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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Tetracore, Inc.

File: B-412535

Date: January 29, 2016

Gerald H. Werfel, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.
Scott M. McCaleb, Esq., John R. Prairie, Esq., and Cara L. Lasley, Esq.,
Wiley Rein LLP, for MRIGlobal, Inc., the intervenor.
William B. Blake, Esq., Department of the Interior, for the agency.
Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's failure to conduct a cost/technical tradeoff analysis prior to awarding a contract at a higher price than had been proposed by the protester under a Broad Agency Announcement (BAA) for research proposals is dismissed for failure to present a valid basis of protest where neither procurement regulations regarding BAA procurements nor terms of the BAA required such analysis.

DECISION

Tetracore, Inc., of Rockville, Maryland, protests the award of a contract to MRIGlobal, Inc., of Kansas City, Missouri, under Broad Agency Announcement (BAA) No. 15DHS-001, issued by the Department of the Interior, Interior Business Center, for research proposals of novel approaches to address emerging, zoonotic, and transboundary animal diseases. Contending that its proposal was substantially lower-priced than MRIGlobal's, Tetracore argues that the agency failed to conduct a cost/technical tradeoff analysis to justify a higher-priced award.

We dismiss the protest.

A BAA is a contracting method by which agencies can acquire basic and applied research to fulfill requirements for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge and understanding, rather than focusing on a specific system or hardware solution. Federal Acquisition Regulation (FAR) § 35.016. Unlike other competitive procurement methods, a BAA does not contain a specific statement of work, proposals need not be evaluated

against each other since they are not submitted in accordance with a common work statement, and offers are to demonstrate that proposed research meets agency requirements. Id.; see Tamper Proof Container Sys. Corp., B-402191, Jan. 27, 2010, 2010 CPD ¶ 46 at 2 n.1.

The BAA here, issued on May 21, 2015, pursuant to FAR § 35.016, sought research proposals for multiple awards of cost-reimbursement-type contracts in any of five focus areas--relevant to this protest, focus area No. 2 called for novel screening, surveillance, and diagnostic tool development. BAA at 7-10. The BAA did not provide a specific statement of work; rather, it listed several "ideal technical requirements" (e.g., regarding cost, response time, detection limits, and sample matrices) and noted the agency's goal to improve upon currently available technologies/capabilities. Id. at 9, 16. Each offeror was to propose its own statement of work, for which the agency might provide partial or full funding. Id. at 14, 21.

The BAA instructed that proposals were to be independently evaluated for scientific merit, sound technical approach, sound management approach, capability to perform/history of past performance, and cost realism; non-cost factors combined were significantly more important than cost. Id. at 27. The BAA contemplated "best value" awards, and the agency's selection was to be based on the evaluation, funds availability, and programmatic considerations. Id. at 26-28.

Many proposals were received and evaluated. MRIGlobal's higher-priced proposal was selected in focus area No. 2; Tetracore's proposal was not selected. This protest followed. Tetracore contends that since its proposal was significantly lower-priced, the agency was required to perform a cost/technical tradeoff between the protester's and MRIGlobal's proposals because the BAA advised that the agency's selections would be based on "overall best value."

The agency contends that the protester's contention is misplaced since no cost/technical tradeoff was required either under FAR § 35.016, which provides regulatory requirements in BAA procurements, or the BAA at issue. Rather, the agency explains that the BAA's references to "best value" reflect the definition of that phrase at FAR § 2.101--i.e., that the expected outcome of the acquisition, in the government's estimation, provides the greatest overall benefit in response to the requirement.

Given the discretion afforded to an agency regarding offeror selection under FAR § 35.016, which sets forth that comparative evaluation of proposals need not be conducted--and the current BAA's failure to define "overall best value" to mean more than the selection of the most advantageous offers based on the evaluation, funding, and programmatic interests as set out in FAR § 35.016--we find unpersuasive the protester's contention that a cost/technical tradeoff was required here. Accordingly, since Tetracore has not provided sufficient factual and legal

support to demonstrate the likelihood that the agency violated applicable procurement rules and regulations in failing to conduct a cost/technical tradeoff, the protest is dismissed without further action. See Bid Protest Regulations, 4 C.F.R. § 21.5(f), see Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

The protest is dismissed.

Susan A. Poling
General Counsel