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Decision

Matter of: Applied Physical Sciences Corporation

File: B-406167

Date: February 23, 2012

David P. Metzger, Esq., Caitlin K. Cloonan, Esq., and William S. Speros, Esq., Arnold & Porter LLP, for the protester.

Joseph A. Mingrone, Ocean Data Systems, LLC, for the intervenor.

Gregory L. Edlefsen, Esq., and Charles G. Steenbuck, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency evaluation of proposals is unobjectionable where it is reasonable and consistent with solicitation evaluation criteria.

DECISION

Applied Physical Sciences Corporation, of Groton, Connecticut, protests the award of a contract to Ocean Data Systems, LLC, of New London, Connecticut, under request for proposals (RFP) No. N00173-11-R-TA07, issued by the Department of the Navy, for the design and build of an Autonomous Undersea Vehicle (AUV) Low-Frequency Towed Array. The protester challenges the agency's evaluation of proposals and selection decision.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside, sought proposals for the award of a fixed-price contract for an AUV Low-Frequency Towed Array to support a research program of the Naval Research Laboratory's Physical Acoustics Branch. Contracting Officer's Statement at 1. Detailed specifications were provided for the towed array. See RFP, attach. 1, Towed Array Specifications.

Offerors were informed that award would be made on a best value basis, considering the following factors: technical/management and price.¹ RFP at 27. The technical/management factor was more important than price. Id. at 26. The RFP identified the following two subfactors under the technical/management factor: technical merit and management. The technical merit subfactor was more important than the management subfactor. Id. at 27.

Instructions were provided for the preparation of proposals. With respect to the technical merit subfactor, offerors were instructed to address all components detailed in the specifications and the agency's requirement that the equipment be delivered rapidly. Id. at 24. The RFP provided that the agency would evaluate an offeror's technical approach and demonstrated ability to meet the requirements of the specifications. Id. at 27. This included a determination of whether an offeror's approach was sound and indicated a high probability of fully satisfying all requirements in a timely manner. Id.

With respect to the management evaluation factor, offerors were instructed to provide a managerial plan for accomplishing the tasks required by the RFP. RFP at 24. The RFP required that the plan include a proposed delivery schedule, manufacturing plan, and quality assurance plan.² Id. The RFP stated that the agency would evaluate offeror's proposed managerial approach to determine whether the offeror's proposed schedule, manufacturing plan, and quality assurance plan demonstrates innovation and a high degree of efficiency. Id.

The agency received four proposals, including Applied Physical's and Ocean Data's, which were evaluated by the agency's technical evaluation board (TEB). Both firms proposed basic (meeting the requirements) and enhanced (exceeding

¹ Although the RFP requested past performance information, past performance was not identified as an evaluation factor.

² The RFP provided that proposals would be rated as either excellent (9-10 points), good (8-8.9 points), fair (5-7.9 points), or unacceptable (0-4.9 points). RFP at 26. A weighted score was then calculated by multiplying the technical merit rating by 85 and the managerial approach rating by 15. See Agency Report (AR) Tab 7, Source Selection Plan, at 2. As relevant here, an excellent rating reflected a proposal that showed a clear and comprehensive understanding of the requirements and any weaknesses were minor. A good rating reflected a proposal that showed good understanding of the requirements with "[s]ome areas of weakness and deficiency noted." RFP at 26.

requirements) versions of their towed arrays.³ The three highest rated offers were evaluated as follows:

	Offeror A	Applied Physical	Ocean Data
Technical Merit (850 max. pts.)	805	807	776
Management (150 max. pts.)	149	138	129
TOTAL (1,000 max. pts.)	954	945	905
PRICE			
Basic	\$264,257	\$115,000	\$98,410
Enhanced	N/A	\$160,000	\$133,165

Legal Memorandum at 4; AR, Tab 9, Business Clearance Memorandum, at 11.

The evaluation was supported by narrative discussions of each offeror's proposal by each TEB member. The TEB found that Offeror A's and Applied Physical's proposals were excellent overall, and that Ocean Data's proposal was good overall. See AR, Tab 9, Business Clearance Memorandum, at 12. Although Applied Physical's proposal was found to be excellent, the evaluators also noted as weaknesses that Applied Physical did not have an [Deleted]. AR, Tab 8, TEB Report, at 31, 34. With respect to Ocean Data's proposal, the evaluators noted as a weakness that Ocean Data did not have an [Deleted] and as a minor weakness that the firm proposed [Deleted] subcontractors. Id. at 18, 20.

The TEB recommended to the contracting officer that award be made to Offeror A, as the firm with the highest technically-rated proposal. AR, Tab 9, Business Clearance Memorandum, at 13. In discussions with the contracting officer, the TEB was unable to support making award to Offeror A at that firm's much higher price. See Contracting Officer's Statement at 3; AR, Tab 9, Business Clearance Memorandum, at 12. The TEB was also unable to identify features in Applied Physical's proposal that warranted award to that firm at its higher proposed price. Contracting Officer's Statement at 4.

The contracting officer concluded that the enhanced versions offered by both Applied Physical and Ocean Data were preferable to their basic versions, and that award should be made to Ocean Data for the enhanced version of its towed array. In this regard, the contracting officer noted that there was only a 4 percent difference in the firms' technical scores but that Applied Physical's price for the enhanced version was more than 16 percent higher than Ocean Data's price for the enhanced version. Id. at 5. The contracting officer concluded that award to Applied Physical

³ Both firms offered the same enhancement. AR, Tab 8, TEB Report, at 1.

could not be justified, where no discriminating features could be identified to warrant the firm's higher price. Id. at 4.

Award was made to Ocean Data, and this protest followed a debriefing.

DISCUSSION

Applied Physical raises various challenges to the agency's evaluation of Ocean Data's proposal under the technical approach and management evaluation subfactors.⁴

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. A protester's mere disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Technical Approach

The protester argues that the agency failed to evaluate Ocean Data's technical approach and demonstrated ability to satisfy the stated requirements as required by the RFP. It is the protester's opinion that Ocean Data lacks the type of staffing,

⁴ Applied Physical also suggests that Ocean Data may not comply with the RFP's limitations on subcontracting clause, Federal Acquisition Regulation (FAR) clause 52.219-14, because, in the protester's view, Ocean Data does not have an in-house manufacturing capability. Protester's Comments at 36. The limitations on subcontracting clause requires that a prime contractor perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. An agency's judgment as to whether a small business offeror will comply with the limitations on subcontracting provision is generally a matter of responsibility and the contractor's actual compliance with the provision is a matter of contract administration. See Coffman Specialties, Inc., B-284546, B-284546.2, May 10, 2000, 2000 CPD ¶ 77 at 5. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror could not and would not comply with the subcontracting limitation, the proposal may not form the basis for an award. See KIRA, Inc., B-287573.4; B-287573.5, Aug. 29, 2001, 2001 CPD ¶ 153 at 3. Here, there is nothing on the face of Ocean Data's proposal, nor has the protester directed us to anything on the face of Ocean Data's proposal, that evidences that the firm cannot and will not comply with the RFP's subcontracting limitation provision.

experience, expertise, and past performance to demonstrate an ability to satisfy the RFP requirements. Protest at 16.

As stated above the TEB report contained individual evaluators' narratives of the evaluation of proposals. The record shows that all the evaluators concluded that Ocean Data's technical approach was sound and demonstrated an ability to satisfy the requirements. Specifically with respect to the technical approach evaluation factor, one evaluator found that the Ocean Data proposal "reflects a clear and comprehensive understanding" of the requirements and describes a "sound technical approach" to the design. AR, Tab 8, TEP Report, at 26. Another evaluator found that Ocean Data's proposal described an "excellent technical approach to the problem." Id. at 18. This evaluator specifically found that Ocean Data's proposal contained a complete description of a design and manufacturing methodology for meeting the requirements. Id. Another evaluator stated that Ocean Data offered a solid proposal on all major technical factors and the overall design and manufacturing details were good. Id. at 22. The contracting officer concluded that while Ocean Data's proposal was ranked lower than Applied Physical's, Ocean Data demonstrated the ability to satisfy the requirement. AR, Tab 9, Business Clearance Memo, at 13.

We find from our review of the record no basis to object to the agency's evaluation of Ocean Data's proposal under the technical approach factor. While the protester disagrees with the evaluators' conclusions, the protester has failed to demonstrate that the agency's judgments were unreasonable.

Management Approach

The protester complains that Ocean Data, as a newly formed business, with no direct managerial experience, and only one employee, could not provide an organizational plan that demonstrated a "high level of efficiency, effectiveness, and economical performance," as required by the RFP. Protest at 21.

The evaluators found, however, that Ocean Data provided a good management plan. See AR, Tab 8, TEP Report, at 20, 24, 28. In this regard, one evaluator commented that Ocean Data provided "a significant amount of detail" on the design and fabrication approaches with a well structured schedule. Id. at 24. Another evaluator stated that Ocean Data's managerial approach was excellent and that Ocean Data's proposed schedule, and manufacturing and quality assurance plans were detailed and specific. Id. at 28.

We have no basis to conclude that the agency's judgment with respect to the evaluation of Ocean Data's management approach was unreasonable. In fact, it appears that the protester's main objection to the evaluation of Ocean Data under the management approach factor is its belief that Ocean Data, as a newly formed business, does not have the resources and ability to perform this requirement. To

the extent that Applied Physical questions Ocean Data's ability to perform the contract, this concerns the agency's affirmative determination of responsibility, which we will not review absent conditions not present here. See Bid Protest Regulations, 4 C.F.R. § 21.5 (c) (2011).

Source Selection Decision

The protester contends that in selecting Ocean Data's proposal for award the agency placed undue weight on price and ignored key discriminators between the firms' proposals. Protest at 23. The protester maintains that the Navy essentially converted the procurement from a best value to lowest-price, technically acceptable basis for award. Protest at 25.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, which are merely guides for the source selection official, who must use his own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract. Information Network Sys., Inc., B-284854, B-2848954.2, June 12, 2000, 2000 CPD ¶ 104 at 12. In this regard, source selection officials are not bound by the recommendations of lower-level evaluators. All Points Int'l Distributions, Inc., B-402993, B-402993.2; Sept. 3, 2010, 2010 CPD ¶ 209 at 3.

Here, contrary to Applied Physical's arguments, the agency did not find the firms' proposals to be technically equal. Rather, the contracting officer recognized that Applied Physical's proposal had been higher rated than Ocean Data's. Although the TEB found that, from a technical perspective, both firms' basic and enhanced versions of the towed array would meet the RFP technical requirements, see AR, Tab 9, Business Clearance Memo, at 13, this was not an unreasonable conclusion given that the RFP contained very detailed specifications that the towed array was required to satisfy. The record shows that, despite Applied Physical's higher technical score, the TEB and the contracting officer were unable to find any advantage or benefit in Applied Physical's proposal to justify its higher price. In this regard, the protester has not identified any innovative or beneficial aspects of its vehicle or technical approach that the contracting officer failed to consider in her tradeoff decision. Although Applied Physical disagrees with the contracting officer's

judgment that the protester's higher-rated proposal was not worth the additional cost to the government, the protester has not shown that her judgment was unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel