Decision

Matter of: Tridentis, LLC

File: B-410202.2; B-410202.3

Date: February 24, 2015

Protest that the agency failed to conduct a reasonable cost realism analysis or appreciate the performance risks in the awardee’s technical approach is denied where the record shows the agency’s cost realism analysis and technical evaluation were reasonable.

DECISION

Tridentis, LLC, of Washington, D.C., protests the award of a task order to Professional Analysis, Inc. (PAI), also of Washington, D.C., by the Department of the Navy, Naval Facilities Engineering Command (NAVFAC), under request for proposals (RFP) No. N00024-14-R-3252 for various support services. Tridentis argues that the agency failed to conduct a reasonable cost realism analysis of PAI’s proposal, and failed to appreciate the technical risk associated with PAI’s proposed labor rates.

We deny the protest.

BACKGROUND

On May 22, 2014, NAVFAC issued the RFP as a small business set-aside under the agency’s SeaPort-e multiple award, indefinite-delivery/indefinite-quantity (ID/IQ) contract. Agency Legal Memorandum at 1. The RFP contemplated issuance of a cost-plus-fixed-fee task order, consisting of a base year and four option years, for
the provision of program management, engineering, logistics, requirements analysis, data management and analysis, and financial management support to NAVFAC’s Expeditionary Program Office (NEPO). RFP at 1, 5.

Award was to be made on a best-value tradeoff basis considering corporate experience, technical capability, past performance on recent relevant projects, and total evaluated cost. Id. at 59-60. Technical capability included three equally-weighted subfactors: management plan, staffing plan, and key personnel. Id. at 60. As relevant here, under the management plan subfactor, the Navy was to consider an offeror’s ability to successfully recruit and place trained and experienced personnel; retain experienced personnel; and manage acceptable performance of personnel, including implementation of an employee recognition/awards program, as well as a termination and replacement plan. Id. at 61. Corporate experience and technical capability were to be of equal weight and, when combined, were of equal importance to past performance. The non-cost factors, when combined, were to be approximately equal to cost. Id. at 60.

Cost was to be evaluated for completeness, reasonableness, and realism. Id. at 62. The RFP stated that evaluation of the cost proposal might include an analysis of each offeror’s proposed costs to determine whether the proposed cost elements are realistic for the work to be performed, reflect that the offeror has a clear understanding of the requirements, and are consistent with other cost-related information. Id. Offerors were cautioned that the government might reject an offer that reflected a "serious lack of cost realism," and were further advised that, "professional compensation that is unrealistically low or not in reasonable relationship to the various job categories may be viewed as evidence of failure to comprehend the complexity of the contract requirements." Id. at 62-63. Finally, offerors were advised that proposed labor categories, labor rates, and indirect ceiling rates were to become part of the contract. Id. at 38. With respect to indirect rates, under the resulting order, the awardee was to bill the lower of the indirect ceiling rates or actual incurred indirect rates experienced during performance. Id.

Proposals were received in response to the RFP from PAI, Tridentis, and a third offeror. The agency’s initial review of proposals identified various weaknesses in each offeror’s proposal, and the agency decided to conduct discussions. As relevant here, the agency informed PAI of the following discussion topic based on an assigned weakness under the management plan subfactor:

Your proposal did not demonstrate the ability to retain experience[d] personnel. Your proposal states [DELETED]. Your proposal [DELETED]. Please provide additional information in your management plan [to] demonstrate PAI’s ability to successfully recruit and place trained and experienced personnel; retain experienced personnel throughout the performance of the contract; and to address an employee recognition program.
Agency Report (AR), exh. 10, PAI Evaluation Notice, at 3. The Navy also informed PAI of the following discussion topic with respect to the cost evaluation factor:

PAI’s proposal states PAI took steps to reduce direct costs by asking many of the current NEPO support team employees to take salary reductions upon award of this task order. PAI’s proposal as also [sic] stated PAI believes the vast majority of its proposed staff will stay—considering most have been with PAI and have supported NEPO for many years and they understand the fiscal environment and enjoy their work. The Government is concerned PAI’s proposed direct labor rates/costs, based on letters of intent from employees, in many instances representing significant salary reductions, may represent a significant cost risk to the Government if these employees leave PAI during the contract period and must be replaced through the competitive marketplace in the Washington, DC geographic area. PAI’s belief that “the vast majority of its proposed staff will stay—considering most have been with PAI and have supported NEPO for many years and they understand the fiscal environment and enjoy their work” appears anecdotal. Please provide additional information to demonstrate PAI’s plan to maintain your workforce at the proposed labor rates/cost throughout the contract period of performance.

Id. The agency received and evaluated final revised proposals from each offeror. In its final evaluation of PAI’s proposal, the agency removed the mentioned weakness under the management plan subfactor, commenting that PAI demonstrated the ability to retain experienced personnel, articulated its recruiting and hiring process, detailed various retention policies, and presented an adequate approach and understanding of the requirements. AR, exh. 18, Summary Evaluation Report, at 20.

The record shows that the agency accepted PAI’s proposed labor rates without adjustment after considering its response to the agency’s concerns. AR, exh. 19, Cost Analysis Revised Proposals, at 4-5. In this regard, the evaluators noted PAI’s representation that its in-depth analysis of wages in the industry showed that salaries could be reduced while still providing the type of support personnel that would help NEPO succeed. Id. at 4. The evaluators apparently accepted PAI’s explanation that its proposed salaries, on average, exceeded the prevailing market rate by about [DELETED] percent, and that the firm’s proposed salaries were more than competitive in recruiting talent. See id.

On July 28, the Task Order Evaluation Authority (TOEA) awarded the task order to the third offeror. AR, exh. 20, Best Value Determination, at 5. In response to an agency-level protest filed by Tridentis, the agency took corrective action, rescinding the award to the third offeror, and making a new award to PAI. AR, exh. 21, Best
Value Determination Addendum, at 1. In the new best value determination, the TOEA relied on the prior evaluation of proposals, which found the following:

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<th>PAI</th>
<th>Tridentis</th>
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<td>Corporate Experience</td>
<td>Outstanding</td>
<td>Good</td>
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<tr>
<td>Technical Capability</td>
<td>Good</td>
<td>Good</td>
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<tr>
<td>Management Plan</td>
<td>Acceptable</td>
<td>Acceptable</td>
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<tr>
<td>Staffing Plan</td>
<td>Good</td>
<td>Good</td>
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<td>Key Personnel</td>
<td>Outstanding</td>
<td>Outstanding</td>
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<td>Past Performance</td>
<td>Substantial Confidence</td>
<td>Satisfactory Confidence</td>
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<td>Overall Technical Rating</td>
<td>Outstanding</td>
<td>Good</td>
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<tr>
<td>Proposed Cost¹</td>
<td>$18,399,428</td>
<td>$18,591,758</td>
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Id. at 3. The TOEA found that Tridentis and PAI had “relatively the same technical capability,” but that PAI had stronger depth of corporate experience. Id. at 4. In this regard, the TOEA articulated a concern with Tridentis’ lack of demonstrated experience managing projects of similar size to this requirement. The TOEA recognized the superiority of PAI’s past performance rating, and that Tridentis’ evaluated cost was slightly higher than PAI’s. Finally, the TOEA found both PAI and Tridentis’ costs to be realistic, reasonable, and based on adequate competition. Id. On this basis, the TOEA determined that PAI’s proposal was the best value solution to the requirements defined in the RFP. Id. at 4. This protest followed.²

DISCUSSION

Tridentis argues that the agency failed to conduct a proper cost realism analysis of PAI’s cost proposal. Protest at 5-7. The protester also argues that the agency unreasonably failed to consider the risks inherent in PAI’s technical proposal resulting from its proposed approach to hire and retain personnel. Id. at 8-9. Our review of the record shows that the protester’s allegations are without merit.³

¹ The agency conducted a cost realism analysis of each proposal, and with respect to PAI and Tridentis, decided to accept their proposed costs without adjustment. AR, exh. 19, Cost Analysis Revised Proposals, at 3, 10; exh. 21, Best Value Determination Addendum, at 4.

² Since the proposed cost of PAI’s task order is $18,399,428, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of $10 million. See 10 U.S.C. § 2304c(e)(1)(B).

³ In its initial protest, Tridentis also challenged the rationality of the agency’s rating methodology. The firm also filed a supplemental protest challenging various aspects of the agency’s evaluation of its proposal under the non-cost factors. See (continued...)
Technical Evaluation

Tridentis argues that the agency failed to conduct a reasonable assessment of PAI’s proposal under the management and staffing plan subfactors. In its original protest, Tridentis argued that the Navy should have identified significant risk in PAI’s technical approach because of its proposed salary reductions for incumbent employees. Protest at 8. According to the protester, employees asked to take significant pay cuts are “likely to be disgruntled and search for other employment.” Id. The protester alleges that, given the outstanding rating assigned to PAI’s technical proposal, the agency must have failed to properly consider this risk. However, as discussed above, the record shows that the agency identified a weakness in PAI’s technical proposal under the management plan subfactor for not demonstrating the ability to retain experience personnel, evidencing that the agency did consider the risk associated with PAI’s proposed technical approach. AR, exh. 10, PAI Evaluation Notice, at 3.

Tridentis recognizes this fact, conceding that the agency “gave some consideration to the risk that PAI might not retain personnel.” Protester’s Comments at 7 (emphasis in original). However, the protester argues that the agency did not critically evaluate whether PAI’s response alleviated the risk. Id.; see also AR, exh. 16, PAI Technical Proposal Revisions, at 16-16b. Tridentis asserts that there is no evidence in the record that the agency considered the risk that PAI’s employees might be disgruntled by the compensation reductions, but “remain with PAI--leaving PAI with an unhappy and very likely less productive workforce.” Id. at 9. The protester concludes that it was unreasonable for the agency to conclude that there was no risk without conducting a more “searching” evaluation. Id. at 10.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. MVM, Inc., B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 4. A protester’s disagreement with the agency’s judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. Id. In reviewing a protest that challenges an agency’s evaluation of proposals, our Office will not reevaluate the proposals, but will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Id.

The Navy responds that it conducted a full and proper evaluation of the risks in PAI’s proposal under the management plan subfactor, and was not required to evaluate retention of employees under the staffing plan subfactor. The agency

(...continued)
gerently Supplemental Protest. The protester later withdrew these issues, and so we do not consider them further. Protester’s Comments at 2 n.2.
asserts that it reasonably considered PAI’s response to the agency’s concern under the management plan subfactor, and found that it mitigated the identified risk. 
Agency Legal Memorandum at 34-35.

Our review of the record gives us no basis to disagree with the agency that it need not evaluate retention of personnel under the staffing plan subfactor, as such consideration more rationally relates to the explicit considerations under the management plan subfactor. Moreover, our review shows that the agency reasonably identified the risk associated with PAI’s proposed salary reduction, assigned a weakness to that risk, and addressed the weakness through discussions. The protester has given us no basis to question the agency’s conclusion that PAI’s discussions response mitigated the assigned weakness.

The record shows that the agency cast a more critical eye on the assertions made by PAI in its proposal than the protester suggests, and required the firm to submit a more robust justification for its proposed technical approach. AR, exh. 10, PAI Evaluation Notice, at 3. In this regard, PAI’s response asserts that its reduced labor rates were still more than market competitive; it had successfully implemented a similar reduction in pay on another government contract; and it offered various initiatives to incentivize employees. AR, exh. 16, PAI Technical Proposal Revisions, at 16-16b. Moreover, while Tridentis questions the thoroughness of the agency’s evaluation, it urges our Office to accept as fact its unsupported assertion that PAI’s technical approach will result in discontent, problems with retention and lowered productivity of the firm’s personnel. Protester’s Comments at 10. We are provided no basis to question the reasonableness of the agency’s evaluation.

Moreover, even the protester appears to concede that the fiscal environment weighs in favor of PAI being able to retain personnel notwithstanding its proposed wage reduction. In this regard, ‘Tridentis’ protest recognizes that PAI’s personnel were overcompensated on the incumbent task order. The protester asserts that, with respect to direct labor rates, “it is well known that many of PAI’s incumbent workers are considered to be overpaid for the qualifications necessary to perform their required tasks.” Protest 6. The firm further asserts that, based on its knowledge of the labor market, individuals meeting or exceeding the RFP requirements “could be hired for far less than the salaries PAI was paying its employees.” Id. Tridentis’ own assertions support PAI’s proposal statements, and add credence to the agency’s reliance on those statements in its evaluation.
Cost Realism

Tridentis also argues that the Navy failed to conduct a reasonable cost realism analysis with respect to PAI’s direct labor rates and indirect cost rates. The protester asserts that the agency failed both to evaluate whether PAI could perform at the rates proposed and to make a most probable cost adjustment to PAI’s proposed costs, as required by the solicitation. Protester’s Comments at 2.

Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror’s proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror’s technical proposal. Federal Acquisition Regulation (FAR) § 15.404-1(d)(1). Agencies are required to perform such an analysis when awarding cost-reimbursement contracts to determine the probable cost of performance for each offeror. FAR § 15.404-1(d)(2). Agencies are given broad discretion to make cost realism evaluations. Burns & Roe Indus. Servs. Co., B-233561, Mar. 7, 1989, 89-1 CPD ¶ 250 at 2. Consequently, 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.

The RFP required the agency to conduct a cost realism analysis of an offeror’s direct labor rates and indirect rates. The record shows that the agency conducted a cost realism analysis of PAI’s cost proposal and found it to be realistic without the need for a probable cost adjustment. AR, exh. 19, Cost Analysis Revised Proposals, at 4-5; exh. 21, Best Value Determination Addendum, at 4. With respect to direct labor rates, the record shows that PAI’s rates are comparable to, and in most cases higher than, those proposed by the other offerors, including Tridentis. AR, exh. 8, Cost Analysis, at 8-11. Thus, Tridentis’ argument that PAI’s rates are unrealistic rests solely on its assertion of risk associated with PAI’s reductions in salary, discussed above. As we previously resolved this issue, we have no basis to question the agency’s determination that PAI’s direct labor rates were realistic.

The protester also argues that the Navy should have upwardly adjusted PAI’s indirect rates in response to its proposed cuts in its direct labor costs, which would have resulted in Tridentis being the lower-cost offeror. The Navy responds that the agency’s evaluation of PAI’s indirect rates was thorough and consistent with the RFP. Agency Legal Memorandum at 32. The agency asserts, as a threshold matter, that there is no risk of increased indirect costs to the government because PAI’s proposed rates are ceiling rates, which are binding on PAI, and because the proposed rates were based on PAI’s Defense Contract Audit Agency (DCAA)-approved 2014 provisional rates. Id. The Navy also states that it thoroughly evaluated PAI’s rates, including rate components, and compared them to those of other offerors. Id. The Navy concludes that it found no reason to adjust PAI’s
indirect rates, and the protester has offered nothing other than disagreement with the agency’s evaluation.  Id.

The record shows that PAI’s proposed indirect rates are derived from its 2014 DCAA-approved provisional rates.  AR, exh. 8, Cost Analysis, at 15; exh. 6, PAI Cost Proposal, at 41-42.  The firm’s cost proposal explained that its indirect rates have remained very consistent for years, and that the firm expects them to remain steady.  PAI specifically related that the firm expects its rates to remain steady should it win this task order because its customer base will be about the same, and its field site overhead should remain the same.  It also explained that it intends to maintain similar office space and administrative staff so that its home site overhead and G&A should remain the same.  AR, exh. 6, PAI Cost Proposal, at 43.  Finally, PAI provided spreadsheets showing how the proposed rates were derived.  Id. at Attachment 7, Rev. 2, Cost Summary, Indirect Rate Support.

We have no basis to question the agency’s conclusion that there was no risk of an increase in cost to the government because the rates proposed by PAI are ceiling rates.  In effect, the ceiling rates served to limit the agency’s exposure to increased costs vis-à-vis PAI’s actual indirect costs above the ceiling rates.  See Vitro Corp., B-247734, B-247734.3, Sep. 24, 1992, 92-2 CPD ¶ 202 at 6-8.  With the indirect rate ceiling, indirect costs could not increase as a proportion of direct costs, and would only increase in absolute terms as direct costs increased.  As discussed above, we found that the agency reasonably found the direct costs realistic.  While the agency’s argument does not address the protester’s position that any unabsorbed overhead due to PAI’s proposed rates would present a risk to successful performance, we are not convinced that the record shows the rates to be discounted rates.  In this regard, we have no basis to question the agency’s reliance on the information submitted by PAI in its proposal, which included the firm’s estimation that its forward-looking indirect costs and rates would remain consistent with its prior year’s rates.

Even if we were to accept Tridentis’ premise—that PAI’s proposal would have resulted in unabsorbed overhead—the protester’s own calculations show that PAI’s total evaluated cost would have increased to $18,711,109, a difference of approximately $300,000 over the firm’s evaluated cost.  Comments at 4-5.  Given PAI’s evaluated superiority on the non-cost factors, Tridentis has given us no basis to conclude that such a price adjustment would have affected the best value decision here.  Further, we are not persuaded that if PAI were forced to absorb $300,000 in unrecovered indirect costs, it would present an unacceptable risk of performance, such that the proposal should be rejected as unrealistic.  In sum, we
have no basis to conclude that the agency’s cost realism evaluation was unreasonable

The protest is denied.

Susan A. Poling
General Counsel