Decision

Matter of: Alexander & Tom, Inc.

File: B-412358; B-412358.2; B-412358.3

Date: January 21, 2016

Christopher R. Shiplett, Esq., Randolph Law, PLLC, for the protester.
Erin Masini, Esq., Department of Commerce, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency’s rating of awardee’s staffing approach as “acceptable” was unreasonable is denied where the omission of key personnel names in the consensus evaluation report was clearly a clerical error, and the awardee’s quotation in fact included specifically-named key personnel satisfying the solicitation’s qualifications requirements.

2. Protest that best-value determination was unreasonable because it was based solely on offerors’ proposed prices for the first task order, and not on the prices proposed for the blanket purchase agreement, is denied where had the agency included both prices in the total evaluated prices used in the best-value determination, the awardee’s quotation would have remained lower-priced and higher-rated under the non-price factors.

DECISION

Alexander & Tom, Inc., of Baltimore, Maryland, protests the Department of Commerce, National Institute of Standards and Technology’s (NIST) award of a blanket purchasing agreement (BPA) to TriVision, Inc., of Chantilly, Virginia, under request for quotations (RFQ) No. SB1350-15-Q-02352, for integrated marketing services for the International Trade Administration. The protester challenges the evaluation of quotations and the resulting best-value decision.

We deny the protest.
BACKGROUND

The RFQ, a total small business set-aside, was issued to contract holders under the General Services Administration’s (GSA) Federal Supply Schedule multiple award program, schedule No. 541-5, Advertising & Integrated Marketing Solutions (AIMS) Services. RFQ at 1. The RFQ provided for award of a BPA and first task order (FTO) to the successful vendor in accordance with Federal Acquisition Regulation (FAR) § 8.405-5. Id. The RFQ indicated that the agency “anticipates but does not guarantee scope and ceiling estimate of $8 million for the BPA.” RFQ at 2.

The RFQ provided that it was the government’s intention to “award a BPA and a firm fixed price FTO [First Task Order] to the vendor that represents the best value to the Government,” considering five evaluation factors (in descending order of importance): technical capability and approach, staffing approach and matrix, first task order, past performance, and price. RFQ at 1, 4-5. The RFQ indicated in this regard that:

the Government is more concerned with obtaining exceptional technical capability rather than making an award based on the lowest overall price. However, the Government will not make an award at a significantly higher overall price to achieve small technical advantages.

RFQ at 5. With regard to a price/non-price factor trade-off, the RFQ further provided that:

as the evaluations of the Non-Price Criteria become more equal between the Vendors, price becomes more important in making the best value award determination. In the event that two or more quotations are determined not to have any substantial technical differences (i.e. are substantially equivalent with respect to the Non-Price Criteria), award may be made to the lower priced quotation. It should be noted that award may be made to other than the lower priced quoted if the Government determines that paying a higher price is warranted due to superior technical merit.

Id. The RFQ, however, also advised that:

The Government intends to award a single BPA for Integrated Marketing Services and a Firm fixed price Task Order for Export Promotion and Education services as specified in the specified SOWs [Statement of Work] . . . to the vendor whose quote, conforming to the RFQ, represents the Best Value (as defined in FAR 2.101) and results in the lowest overall cost alternative considering both price and non-price criteria. The overall determination of best value will be inclusive
of evaluating concurrently the submissions related to the BPA and to the FTO.

Id.

The agency received four quotations by the closing date, including quotations from Alexander & Tom and TriVision. Technical Evaluation Team (TET) Report at 2. The TET evaluated the quotations using an adjectival evaluation scheme, including possible technical ratings of superior, acceptable, marginal and unacceptable, and possible past performance ratings of good, satisfactory, unsatisfactory and neutral. Id. The TET arrived at the following consensus vendor ratings and rankings for non-cost factors:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Technical Capability</th>
<th>Staffing Approach</th>
<th>First Task Order</th>
<th>Past Performance</th>
<th>Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vendor A</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>1</td>
</tr>
<tr>
<td>TriVision</td>
<td>Acceptable</td>
<td>Acceptable</td>
<td>Acceptable</td>
<td>Satisfactory</td>
<td>2</td>
</tr>
<tr>
<td>Alexander &amp; Tom</td>
<td>Marginal</td>
<td>Acceptable</td>
<td>Marginal</td>
<td>Good</td>
<td>3</td>
</tr>
<tr>
<td>Vendor B</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>4</td>
</tr>
</tbody>
</table>

TET Report at 2. The agency’s competitive award memorandum (CAM) included the following chart, showing the TET’s ratings and ranking of quotations for non-price factors and the offerors’ evaluated total prices for the FTO:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Non-Price Ranking</th>
<th>Proposed Total Price for FTO</th>
</tr>
</thead>
<tbody>
<tr>
<td>IGCE¹</td>
<td></td>
<td>$1,817,934.00</td>
</tr>
<tr>
<td>Vendor A</td>
<td>1</td>
<td>[deleted]</td>
</tr>
<tr>
<td>TriVision</td>
<td>2</td>
<td>$1,279,714.58</td>
</tr>
<tr>
<td>Alexander &amp; Tom</td>
<td>3</td>
<td>$3,054,908.00</td>
</tr>
<tr>
<td>Vendor B</td>
<td>4</td>
<td>[deleted]</td>
</tr>
</tbody>
</table>

CAM at 1-2. With regard to the protester and the awardee, the CAM advised:

**TriVision** proposed the lowest total Price for the FTO. The TET determined that the technical proposal of **TriVision** was rated 2nd technically. **TriVision’s** rates proposed were consistent with their GSA schedule and therefore determined to be reasonable. Additionally, they offered a discount 10% below their GSA schedule rates for the

¹ Independent Government Cost Estimate.
BPA and no escalation of rates in the option years. Their level of effort proposed for the FTO was 10,857 [hours which] was in range of the IGCE estimate and the total price of $1,279,714.58 is 30% less than the IGCE and determined to be reasonable.

**Alex & Tom** proposed the fourth lowest total price for the FTO. The TET determined that the technical proposal of **Alex & Tom** was rated 3rd technically. **Alex & Tom's** rates proposed were consistent with their GSA schedule and therefore determined to be reasonable. Additionally, they offered a discount ranging from 30-40% below their GSA schedule rates and no escalation of rates in the option years. Their level of effort proposed for the FTO was 21,599 [hours] and greatly exceeded the IGCE estimate and the total price of $3,054,908.00 is 40% higher than the IGCE and determined to be reasonable.

*Id.* at 2 (emphasis in original). In comparing the quotations, the agency noted that while Alexander & Tom proposed the highest price and was rated third technically, with marginal ratings for technical approach and the FTO, TriVision quoted the lowest price and was rated second technically. CAM at 2-3. The agency concluded that TriVision’s quotation represented the best value, and on September 22, 2015, NIST awarded the BPA to TriVision, with a ceiling price of $8 million, and issued it the FTO, at a price of $1,279,714. CAM at 3; Contracting Officer's Statement (COS) at 6. This protest followed.

**DISCUSSION**

Alexander & Tom asserts that the agency unreasonably evaluated quotations and made an unreasonable best-value determination. Where an agency conducts a formal competition for the establishment of a BPA, we will review the agency’s actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. *The Clay Group, LLC*, B-406647, B-406647.2, July 30, 2012, 2012 CPD ¶ 214 at 8. 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. *The Clay Group, LLC*, supra. A protester’s disagreement with the agency’s judgment, without more, does not establish that an evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

We have considered all of the protester’s arguments and find that none furnishes a basis for sustaining the protest. We discuss several of the arguments below.
Alexander & Tom asserts that the agency’s rating of its technical capability and approach as “marginal” was unreasonable because, according to the protester, “[e]ach individual member of the TET evaluated Alex & Tom’s Technical Factor as either ‘Acceptable’ or ‘Acceptable/Superior.’”

Comments and Second Supp. Protest at 2. As support for its argument that the “marginal” rating was unreasonable, the protester also notes the TET’s rationale for the rating as set forth in the TET Report:

The TET assigned a MARGINAL rating under the Technical Capability and Approach factor because it determined summarize rationale for assigning adjectival rating. [sic]

TET Report at 18 (emphasis in original).

We find that Alexander & Tom has not shown the “marginal” rating to be unreasonable. First, we note that the fact that evaluators’ individual ratings may differ from the final rating, by itself, does not warrant questioning the evaluation. See Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 12 (not unusual for individual evaluators to reach disparate conclusions when judging competing proposals since both objective and subjective judgments are involved); Trailboss Enterprises, Inc., B-297742, Mar. 20, 2006, 2006 CPD ¶ 64 at 4 n.2 (discussions among evaluators generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation; the overriding concern in the evaluation process is that the final rating assigned accurately reflects the actual merits of the proposals).

Further, although the protester identifies an obvious typographical error in the paragraph in the TET Report summarizing the rationale for the “marginal” rating, that is, the omission of the rationale for the rating, it disregards the preceding two pages in the TET Report that include a discussion of Alexander & Tom’s five strengths and four weaknesses under the technical capability and approach factor. TET Report at 17-18. In this regard, the TET identified as weaknesses in Alexander & Tom’s technical quotation that: (1) it provided “no description” of its approach to integrated

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2 While the TET Report appears to indicate that four of the evaluators rated Alexander & Tom’s quotation as “Acceptable” under the technical capability and approach factor, and another rated it as “Acceptable/Superior,” TET Report at 17, the agency reports that this is, in fact, incorrect. According to the TET Chair, due to a “copying error,” one evaluator’s rating was identified as “Acceptable/Superior” for technical capability and approach, and “Acceptable” for Staffing Approach, but was actually “Marginal” for both factors. TET Report at 17; see AR, exh. 9, Declaration of Technical Evaluation Team Chair (TET Chair Declaration), at 5-6.
marketing solutions, but instead included “only three sentences that make unsupported, broad claims,” TET Report at 18; (2) it did not mention either press kits or press releases, although the SOW specifically assigned responsibility to the contractor for “Public Relations services, including preparation of media materials, articles, press kits, and press releases,” id.; see SOW § 1.4.4; (3) the scope of the work it proposed with regard to trade shows “did not demonstrate the firm’s experience in trade show basics, e.g., lead management; collateral creation; pre-show, at-show, post-show efforts,” TET Report at 17-18; and (4) it did not include the results achieved in its digital campaigns. Id. at 17-18. Further, the protester has not rebutted the substance of any of the above specific weaknesses found by the TET under the technical capability and approach factor. See Comments and Second Supp. Protest at 3.

In addition, we note that the supplemental agency report included a declaration from the TET Chair listing a total of nine areas of concern which underlay the “marginal” rating for Alexander & Tom’s technical capability and approach, including several not mentioned in the TET Report. Supp. AR, Dec. 8, 2015, TET Chair Declaration at 2-3. For example, the TET Chairman noted that Alexander & Tom indicated in its quotation that, rather than provide detail as to its technical approach to the current SOW, it instead would discuss its “portfolio” of prior experience. TET Chair Declaration at 2, citing Alexander & Tom Technical Quotation at 9. The TET Chair also cited as an additional reason for the panel’s consensus rating that:

The proposal is composed in a casual tone that seems as though it may be aiming for an “edgy” or “cool” image, but falls flat as it is riddled with grammar and formatting errors, thus reflecting poor quality control of communications products, which is of enormous relevance to each of the nine areas of services required in our SOW.

TET Chair Declaration at 3.

Alexander & Tom also does not challenge the substance of the specific agency concerns as set forth in the TET Chair’s declaration, but instead contends that we should give little weight to the agency’s post-hoc explanation of the errors and omissions in the evaluation record. Supp. Comments, Dec. 11, 2015, at 2-3. As noted by the protester, in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, we indicated that our Office accords lesser weight to evaluation conclusions reached by an agency after a protest has been filed; that is, in the heat of litigation. However, where a submission provides a detailed rationale for contemporaneous conclusions, and simply fills in previously unrecorded details, we will consider the explanation if it is credible and consistent with the contemporaneous record. SENTEL Corp., B-407060, B-407060.2, Oct. 26, 2012, 2012 CPD ¶ 309 at 9 n.6.
We need not determine whether the TET Chair’s additional concerns not cited in the TET Report were the result of a reevaluation rather than being simply a detailed rationale for the contemporaneous evaluation conclusions. Given the failure of the protester to offer a substantive response to these concerns, and the fact that a review of Alexander & Tom’s quotation supports the agency’s concerns, we conclude that even applying the enhanced skepticism called for under Boeing Sikorsky Aircraft Support when dealing with a reevaluation in the heat of litigation, there would be no basis for our Office to ignore the cited shortcomings in Alexander & Tom’s quotation. In any case, we find that the four weaknesses cited in the contemporaneous TET report by themselves provide a reasonable basis for the assigned rating of “marginal” under the technical capability and approach factor.

**Alexander & Tom’s Past Performance**

Alexander & Tom asserts that the agency’s rating of its past performance as “good” was unreasonable because the past performance “indicators” that the agency received supported a rating of “superior.” Comments and Second Supp. Protest at 3. The agency, however, notes that a “good” rating, as received by Alexander & Tom, was the highest possible rating for past performance under the agency’s evaluation plan. Supp. AR at 5; see AR, exh. 10, Technical Evaluation Plan Instructions, at 3. Since the protester fails to point to any indications of favorable past performance ignored by the agency in assigning it a “good” past performance rating, this protest ground does not set forth a basis for relief.

**TriVision Staffing Approach**

Alexander & Tom challenges the agency’s rating of TriVision’s staffing approach as “acceptable.” In this regard, the protester notes that the RFQ required adequate staffing, including “appropriate key personnel,” RFQ at 6, and points to the agency’s evaluation under this factor:

TriVision proposed name as the Project Coordinator, name of the Project Manager, name as the Construction Superintendent, and name as the Quality Control Person as key personnel. [sic]

TET Report at 14. The protester asserts that since TriVision did not propose “such Key Person[s] as ‘Construction Superintendent,’ or ‘Quality Control Person,’ and the TET has not entered the names of TriVision’s proposed key persons,” the “acceptable” rating was unreasonable. Comments and Second Supp. Protest at 3.

We find this argument to be without merit. The record indicates, once again, that the TET Report included a clerical error. In this regard, the BPA SOW only required appointment of a program manager; according to the BPA SOW, “[q]ualifications of additional personnel will be specified based on the scope of work for each call order.” BPA SOW at 2-3. The FTO SOW specified three key personnel positions for...
the task order, including principal strategist, senior audiovisual producer, and senior writer. FTO SOW at 3. TriVision proposed key personnel for each of these positions. AR, exh. 4, TriVision Quotation, Vol. II, at 4.

Further, while the TET Report assessed Alexander & Tom’s quotation a weakness—“Staffing allocation matrix (lead, support, advisory), but no hourly breakdown of staff time”—nothing in the evaluation record called into question the acceptability of its staffing approach. TET Report at 14-15. On the contrary, as noted by the agency, the TET specifically noted a number of favorable aspects of TriVision’s staffing approach, including:

Emphasized in-house talent and production facilities; this reduces the variability/interdependencies that often accompany the subcontracting of work/production.

* * * * *

Resumes demonstrate appropriate skills/abilities and client mix.

* * * * *

TriVision covered every area that we requested, and provided exceptional detail concerning their approach. For most areas, they suggested specific ideas, showing both that they understand what we’re looking for and can be creative.

Id.

Alexander & Tom also asserts that TriVision’s proposed senior writer failed to meet the required qualifications for that position. In this regard, the FTO SOW required that the proposed senior writer have a “BA in English or Journalism or equivalent technical field.” FTO SOW at 3. Alexander & Tom argues that the Bachelor of Science (BS) degree in Mechanical Engineering and the Master of Science (MS) degree in Mechanical Engineering, Design and Entrepreneurship possessed by TriVision’s proposed senior writer do not meet this requirement. Comments and Second Supp. Protest at 4; see AR exh. 4, TriVision Quotation, Vol. II, Annex I, at 6-7. The protester, however, does not explain, nor is it otherwise evident, why the BS in Mechanical Engineering does not meet the requirement for a bachelor’s degree in an “equivalent technical field.” FTO SOW at 3. In sum, we find no basis for questioning the agency’s determination that TriVision submitted an acceptable staffing approach.
Best-Value Determination

Finally, Alexander & Tom asserts that the agency’s best-value determination was unreasonable and contrary to the stated evaluation criteria because the agency based its determination solely on vendors’ proposed prices for the FTO, and did not include the BPA prices in the totals. Comments and Second Supp. Protest at 4-5. According to the protester,

the best value determination was unreasonable because the Agency only used a sub-set of the total submitted price to determine best value. According to that sub-set, Alexander + Tom’s price would be roughly double TriVision’s price. However, had the agency properly used the total proposed BPA price as required in the solicitation, Alexander + Tom’s price would have been roughly equal to TriVision’s price, and the best value therefore would have been determined differently.


This argument furnishes no basis to question the agency’s best-value determination. As noted above, the total evaluated prices used in the agency’s competitive award memorandum were the offerors’ FTO prices, without including any BPA pricing in the totals. CAM at 1-2. However, while Alexander & Tom’s FTO price ($3,054,908) was significantly higher than TriVision’s ($1,279,714), Alexander & Tom’s BPA price ($7,999,825) was significantly higher than TriVision’s ($6,398,572) as well. Comments and Second Supp. Protest, exh. 1: TriVision Proposal, Price Proposal Matrix; Alexander and Tom Proposal, Price Proposal Matrix. Thus, had the total evaluated prices used in the best value determination included both the offerors’ FTO and BPA prices, Alexander & Tom’s total evaluated price would still have been significantly higher than TriVision’s. Since we see no basis for questioning the agency’s ranking of TriVision’s quotation as higher than Alexander & Tom’s under the non-price factors, we find the selection of TriVision’s quotation as representing the best value to be reasonable.

The protest is denied.

Susan A. Poling
General Counsel