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Decision

Matter of: CALNET, Inc.
File: B-413386.2; B-413386.3
Date: October 28, 2016

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Scott A. Schipma, Esq., and Stephen J. Migala, Esq., Winston & Strawn LLP, for Universal Consulting Services, Inc., an intervenor.
Ana F. Smith, Esq., Diana L. King, Esq., and Eric D. Flores, Esq., Department of the Navy, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's cost realism evaluation is sustained where the record shows that the agency had no basis to find the proposed costs of the offerors realistic.
 2. Protest that agency unreasonably found several proposals equivalent is sustained where, although the agency's evaluators identified detailed strengths and weaknesses in each proposal, and also ranked the proposals based on these non-cost findings, the agency's source selection decision relied entirely on the adjectival ratings assigned to the proposals in making a finding of equivalence.
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DECISION

CALNET, Inc. (CI), a small business of Reston, Virginia, protests the issuance of a task order to Universal Consulting Services, Inc. (UCS), a small business of Fairfax, Virginia, under request for proposals (RFP) No. N00024-15-R-3356, issued by the Department of the Navy for a range of technical support services to be provided to the Naval Sea Systems Command Pacific Enterprise Data Center. CI maintains that the agency miscalculated proposals and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

The RFP, issued pursuant to the Navy's Seaport-e multiple award indefinite-delivery, indefinite-quantity contract program, contemplated the issuance of a cost-plus-fixed-fee task order on a best-value basis to perform a range of technical support services for a base year and four 1-year options. Firms were advised that the agency would make award based on evaluated cost and two non-cost evaluation considerations, organizational experience (deemed more important) and past performance. RFP at 39. The RFP further provided that the non-cost factors were significantly more important than cost, but also advised that cost would become more important as the degree of the proposals' equality under the non-cost factors increased. Id.

The RFP specified 13 labor categories to be proposed, the level of effort for each labor category, along with stipulated other direct costs that had to be included by the offerors in their proposed cost. RFP at 33-34, 35-36. Firms were required to provide information on their direct labor rates, as well as indirect rates to be applied to those direct rates. RFP at 34-35. There was no requirement in the RFP for offerors to propose technical solutions and, correspondingly, there was no solicitation provision that anticipated evaluating the offerors' technical approaches. RFP at 39-41, Section M, Evaluation Factors for Award. Firms were advised that the agency would perform a cost realism evaluation in connection with evaluating proposed costs. RFP at 40-41.

In response to the solicitation, the agency received 13 proposals. The agency evaluated the proposals and assigned identical ratings to the proposals submitted by CI and UCS.¹ Both proposals received good/low risk ratings under the organizational experience factor, and both received very relevant/substantial confidence ratings under the past performance factor. AR exh. 10, SSD, at 8.² Notwithstanding the assignment of identical ratings to the proposals, the record shows that the agency ranked CI's proposal second overall under the non-cost evaluation factors, and ranked UCS fourth. Id.

¹ The record shows that in evaluating proposals, the agency assigned adjectival ratings of outstanding, good, acceptable, marginal or unacceptable, as well as risk ratings of low, moderate or high, under the organizational experience factor. Agency Report (AR), exh. 10, Source Selection Decision (SSD) at 5-6. The agency assigned relevancy ratings of very relevant, relevant, somewhat relevant or not relevant in evaluating past performance, and also assigned adjectival ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence or unknown (neutral) confidence for past performance. Id. at 6-7.

² The record shows that there was at least one other concern that also received the same non-cost ratings as those assigned to CI and UCS. AR, exh. 10, SSD, at 8.

In evaluating cost proposals, the record shows that the agency made no adjustments to the protester's proposed costs, finding them realistic and reasonable. CI's total evaluated cost was \$19,942,508. AR, exh. 10, SSD, at 9. In evaluating the UCS proposed cost, the agency made a minor upward adjustment of \$26,367 to account for an error made by UCS in calculating its other direct costs; the agency found that UCS had a total evaluated cost of \$17,791,347.³

On the basis of these evaluation results, the agency made award to UCS, finding that, since its proposal was equivalent to the proposal of CI and another concern (which had an evaluated cost of \$19,264,891⁴), and since it was the lowest cost proposal among the equivalent proposals, it represented the best value to the government.⁵ After being advised of the agency's source selection and requesting and receiving a debriefing, CI filed this protest.⁶

³ The RFP required offerors to propose other direct costs of \$66,000 per year for each year of contract performance. RFP at 35. The record shows that UCS proposed other direct costs of only \$61,116 per year and then [deleted] to that amount to arrive at a total proposed cost of \$66,000 per year. UCS Proposal at 62. The agency's adjustment to UCS's proposed costs added \$4,883 per year in other direct costs to arrive at the figure of \$66,000 per year, and also added [deleted] per year to account for the additional G&A cost related to the additional other direct costs. AR, exh. 10, SSD, at 56.

⁴ The record shows that the agency made a minor upward adjustment of \$34,481 to the third-identified concern's proposed cost to account for various subcontracting costs that the agency found had not been included in the firm's proposed costs. AR, exh. 10, SSD, at 57-58.

⁵ The agency's source selection decision did not actually make a tradeoff between these three proposals, finding instead only that the three proposals--along with another, unidentified proposal--were equivalent. AR, exh. 10, SSD at 67. Once the agency made that finding, it then conducted a cost/non-cost tradeoff between UCS--the lowest evaluated cost proposal among the equivalent proposals--and another offeror that apparently was rated lower under the non-cost factors, but had a lower evaluated cost compared to UCS. Id. at 68-69.

⁶ The awarded value of the task order at issue here exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under Department of Defense multiple-award ID/IQ contracts. 10 U.S.C. § 2304c(e).

PROTEST

CI challenges the propriety of the agency's evaluation, and also alleges that the agency failed to make a reasonable source selection decision. We have carefully considered all of CI's allegations and sustain its protest for the reasons discussed below. We deny CI's remaining allegations.

Cost Realism Evaluation

CI argues that the agency's cost realism evaluation essentially was irrational and meaningless. In particular, CI maintains that UCS's proposed direct labor rates were unrealistically low and inadequate to attract and retain the personnel necessary to perform the requirement. CI argues that, had the agency properly evaluated UCS's proposed direct rates of compensation, it would have found them unrealistic, and would have made upward adjustments to them in connection with performing its cost realism evaluation.

We agree with the protester that the agency's cost realism evaluation here was inadequate. Where, as here, an agency evaluates proposals for the award of a cost-reimbursement type contract, the agency is required to perform a cost realism evaluation to determine the extent to which each offeror's proposed costs represent what the contract costs are likely to be. Federal Acquisition Regulation (FAR) § § 16.505(b)(3), 15.404-1(d). Ordinarily, such an evaluation involves consideration of not only the realism of the various elements of each offeror's proposed cost, but also consideration of whether each offeror's proposed cost reflects a clear understanding of the requirements to be performed, and is consistent with the unique methods and materials described in each offeror's technical proposal. Id.

We note at the outset that this case presents circumstances that distinguish it from typical cases involving challenges to an agency's cost realism evaluation. As discussed above, offerors were required to propose the exact labor mix and level of effort identified in the RFP, and also were required to propose certain stipulated other direct costs. Consequently, offerors did not propose unique or differing technical approaches. (Correspondingly, as noted, the RFP did not provide for evaluation of the offerors' unique technical approaches under the non-cost evaluation factors.) In short, the only variations among the firms' proposals were their respective direct labor rates and their respective indirect cost rates. The agency's cost evaluation could only evaluate the realism of those cost elements; since there were no technical approaches in the proposals, there was no basis for the agency to consider differences in the likely cost of performance based on

differing technical approaches, which ordinarily is the hallmark of a cost realism evaluation.⁷

The RFP here specified 13 labor categories, and the offerors provided the agency with detailed information relating to their proposed direct hourly rates of compensation for each labor category, as well as their respective indirect rates (offerors also were required to provide the agency with rates of escalation for each year of the contract after the base year). To evaluate the offerors' proposed labor rates, the record shows that the agency collected information about identical labor categories under some 22 other contracts, one of which was the predecessor task order for the current requirement. Using this data set, the agency created a "range" of fully-burdened hourly rates for each labor category that was bounded by the lowest and the highest fully-burdened labor rate for each category. For example, the agency's range for the program manager labor category ranged from a low of \$69.44 per hour to a high of \$228.93 per hour. AR, exh. 10, SSD, Business Clearance Memorandum Attachment, at 86.

The record shows that the agency then compared the offerors' proposed fully-burdened rates to these ranges to determine whether they were both realistic and reasonable. AR, exh. 10, SSD, Business Clearance Memorandum Attachment, at 86. The agency only found a proposed rate to be unrealistic if it fell below the low end of the range established by the agency's data. The record shows that, of the 186 hourly rates evaluated by the agency, only 3 fell below the ranges established by the agency for realism purposes (none of the rates proposed by UCS was found unrealistic), and all 3 of those rates were for less expensive labor categories, such as workstation technicians, operators, and clerk typists. Id.

The protester challenges the agency's evaluation using these other contracts because it maintains that the overwhelming majority of them were fixed-price contracts. Protester's Comments at 9-10. CI maintains that comparing hourly rates from fixed-price contracts for purposes of establishing the realism of the proposed rates here was unreasonable because the fixed-price rates used for the comparison

⁷ Although the question is not directly at issue in this protest, it is not clear why the agency is using a cost-reimbursement type contract under the circumstances here. The agency has fully defined its requirements, and knows the labor categories it requires, the level of effort it requires, and the staffing profile it requires. In this connection, FAR § 16.301-2 provides that cost-type contracts should only be used where circumstances do not allow the agency to define its requirements sufficiently to allow for use of a fixed-price type contract, or where uncertainties involved in contract performance do not allow costs to be estimated with sufficient accuracy. See also FAR § 16.104(d) ("As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.").

were never evaluated for realism. The protester also maintains that a number of the comparison contracts were performed in locations with lower cost labor markets, such as Battle Mountain, Nevada, Austin, Texas, and Albuquerque, New Mexico. Id. at 10-11. In the protester's view, by including labor rates from much lower-cost geographic areas, the agency created artificially low thresholds for assessing the realism of the proposed rates.

The protester is correct that the majority of the contracts considered were fixed-price type contracts (only three of the contracts reviewed as part of the agency's realism analysis were cost-reimbursement type contracts). AR, exh. 10, SSD, Business Clearance Memorandum Attachment, at 84-85. The record shows that, for the low end of the agency's rate ranges, only one of the hourly rate reference points was derived from a cost-type contract (the low-end hourly rate for a clerk typist). Id. The protester also is correct that, of the 13 labor categories considered, at least four of the low end hourly rates were established by reference to contracts performed in other locations such as Austin, Texas and Battle Mountain, Nevada. Id. We also note that the agency's data set was comprised entirely of fully-burdened labor rates. Id.

We have several concerns. First, the cost of this contract is driven almost entirely by the cost of labor (for example, in the base year of contract performance, the awardee proposed [deleted], \$66,000 in other direct costs and [deleted]). AR, exh. 10 SSD, at 10-11. As noted above, the agency's cost evaluation was confined entirely to consideration of fully burdened hourly rates. However, where, as here, a cost-reimbursement contract's cost is driven in significant measure by labor costs, agencies are required to evaluate the offerors' direct labor rates to ensure that they are realistic. Prism Maritime, LLC, B-409267.2, B-409267.3, Apr. 7, 2014, 2014 CPD ¶ 124 at 12. The underlying policy consideration for such a requirement is that, unless an agency evaluates the realism of the offerors' proposed direct rates of compensation (as opposed to its fully-burdened rates), the agency has no basis to determine whether or not those rates are realistic to attract and retain the types of personnel to be hired. Id.

Here, the agency has no basis to conclude whether or not the offerors' proposed direct rates of compensation are realistic because no analysis of those rates was ever performed. Moreover, the record includes no data that could have provided insight in making such a realism determination concerning the offerors' proposed direct rates of compensation, because the comparison data used by the agency does not separate the fully-burdened hourly rates into their constituent elements.⁸

⁸ The record shows that, in most of the labor categories, the protester--the current incumbent--proposed higher direct labor rates than the awardee. We offer no opinion regarding whether the awardee's proposed direct rates of compensation are unrealistically low, or whether, in the alternative, the protester's direct rates of

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(We note as a corollary that the agency performed no critical analysis of the offerors' proposed indirect rates. Thus, the agency also has no basis for concluding whether or not those rates are realistic.)

Second, as noted by the protester, the majority of the labor rates the agency used for its comparison labor rates were from fixed-price contracts. There is no information in the record to show that these fixed-price hourly rates were subject to a price realism evaluation. In the absence of a requirement to perform a price realism evaluation in the context of a fixed-price contract setting, there is nothing objectionable about an agency making award to a firm submitting low, or even below-cost prices. Lowe Campbell Ewald, B-411614, B-411614.2, Sept. 11, 2015, 2015 CPD ¶ 296 at 6. It is therefore possible that the agency is using low-cost, or even below-cost, comparison prices to perform its cost realism evaluation here.

Further, even if the fixed-price hourly rates were drawn from contracts that had been awarded after performance of a price realism evaluation, there is no guarantee that the rates actually are realistic. Agencies do not adjust proposed prices during a price realism evaluation, but, rather, use the conclusions from such an analysis for the limited purpose of assessing technical understanding or risk. FAR § 15.404-1(d)(3). Thus, even where a solicitation contemplates a price realism evaluation, there is no bar to an offeror proposing--and an agency accepting--a below-cost price. Optex Systems, Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6. It follows that there was no basis for the agency to conclude that the majority of the comparison rates used in its evaluation were realistic.

Finally, as noted by the protester, a number of the agency's low-end comparison rates were drawn from contracts that were performed in locations other than San Diego. Protester's Comments at 10-11. Simply stated, the agency performed absolutely no analysis to determine whether the rates drawn from these other contracts were comparable to the rates of compensation that might be appropriate to perform a contract in San Diego.

Because the record shows that the agency essentially did not consider the realism of the constituent elements of the offerors' proposed rates, its evaluation was unreasonable. In addition, because the agency used fixed-price comparison rates in the majority of its comparisons, and because several of these rates were derived from contracts not performed in the San Diego area, there is no basis for our Office

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compensation are comparatively high. But on this record, there is simply no way for our Office or the agency to reach a reasoned conclusion concerning the question.

to conclude that the agency was using realistic hourly rates in its evaluation of the offerors' proposed costs. We therefore sustain this aspect of CI's protest.⁹

Best-Value Tradeoff

CI maintains that the agency made an unreasonable cost/non-cost tradeoff in making award to UCS. In this connection, the record shows that the agency's evaluators identified specific strengths and weaknesses in the offerors' proposals and past performance. AR, exh. 7, Technical Evaluation Team Report. The record also shows that the evaluators ranked the firms, and specifically ranked the protester ahead of the awardee under the non-cost evaluation factors. *Id.* at 11. Those detailed strengths and weaknesses, along with the ranking of the proposals was carried forward into the agency's source selection decision. AR, exh. 10, SSD. The protester maintains that the agency unreasonably concluded that CI and UCS (along with two other offerors) were equivalent based solely on the firms' adjectival ratings and did not perform a detailed critical analysis of the comparative merits of the proposals.

We sustain this aspect of CI's protest. Adjectival or point score evaluation ratings are merely guides to intelligent decision making. Metis Solutions, LLC, et al., B-411173.2 et al., July 20, 2015, 2015 CPD ¶ 221 at 13. Evaluators and source selection officials are required to consider the underlying bases for the ratings assigned, including the advantages and disadvantages associated with the specific content of competing proposals. Even in an acquisition conducted under FAR part 16, a contracting officer is required to document the basis for the agency's selection decision based on a comparative assessment of proposals against all source selection criteria in the solicitation. FAR § 16.505(b)(7); see also Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 11-12. While a comparative assessment might be made in the underlying documents upon which the selection decision relies, or in the selection decision itself, it must be documented and reviewable.

Here, as noted, the evaluators identified specific strengths and weaknesses in the offerors' non-cost proposals and past performance information, and also expressly ranked the proposals, and those findings were incorporated into the agency's source selection decision. Notwithstanding these facts, the record shows that the agency's conclusion that four of these proposals were equivalent under the non-

⁹ We note that, during the course of the protest, the agency presented what it describes as an alternate cost evaluation of proposals that it maintains shows that any of the errors identified by CI were not prejudicial. We give essentially no weight to this alternative analysis, as it was prepared in the heat of the adversarial process. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

cost evaluation factors was based entirely on the adjectival ratings assigned, rather than on a detailed comparison of the strengths and weaknesses of the four proposals. AR, exh. 10, SSD, at 67.¹⁰ In addition, the record contains no explanation of why, although the agency expressly ranked the proposals under the non-cost evaluation factors, it nonetheless found them equivalent. We therefore sustain this aspect of CI's protest.

RECOMMENDATION

We recommend that the agency reevaluate the realism of the offerors' proposed costs in a manner consistent with the discussion above, and make a new source selection decision. If, on the basis of that reevaluation, the agency determines that a proposal from a firm other than UCS represents the best value to the government, we recommend that the agency terminate the task order issued to UCS, and issue a task order to the selected concern, if otherwise proper. Finally, we recommend that the agency reimburse CI the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel

¹⁰ We point out that the record furnished by the Navy in response to the protest includes documents that are heavily redacted, despite the issuance of a protective order in this case. Consequently, the record provided to our Office shows that the agency made its finding of equivalency based entirely on the adjectival ratings assigned under the non-cost evaluation factors. Although it is possible that some other portion of the agency's source selection decision--not produced despite the protective order--may provide a more detailed analysis supporting the conclusion that these proposals are comparatively equal, the record presented to our Office does not include such information. In the absence of an adequate record, our Office cannot conclude that the agency's finding was reasonable. CORTEK, Inc., B-412047, et al., Dec. 17, 2015, 2015 CPD ¶ 397 at 3.