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Decision

Matter of: Data Recognition Corporation

File: B-411767.7

Date: January 20, 2016

Gregory S. Jacobs, Esq., and Steven A. Pozefsky, Esq., Polsinelli PC, for the protester.

David S. Black, Esq., Gregory R. Hallmark, Esq., Elizabeth N. Jochum, Esq., and Daniel P. Hanlon, Esq., Holland & Knight LLP, for Ipsos Public Affairs, the intervenor.

David R. Smith, Esq., Defense Health Agency, 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 that the agency unreasonably evaluated the awardee's quotation under the technical factor is denied where the record shows that, even if the agency made an error during the procurement, there is no evidence that the protester was prejudiced by the alleged procurement error.

DECISION

Data Recognition Corporation (DRC), of Maple Grove, Minnesota, protests the award of a contract to Ipsos Public Affairs, LLC, of Washington, D.C., by the Department of Defense (DoD), Defense Health Agency (DHA) under request for quotations (RFQ) No. HT0011-15-R-0003 for program management support services. DRC argues that the agency unreasonably evaluated the awardee's technical quotation and challenges the agency's best-value tradeoff decision.

We deny the protest.

BACKGROUND

The RFQ, issued on October 31, 2014, sought quotations from General Services Administration (GSA) Federal Supply Schedule contract holders to provide consultation and survey program management support services to assist in the development, administration, analysis and reporting on surveys of DoD

beneficiaries who receive outpatient care at military treatment facilities and through TRICARE purchased care. RFQ at 20, 58. The RFQ contemplated the award of a fixed-price contract with cost-reimbursable elements over one base and four option years. Id. at 60-61.

Award was to be made on a best-value basis considering technical, past performance, and price factors. Id. at 28. The technical factor was to be more important than past performance and both non-price factors, when combined, were significantly more important than price. Id. at 28-29. The technical factor included four subfactors listed in descending order of importance: technical approach, experience, management approach and quality control approach. Id. As relevant here, the technical approach subfactor states, “Demonstrated evidence of the capacity to field and complete all aspects of large-scale surveys . . . is important.” Id. at 30. Also as relevant here, the RFQ states that “management approach will be evaluated for the degree to which the Schedule Holder’s quote reflects a management approach (including approach to staffing) that will lead to the successful accomplishment of the requirement.” Id. at 32.

Past performance information submitted by vendors was to be evaluated to determine the quality of the contractor’s past performance as it relates to the probability of success of the required effort. Id. at 35. As stated in the RFQ, vendors could be assigned one of three adjectival ratings under the past performance factor: acceptable, neutral or unacceptable. A rating of acceptable was to be assigned where the vendor “has historically performed in a satisfactory manner in the fulfillment of like or similar requirements.” Id. Additionally, an acceptable rating was appropriate where a vendor has shown that it is capable of adequately performing the requirement, and the rating indicates a low level of performance risk to the Government. Id. The price factor was to be evaluated separately from the non-price factors and was to determine whether the offered prices for the base year and all option years were fair and reasonable. Id.

Eight vendors submitted quotations in response to the RFQ. Agency Report (AR), exh. 29, Source Selection Decision Document (SSDD), at 2. After an initial contract award and subsequent protest, the agency decided to take corrective action. Id. As part of the corrective action, the agency engaged in discussions, received quotation revisions and, after a new evaluation of quotations, the relevant results were:

	DRC	Ipsos
Overall Technical	Good	Outstanding
Technical Approach	Good	Outstanding
Experience	Good	Good
Management Approach	Good	Outstanding
Quality Assurance	Good	Good
Past Performance	Acceptable	Acceptable
Price	\$35,136,581.57	\$31,886,935.98

Id. at 4.

The source selection authority (SSA) agreed with the evaluations of both DRC and Ipsos, and the adjectival ratings noted above. AR, exh. 29, SSDD, at 4-7, 10. In discussing the technical evaluation board's (TEB) evaluation, the SSA recognized and concurred with the assignment of various strengths to Ipsos' quotation under the various subfactors, including the technical approach subfactor. Id. at 10. As relevant here, the SSA acknowledged a strength assigned by the TEB to Ipsos' quotation under the technical approach subfactor for scope management and level of effort proposed. Id. Specifically, the TEB recognized as a strength that Ipsos proposed a level of effort of an additional [DELETED] direct labor hours for all years over the independent government cost estimate (IGCE). AR, exh. 32, TEB Consensus Report, at 29. The SSA also found both DRC and Ipsos's offered prices to be fair and reasonable. AR, exh. 29, SSDD at 7, 10.

The SSA then conducted tradeoff analyses between various offerors, including between DRC and Ipsos. Ipsos' quotation was found to offer advantages over DRC's under both the technical approach and management approach subfactors. The SSA specifically noted Ipsos' strengths under the technical approach subfactor in statistical analysis, sampling methodology, and ad hoc reporting as being discriminators over DRC's quote. Id. at 15. Importantly, as discussed below, the SSA did not recognize Ipsos' level of effort as a discriminator between the two quotations. The SSA determined that Ipsos' quotation was a better value than DRC's because of its superior technical quotation and substantially lower price. Id.

Ultimately, the SSA determined that Ipsos offered the best value to the government as it was the highest technically-rated vendor with a record of past performance equal to that of the other vendors, and that there was "no sound basis for paying a price premium for the lower technically-rated [quote] presented by . . . DRC." Id. This protest followed.

DISCUSSION

DRC's primary argument¹ in this protest is that the agency unreasonably evaluated Ipsos' quotation under the technical factor because it failed to consider the impact of

¹ DRC also argues that the agency improperly treated past performance as a pass-fail criterion. Protester's Comments at 7. This allegation is without merit. While the RFQ did state that past performance would be considered as part of the best-value analysis, RFQ at 28, past performance was only to be considered on an acceptable, unacceptable, or neutral basis. Id. at 35. The record shows that DRC and Ipsos both received acceptable ratings for past performance, and the SSA found both offerors' past performance to be equal. AR, exh. 29, SSDD, at 4, 15. If the

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an [DELETED] labor hour reduction from Ipsos' pre-corrective action quotation to its final, post-corrective action quotation. In this regard, DRC alleges that the agency's technical evaluation of Ipsos as outstanding is unsupported by the record, and that the agency ignores that Ipsos' technical quotation "contained no explanation as to how it achieved an almost [DELETED] labor hour reduction in its final proposal revision without sacrificing performance quality under the contemplated contract." Protester's Comments at 1. Our review of the record affords us no basis to sustain the protest.²

In reviewing a protest challenging an agency's evaluation, our Office will not 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 2. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id.

The record shows that Ipsos initially proposed 284,768 total direct labor hours for the base year and all option years. AR, exh. 37, Initial Price Analysis Report, at 3. For the same requirements, the agency's IGCE estimated [DELETED] total direct labor hours, thus supporting the TEB's assigned strength to Ipsos' quotation for offering [DELETED] more total direct labor hours than the IGCE. Id.; AR, exh. 32, TEB Consensus Report, at 29. However, the record shows that Ipsos proposed [DELETED] total direct labor hours in the final revision of its quote. AR, exh. 33, Final Price Analysis Report, at 3. Thus, DRC correctly asserts that Ipsos reduced

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protester disagreed with the agency's past performance evaluation scheme, it should have protested the terms of the solicitation prior to the date set for receipt of proposals, which it did not. See 4 C.F.R. § 21.2(a)(1).

² In its initial protest, DRC argued that the agency could not have reasonably assigned an outstanding rating to Ipsos' final proposal revision because the firm drastically reduced its price from its initial, pre-corrective action quotation price. Protest at 6-8. However, in its comments, the protester focused its argument on the awardee's drastic reduction of labor hours, not price. To the extent that DRC is arguing that the agency's evaluation of Ipsos' quotation was irrational because the firm's proposed price was too low, such an argument challenges the realism of the awardee's proposed price. See DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Here, the terms of the solicitation only contemplated the evaluation of proposed prices to determine if they were fair and reasonable, and does not contemplate a price realism analysis. Therefore, any argument that Ipsos' proposed price was unrealistically low is denied.

its total direct labor hours by approximately [DELETED] hours from its initial quotation to its final revision.

However, as stated previously, the TEB continued to assign a strength to Ipsos' quotation under the technical approach subfactor for proposing [DELETED] more total direct labor hours than the IGCE, which the SSA recognized in his source selection decision. AR, exh. 29, SSDD, at 10; exh. 32, TEB Consensus Report, at 29. Thus, the record appears to show an error in the procurement, that is, the agency's evaluators continued to assign a strength to Ipsos' quotation that was not supported by its final quotation revision.³ The question for our review, is whether DRC was prejudiced by this procurement error. Bannum, Inc., B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (prejudice is an element of every viable protest). We conclude that it was not.

First, the strength at issue was one of at least nine strengths assigned to Ipsos' quotation under the technical approach subfactor. AR, exh. 32, TEB Consensus Report, at 27-29. This is as opposed to six strengths assigned to DRC's quotation under the same subfactor. Id. at 14-15. Second, the protester has not provided any basis for us to question any other aspect of the agency's evaluation under the same subfactor, or any other subfactor under the technical factor. Even if we were to agree with the protester that this strength was unreasonably assigned, it is unlikely on this record that Ipsos' technical evaluation would have been significantly impacted.⁴ Third, it is apparent from the SSDD that the SSA did not treat Ipsos' assigned strength for proposing [DELETED] more direct labor hours than the IGCE as a discriminator between quotations. AR, exh. 29, SSDD, at 15. As a result, the record does not support a conclusion that the removal of the strength at issue would impact the SSA's best-value award decision. Finally, given that Ipsos' quotation

³ The agency argues in response to the protest that Ipsos moved those labor hours to the other direct costs contract line item number (CLIN) and that its level of effort did not, in fact, decrease. Supp. Agency Report at 11-12. This assertion is not supported by the contemporaneous record, and would appear inconsistent with the final TEB report's assignment of a strength to Ipsos' quotation for proposing [DELETED] total direct labor hours more than the IGCE.

⁴ We also observe that not only was Ipsos' final proposed direct labor hours greater than the government's IGCE, but it also exceeded DRC's proposed direct labor hours by over [DELETED] hours. AR, exh. 33, Final Price Analysis Report, at 3. Despite receiving Ipsos' quotation in its entirety, DRC has not shown why our Office should be concerned with the awardee's technical approach even if it did reduce its total direct labor hours, where its final quotation offered labor hours in excess of those proposed by the protester and the government's own estimates. The record suggests that DRC's proposal was simply more costly, and as discussed earlier, unrealistically low pricing was not a consideration under this solicitation.

was technically superior, and significantly lower in price, we conclude that DRC has not shown that there is any reasonable possibility that it was prejudiced by this procurement error.

The protest is denied.

Susan A. Poling
General Counsel