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Decision

Matter of: INDUS Technology, Inc.

File: B-411702; B-411702.2; B-411702.3

Date: September 29, 2015

Richard B. Oliver, Esq., Meghan D. Doherty, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.

Eric S. Pommer, Esq., for C.J. Seto Support Services LLC, the intervenor.

Robert Jusko, Esq., and Alan Mygatt-Tauber, Esq., Department of the Navy, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of proposals under the solicitation's non-price factors is denied where the record shows that the agency's evaluation was reasonable and consistent with the solicitation's terms.

DECISION

INDUS Technology, Inc., of San Diego, California, protests the award of a task order to C.J. Seto Support Services LLC (CJS), of Ventura, California, by the Department of the Navy under request for proposals (RFP) No. N00024-14-R-3475, issued to obtain information technology support services. INDUS primarily challenges the agency's evaluation of proposals under the non-price factors.

We deny the protest.

BACKGROUND

The RFP, issued on October 9, 2014, sought proposals from service-disabled veteran-owned small businesses under the Navy's Seaport-e multiple-award indefinite-delivery, indefinite-quantity contract to provide information technology support services to the agency's Naval Undersea Warfare Center Division located in

Keyport, Washington.¹ RFP at 1, 15. The RFP contemplated the award of a cost-plus-incentive-fee task order consisting of one base year and four option years. Id. at 1-14. The scope of services to be provided under the resulting task order was defined in six categories: corporate network support, help desk services, server administration, corporate process automation support, corporate operational support, and comptroller process automation support. Id. at 19-31.

Proposals were to be evaluated based on technical approach, past performance and cost/price. Id. at 85. Technical approach was more important than past performance, and when combined, these two factors were moderately more important than cost/price. Id. at 85-86. The technical approach factor was comprised of the following three subfactors listed in descending order of importance: capability and corporate experience, management approach, and key personnel. Id. at 85. The RFP instructed offerors that, although cost/price was important, it was not the most important evaluation factor. Award was to be made to the firm whose proposal offered the best value to the government, striking the most advantageous balance between the three evaluation factors. Id. at 86.

Four proposals were received, including those from INDUS and CJS. Agency Report (AR), exh. 5, Business Clearance Memorandum, at 26. The relevant evaluation results were as follows:

	CJS	INDUS
Technical Approach	Good	Marginal
Capability and Corporate Experience	Good	Marginal
Management Approach	Good	Acceptable
Key Personnel	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Proposed Cost/Price	\$16,365,827	\$16,215,703
Evaluated Cost/Price	\$18,138,177	\$16,759,187

Id. at 92. The source selection authority (SSA) conducted an analysis of proposals and ultimately determined that CJS' proposal offered the best value to the government. As part of the analysis, the SSA considered the strengths and weaknesses of each proposal. The SSA also noted the source selection evaluation board's (SSEB) finding that CJS' proposal presented a low risk of unsuccessful

¹ The estimated value of the task order at issue is greater than \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

contract performance under the technical approach factor, whereas INDUS' proposal presented a high risk of unsuccessful contract performance under the same factor. Id. at 109.

The SSA further noted that CJS' proposal had ten discriminating strengths and two discriminating weaknesses under the technical capability and corporate experience subfactor, which would provide benefits under five performance work statement (PWS) areas, but the risk of unsuccessful performance under two areas. The SSA also discussed one strength under the management approach subfactor for the firm's strong incumbent retention approach. Id. With respect to INDUS, the SSA discussed one discriminating strength and two discriminating weaknesses for the firm's proposal under the technical capability and corporate experience subfactor, which would provide benefits under one PWS area, and two weaknesses that would increase the risk of unsuccessful performance under two areas. Id. The SSA also noted one strength and one weakness in INDUS' proposal under the management approach subfactor, and one weakness under the key personnel subfactor. Id.

The SSA ultimately found that CJS' strengths provided a higher technical benefit than INDUS' strengths. He determined that CJS' identified weaknesses minimally increased the risk of unsuccessful performance under the technical approach factor. In contrast, the SSA found that INDUS' proposal had weaknesses that were not offset by strengths, which increased the risk of unsuccessful performance. Id. at 110. With respect to past performance, the SSA found that both firms' ratings of substantial confidence provided a high expectation that both would successfully perform the required effort, and that there was no discriminator between the proposals for this factor. Id. at 109. The SSA concluded that CJS' proposal represented a technically superior approach and the award of a task order at a cost premium of 8.23 percent was in the best interest of the government. Id. at 110. INDUS requested and received a written debriefing. This protest followed.

DISCUSSION

INDUS raises various challenges to the evaluation of proposals under the technical approach and past performance factors. Under the technical approach factor, the protester argues that the agency unreasonably assigned a marginal rating to the firm's proposal, and challenges both various assigned weaknesses and the agency's failure to recognize additional strengths in the proposal. INDUS also challenges the evaluation of CJS' past performance, arguing that the agency conducted an unreasonable and disparate evaluation. Although we address only examples of the allegations below, we have considered all of INDUS' arguments and find them to be without merit.

Technical Evaluation

INDUS argues that the agency unreasonably assigned its proposal a marginal rating under the technical approach factor. Protest at 13-15; Protester's Comments at 3-6. The essence of the firm's argument is that, while its proposal was evaluated as having 11 weaknesses under the technical approach factor, none of them were significant weaknesses, a requirement of the RFP's definition of marginal, and a marginal rating also could not be assigned because the firm's proposal had offsetting strengths.² Protester's Comments at 3. The agency responds that INDUS' proposal was properly assigned a marginal rating because the assigned weaknesses, when combined, met the definition of marginal under the RFP, the assigned weaknesses were not offset by the assigned strengths, and the firm's proposal was found to have a high risk of unsuccessful performance. Legal Memorandum at 6-7.

As a general matter, adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. Science Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 7. Thus, the relevant question here is not whether the agency properly rated the proposal marginal but, rather, whether the underlying evaluation was reasonable and supported the source selection decision. As discussed in more detail below, we find unobjectionable the agency's evaluation of the relative merits of CJS' and INDUS' proposals and the source selection decision based on that evaluation.³

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. INDUS first challenges the assignment of two weaknesses to the firm's proposal under the technical approach factor. Protester's Comments at 7-11. The protester also argues that the agency unreasonably failed to recognize at least five strengths in its proposal. Id. at 11-15.

With respect to one assigned weakness, INDUS argues that the agency incorrectly identified a requirement in the PWS and also overlooked experience stated in the

² According to the RFP, the rating of marginal was defined as "[p]roposal does not clearly meet the requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more significant weaknesses that are not offset by strengths. Risk of unsuccessful contract performance is high." RFP at 89.

³ INDUS also points to certain apparently contradictory findings in the evaluation record to show the unreasonableness of the agency's evaluation. Protester's Comments at 6-7. We have considered all of the protester's contentions and find no basis to sustain the protest.

firm's proposal. Protest at 21-22. In this regard, the protester argues that the evaluation reference to a "CISCO Identity Services Engine emergency responder" improperly combines two solicitation requirements, for "2 Cisco Emergency Responder (CER) deployments" and "1 Cisco Identity Services Engine deployment." Id.; RFP at 19. The protester also argues that the firm's proposal details experience with certain requirements stated in the PWS that the evaluators identified as lacking. Id. at 22.

The Navy argues that, notwithstanding the error alleged by INDUS, the evaluation was reasonable because the protester fails to show that it met the requirements of the PWS with respect to experience with the two separate requirements identified above. Legal Memorandum at 14. We agree with the agency. Even if the protester is correct that the agency erroneously combined two separate requirements in the assigned weakness, the protester has not shown that it was prejudiced by the agency's alleged evaluation error. See Bannum, Inc., B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (prejudice is an element of every viable protest). In this regard, it seems apparent that the agency was concerned about the two separate requirements, even if it combined the two in the assigned weakness. Moreover, the protester has not shown, nor does our review reveal, that the protester's proposal evidences such experience.

With respect to the second aspect of this weakness, that the evaluators identified INDUS as lacking experience with certain requirements identified in the PWS, the protester points to areas in the firm's proposal which purport to discuss such experience. Protest at 22-23. The agency responds that the weakness was assessed under the corporate network support scope of work, whereas the experience listed by INDUS in its proposal relates to application based support. Legal Memorandum at 15. The agency asserts that the SSEB determined that INDUS' experience with application based support was not interchangeable with the requirement for corporate network support. Id. The protester has provided us no basis to question the reasonableness of the agency's evaluation.⁴

⁴ The protester does not provide any substantive response to the agency's position, and responds only that the agency's explanation is an improper post-hoc rationalization, which should be excluded from consideration under the rationale set forth by our Office in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91. In Boeing, our Office observed that while we consider the entire record, we accord greater weight to contemporaneous source selection materials rather than judgments, such as reevaluations made in response to protest contentions. Id. at 11. However, the agency's explanations are not post-hoc rationalizations, as the protester contends. Boeing is irrelevant in situations such as here, where the agency offers post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details. Such explanations will generally be considered in our review of (continued...)

With respect to strengths that INDUS argues the agency unreasonably failed to recognize, the firm asserts, for example, that its innovative approach to call tracking warranted assignment of a strength. Protest at 28. The protester contends that its innovative methodology and application for tracking tickets has provided benefits to other government agencies, “and will similarly keep the Navy better informed during contract performance here by providing bi-weekly briefings and reports that are not required by the Solicitation.” Id. The agency counters that a strength was not warranted because the agency will designate the help desk system. Legal Memorandum at 24. Moreover, the agency asserts that the SSEB determined that the system did not warrant a strength because any basic help desk system would have a process for tracking tickets, reporting on the time necessary to close tickets and a method for tracking trends in types of tickets entered. Id.

INDUS asserts that the agency disparately assigned CJS a strength under the same PWS scope of work. However, a review of the record shows that the strength assigned to CJS’ proposal was for [DELETED] which the agency found would improve overall customer experience and reduce the number of calls placed with the help desk. AR, exh. 5, Business Clearance Memorandum, at 96. The strength assigned to CJS’ proposal is for demonstrably different work and experience than that described in INDUS’ proposal, and does not evidence disparate treatment in the evaluation of the firm’s proposal. Where a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors’ proposals. See Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. INDUS has not made this showing.

As another example, INDUS argues that the agency unreasonably failed to identify a strength in the firm’s proposal for its strong incumbent employee retention program, a strength that was assigned to CJS’ proposal. In support of its argument, INDUS points to various areas of its proposal emphasizing that it has a majority of personnel already in place; those personnel already have required training, certifications, licenses, and qualifications needed to continue to perform on the resulting contract; and that, as the incumbent contractor, there will be no disruption to ongoing work and a low transition period. Protester’s Comments at 27-28.

(...continued)

the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. Management Sys. Int’l, Inc., B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 6. We find the agency’s explanation to be both credible, and consistent with the contemporaneous written record.

The agency asserts that, while INDUS' proposal discusses at numerous points that it has personnel in place, it makes no mention of any plans to retain those personnel, which was the basis of CJS' assigned strength. Supp. Legal Memorandum at 11. A review of the record, including those sections cited by the protester, confirms the agency's position. The record shows that INDUS' proposal discusses its retention program in the context of personnel already in place under the incumbent contract that will be utilized on the new contract. However, it does not clearly discuss a plan to retain those personnel going forward, which was the basis of the strength assigned to CJS. The protester has provided us no reason to question the agency's evaluation in this regard.⁵

Past Performance Evaluation

INDUS argues that the Navy improperly evaluated CJS' past performance. The protester argues that the agency could not have reasonably determined that CJS' past performance warranted a rating of substantial confidence. Protest at 35. In this regard, the protester points to one of five past performance references submitted by CJS on behalf of it and its subcontractors, to argue that CJS should not have received a very relevant rating for relevancy because of the small annualized dollar amount for the contract. Protester's Comments at 15-17.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Advanced Envtl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

Under the RFP, a very relevant rating was to be assigned to a past performance reference where the "[p]resent/past performance effort involved essentially the

⁵ While we do not discuss them here in any detail, we have considered each of INDUS' assertions that the agency improperly failed to assign several strengths to the firm's proposal. 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, without more, does not establish that the evaluation was unreasonable. Id. Our review of the protester's allegations and the agency's explanations provide us no basis to question the agency's judgement.

same scope and magnitude of effort and complexities this solicitation requires.” RFP at 90. The protester only challenges the reference based on the dollar value of the contract. Protester’s Comments at 16. The dollar value for the particular past performance reference was approximately \$2 million, which is significantly lower than the \$18 million cost for the instant contract. AR, exh. 5, Business Clearance Memorandum, at 41, 56. However, even if we were to agree with the protester that the assignment of a very relevant rating was unreasonable given the disparate dollar values between the reference and the instant contract, the protester has not shown why, given the dollar values, relevancy, and ratings for three of CJS’ other past performance references (one for CJS and two for its subcontractors), that the agency’s rating of substantial confidence for CJS under the past performance factor was unreasonable. In sum, INDUS has not shown that it was prejudiced by any purported evaluation error.

The protest is denied.

Susan A. Poling
General Counsel