Based on our review of the record here, we find no basis to find the agency's evaluation of Signal's past performance unreasonable.

Risk Evaluation

The protester also contends that the agency failed to evaluate the risk inherent in Signal's final proposed price, which was lower than the price proposed by Signal in earlier versions of its proposal. Comments at 6. In this regard, the protester notes that the RFP informed offerors that changes or exceptions in the FPR would be subject to evaluation and might introduce risk that the offeror's proposal would be found unacceptable and ineligible for award. RFP at 86. Additionally, the protester cites language in the agency's request for FPRs that specifically addressed price:

You are cautioned that any new changes introduced with the [final price revision] submittal will be subject to evaluation, and could potentially introduce a new deficiency or other issue that would render the proposal unawardable. You are cautioned that price changes that are not adequately explained or that lack traceability from the offeror's previous proposal position may not be considered credible in the final evaluation. Traceability to the technical, business, or financial conditions that brought about the changes must be maintained. Lump sum reductions in cost/price will not be accepted without supporting rationale.

Protest, Exhibit A, Request for FPRs, June 16, 2017.

According to the protester, because offerors were on notice that price changes had to be traceable back to the technical, business, or financial conditions that brought about the price changes, the agency was required to evaluate whether a change in an offeror's proposed price created any risk to successful performance. Comments at 7. We disagree. We think that the traceability requirement is most reasonably taken at face value--i.e., as requiring simply that offerors provide the agency with satisfactory explanations for changes in their proposed prices. Whether a risk assessment is then required depends on the nature of the explanation furnished.

Here, Signal reduced its price, and traced the price reduction to an adjustment of its profit margins. AR, Tab 7, Signal's Rationale for Price Change. Had Signal made changes to its technical approach in an effort to reduce its proposed price, which was not the case here, it would have been appropriate for the agency to consider whether the changes to the technical approach introduced new deficiencies or other issues that rendered the proposal unawardable. On its own, however, a reduction in price did not trigger the requirement for a new risk assessment of Signal's technical approach. Accordingly, we find the protester's argument that the agency was required to perform a risk assessment of Signal's final price to be without merit.

Price Realism

In addition, the protester contends that the agency failed to conduct a price realism analysis despite language in the RFP and the agency's request for FPRs that, according to the protester, obligated the agency to perform such an analysis. Comments at 9. The agency contends, however, that such analysis was neither required nor permitted based on the language in the solicitation.

Here, the RFP contemplated the award of a fixed-price contract. Absent a solicitation provision expressly or implicitly providing for a price realism evaluation, agencies are neither required nor permitted to conduct a price realism analysis in awarding a fixed-price contract. PAE Applied Technologies, LLC, B-414624, June 12, 2017, 2017 CPD ¶ 187 at 3. In the absence of an express price realism provision, we will conclude that a solicitation contemplates a price realism evaluation only where the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, or where the RFP states that a proposal can be rejected for offering low prices. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 14.

Based on the record, we conclude that the solicitation did not contain an express price realism provision, and did not otherwise provide for a price realism analysis. The RFP advised offerors that price proposals would be evaluated for reasonableness, balance, and VATEP. Id. at 95. The RFP also advised that offerors whose prices were determined to be unreasonable might not be considered for award, and that an offer might be rejected if the contracting officer determined unbalanced pricing posed an unacceptable risk to the government. Id. Finally, the RFP advised offerors that they were required to provide sufficient detail to demonstrate the balance and reasonableness of their pricing and their VATEPs, noting that the burden of proof for credibility of proposed prices rests with the offeror. Id. at 67. Nothing described above amounts to an express statement that the agency would review prices to determine whether they are so low that they reflect a lack of technical understanding, or advising offerors that a proposal can be rejected if the proposed price is too low.

Additionally, the protester contends that the language in the agency's request for FPRs constitutes an amendment to the solicitation that created an obligation for the agency to perform a price realism analysis. Even if we were to find that the language cited by the

protester constituted an amendment to the solicitation, the language cited by the protester also fails to provide the types of express statements necessary for our Office to conclude that a price realism analysis was contemplated. As discussed above, the language did nothing more than require offerors to explain any changes in their proposed prices and to trace any changes to the technical, business, or financial conditions that brought about the changes. A broader reading of the language is not supported by the record.

The protest is denied.

Susan A. Poling
General Counsel