



Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: Centerra Group, LLC

File: B-414768; B-414768.2

Date: September 11, 2017

Craig S. King, Esq., Richard J. Webber, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for the protester.

Paul A. Debolt, Esq., Michael T. Francel, Esq., Jengeih S. Tamba, Esq., and James Y. Boland, Esq., Venable, LLP, for Kellogg Brown & Root Services, Inc., the intervenor.

Kyle D. Murray, Esq., Department of the Navy, for the agency.

Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that unclear solicitation requirements led offerors to propose pricing on an unequal basis is denied where the protester does not demonstrate that differences in the offerors' approaches stemmed from unclear solicitation requirements.
2. Protest that agency should have assigned protester's proposal additional strengths and a higher technical rating reflects the protester's disagreement with the agency's evaluation judgment, and provides no basis for sustaining the protest.
3. Protester is not an interested party to challenge agency's evaluation of awardee's staffing where protester would not be in line for award if its protest were to be sustained.

DECISION

Centerra Group, LLC, of Palm Beach Gardens, Florida, challenges the award of a contract to Kellogg Brown & Root Services, Inc. (KBR), of Houston, Texas, under request for proposals (RFP) No. N62470-15-R-4006, issued by the United States Navy, Naval Facilities Engineering Command, Atlantic, for base operations support services at the Naval Support Activity in Bahrain. The protester asserts that the agency failed to evaluate prices on a common basis, failed to conduct meaningful discussions, and conducted a flawed technical evaluation of Centerra's and KBR's proposals.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation, which was issued on February 23, 2016, contemplated the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract for fixed-price line items for base operations support services at various locations in the Kingdom of Bahrain. The RFP anticipated that the resulting IDIQ contract would have a 12-month base period and seven 1-year option periods. RFP at 317.¹

The solicitation provided that award would be made to the offeror whose proposal presented the best value, considering the following factors: price, corporate experience, technical approach/management approach, and past performance. Id. at 563-565.² Under the evaluation criteria, the corporate experience and technical approach/management approach factors, when combined, were of equal importance to past performance. Id. at 563. The three non-price factors, when combined, were of equal importance to price. Id.

Regarding technical approach/management approach, the RFP provided for the evaluation of each offeror's understanding of current industry standards, policies, procedures, and processes utilized in accomplishing the complexity and magnitude of service requirements set forth in the performance objectives and standards of the performance work statement (PWS). Id. at 564. To make this determination, the solicitation anticipated that the agency would evaluate certain elements, including whether the offeror's approach and methodology demonstrated adequate staffing supported by a reasonable basis of estimate. Id.

With regard to price, the solicitation provided for the evaluation of proposed prices to assess whether such prices were fair and reasonable. Id. at 563. The RFP did not state that the agency would evaluate prices for realism.

Centerra, the incumbent contractor for this requirement, timely submitted a proposal in response to the solicitation. Following the establishment of a competitive range, the Navy conducted discussions with Centerra, KBR, and two other offerors. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 4. Among other discussion items, the agency advised KBR of a weakness that had been assessed for KBR's

¹ Citations to the RFP refer to the February 23, 2016, conformed solicitation provided at Tab 5 of the agency report (AR).

² The RFP also included an evaluation factor for safety, which was to be evaluated on an acceptable/unacceptable basis. Id. at 563.

proposed staffing for certain PWS annexes, stating:

It appears to the Government that the proposed staffing for Annexes 1300000 Galley, 1402000 Unaccompanied Housing, 1501000 Facility Management, 1503010 Custodial, 1604000 Wastewater, and 1606000 Water may be low. Please describe per annex, how you will perform with your proposed staffing level or review/validate/revise as appropriate.

AR, Tab 14, KBR Discussion Notice, at 3.³ The agency also advised KBR of a significant weakness that had been assessed on the following basis:

It appears to the Government that your Basis of Estimate (BOE) for labor is [DELETED] hours per year which is [DELETED] hours/day [DELETED] days/week [DELETED] weeks/yr. It appears you have not addressed [DELETED]. Please review/validate/revise as necessary.

Id. Centerra was similarly advised of a weakness for its proposed staffing as follows:

It appears to the Government that the proposed staffing for Annex 1300000 Galley, 1402000 Unaccompanied Housing, and 1601000 Utilities Management may be low. Please describe per annex, how you will perform with your proposed staffing level or review/validate/revise as appropriate.

AR, Tab 13, Centerra Discussion Notice, at 3.

In response to these discussion items, both Centerra and KBR provided revised proposals that contained further explanation for their staffing and also small increases in the levels of staffing for certain of the PWS annexes. See AR, Tab 15, Centerra Final Proposal Revision (FPR), at 102-105; AR, Tab 16, KBR FPR, at 99-104. KBR additionally stated that its basis of estimate included [DELETED]. AR, Tab 16, KBR FPR, at 104.

³ Tabs 13, 14, 15 and 16 did not contain page numbers. Our Office separately assigned consecutively numbered pages to the unnumbered pages in these documents. The citations to this document in this decision are to the page numbers assigned by our Office.

Following submission of the revised proposals, the agency evaluated offerors' proposals as follows:

	KBR	Offeror A	Offeror B	Centerra
Overall Technical	Good	Acceptable	Good	Good
Corporate Experience	Outstanding	Outstanding	Outstanding	Outstanding
Technical Approach/ Management Approach	Acceptable	Marginal	Acceptable	Acceptable
Safety	Acceptable	Acceptable	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence	Substantial Confidence	Substantial Confidence
Non-Price Ranking⁴	2	3	1	1
Price	\$90,838,446	\$95,078,039	\$135,603,472	\$152,756,038
Overall Ranking	1	2	3	4

AR, Tab 20, Addendum to Source Selection Advisory Council (SSAC) Report, at 3.

On May 23, 2017, the Navy selected KBR for award. COS/MOL at 5. This protest followed.

DISCUSSION

Centerra challenges the Navy's price evaluation and argues that the agency failed to conduct meaningful discussions. In this regard, the protester asserts that the large differences in pricing and staffing between KBR's and Centerra's proposals evidence that the two offerors based their approaches on differing understandings of the solicitation requirements. Centerra argues that the agency failed to evaluate prices on a common basis and erred in not discussing the disparity with Centerra. In addition, the protester argues that the agency should have assigned its proposal additional strengths for its technical approach/management approach. Finally, the protester asserts that the Navy's evaluation of KBR's technical approach/management approach was unreasonable and undocumented.⁵

⁴ The agency ranked KBR as second in the non-price factors, despite ranking two offerors (Offeror B and Centerra) as tied for first.

⁵ While we do not address every argument raised by Centerra in its protest, we have reviewed each issue and do not find any basis to sustain the protest. For example, the protester argued that the agency improperly evaluated KBR's technical approach/management approach by failing to account for KBR's lack of understanding
(continued...)

Price Evaluation and Discussions

The protester asserts that the large pricing and staffing differences between Centerra's and KBR's proposals demonstrate that offerors did not possess a common understanding of the solicitation requirements. In this regard, KBR's total price was more than 40 percent lower than Centerra's. See Tab 20, Addendum to SSAC Report, at 3. KBR also proposed more than [DELETED] percent fewer full-time equivalents (FTEs) than Centerra during both the base and option periods. Compare AR, Tab 15, Centerra FPR, at 133 with AR, Tab 16, KBR FPR, at 109. This disparity was more stark within certain PWS annexes with Centerra proposing, for example, [DELETED] FTEs for annex 1503010 custodial services, while KBR proposed only [DELETED] FTEs. Compare AR, Tab 15, Centerra FPR, at 122 with AR, Tab 16, KBR FPR, at 123. The protester contends that these staffing differences "underscore[] that the two offerors had very different understandings of what number of personnel was required to perform the requirements." Supp. Comments at 3. The protester argues that the agency's price evaluation was flawed because the offerors were not competing based on a common understanding and that, because of this, the agency was obligated to clarify its staffing requirements during discussions.

The protester primarily relies on our Office's decisions in Baytex Marine Commc'n, Inc., B-237183, Feb. 8, 1990, 90-1 CPD ¶ 164 and US Sprint Commc'ns Co. Ltd. P'ship, B-243767, Aug. 27, 1991, 91-2 CPD ¶ 201 to assert that the agency was obligated to "clarify its imprecise requirements" once it became clear that offerors lacked a common understanding of the solicitation requirements. Protest at 14. In those cases, however, the lack of a common understanding could be traced to unclear or latently ambiguous requirements found within the solicitation, which resulted in offerors proposing differing products or solutions.

(...continued)

as reflected by its low proposal price. We dismissed this argument because in our view, while it was styled as a challenge to the agency's technical evaluation, it was, in actuality, a price realism argument, i.e., an argument that the agency should have assessed technical risks based on the awardee's unrealistically low price. See NJVC, LLC, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8 (noting that an agency's failure to consider the awardee's low price as part of the agency's technical analysis is an allegation that the agency failed to conduct a price realism analysis). The solicitation, however, did not provide for a price realism assessment. Our Office has noted that absent a solicitation provision expressly or implicitly providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. Decisive Analytics Corp., B-410950.2, B-410950.3, June 22, 2015, 2015 CPD ¶ 187 at 9.

Here, Centerra has not identified any PWS requirements that are ambiguous or unclear, and has therefore not provided us with a basis to conclude that KBR proposed to meet different PWS requirements from the requirements Centerra proposed to meet. Instead, Centerra broadly asserts that the staffing and pricing differences, by themselves, evidence that something in the solicitation caused offerors to possess differing understandings of the solicitation requirements. Centerra additionally notes that KBR proposed fractional FTEs throughout its proposal and relied on [DELETED], but the protester does not explain how either approach would be inconsistent with the solicitation requirements. Supp. Comments at 4.⁶ Indeed, the solicitation permitted offerors to propose their own staffing solutions, so long as they provided the basis for their staffing estimates and explained how such staffing would meet the PWS requirements. See RFP at 558. Because the protester has not specifically traced the offerors' differing solutions to a differing understanding of the solicitation requirements, we see no basis to conclude that the agency was obligated to clarify its requirements. See The Gerard Co., B-242976, Feb. 27, 1991, 91-1 CPD ¶ 240 at 2 (dismissing protest where protester only raised a general assertion that the solicitation contained a latent ambiguity without identifying clear evidence that the awardee interpreted the solicitation differently than the protester).

We also conclude that the Navy was not otherwise obligated to tell Centerra that its staffing and pricing were high in relation to other offerors. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. Weaknesses in an offeror's proposal relative to the merits of a competitor's offer are not for discussion, however, and it would be improper to disclose to one competitor another offeror's innovative approach or solutions to problems. Bioqual, Inc., B-259732.2, B-259732.3, May 15, 1995, 95-1 CPD ¶ 243 at 5. Further, unless an offeror's proposed price is so high as to be unreasonable or unacceptable, an agency is not required to inform an offeror during discussions that its proposed price is high in comparison to a competitor's proposed price, even where price is the determinative factor for award. DeTekion Sec. Sys., Inc., B-298235, B-298235.2, July 31, 2006, 2006 CPD ¶ 130 at 15. Here, since the Navy did not conclude that Centerra's price was so high as to be unreasonable or unacceptable, the agency was not required to discuss Centerra's comparatively high price with the firm.

Centerra further asserts that because the Navy found KBR's "much lower" staffing level to be acceptable, the agency was obligated to find Centerra's 57 percent higher staffing to be unreasonably high. Supp. Comments at 5. We do not agree.⁷ The record

⁶ We note that Centerra's proposal also included fractional FTEs. See, e.g., AR, Tab 15, Centerra FPR, at 122.

⁷ We address below protester's related argument that Centerra's staffing levels establish that KBR's staffing levels were unacceptably low.

evidences that the agency reasonably evaluated Centerra's staffing levels in relation to the PWS requirements, and that Centerra's staffing levels were not considered a deficiency or weakness in need of revision. See AR, Tab 17, Technical Evaluation Team (TET) Report, at 19 ("Overall staffing levels are acceptable to perform the contract."). Indeed, Centerra received a strength for one aspect of its staffing: proposing [DELETED] quality control personnel. See id. Further, while the protester contends that the agency should have found Centerra's staffing levels to be unreasonably high, the protester does not assert that Centerra's high staffing levels presented a technical risk that the agency should have acknowledged. Instead, the protester appears to assert that its staffing should have been found to be unreasonably high solely because it led to Centerra's noncompetitive price. As discussed above, however, the agency was under no obligation to tell Centerra that its price was comparatively high; we therefore conclude that the agency similarly was not obligated to tell Centerra its high staffing was causing its overall price to be comparatively high.

Centerra also contends that it was misled during discussions into increasing its staffing because the Navy told the firm that its staffing may be low for certain annexes.⁸ In this regard, the agency advised Centerra that its staffing "may be low" for these annexes and asked Centerra to "[p]lease describe per annex, how you will perform with your proposed staffing level or review/validate/revise as appropriate." AR, Tab 13, Centerra Discussion Items, at 3. In response to this notice, Centerra provided further explanation and also raised its staffing in these categories by approximately [DELETED] FTEs. AR, Tab 15, at 117-118, 129.

During discussions, agencies may not consciously mislead or coerce an offeror into raising its prices. Eagle Tech., Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468 at 3-4. We will not find coercion in discussions, however, where an agency in good faith provides accurate information to an offeror about its concern, and provides the offeror with the opportunity to explain or revise its rates. First Info. Tech. Servs., Inc., B-405602, Dec. 1, 2011, 2011 CPD ¶ 261 at 10.

Here, we find that the agency's discussions were not misleading. The evaluation record demonstrates that the Navy accurately identified its concern that Centerra's staffing was low under certain annexes and asked Centerra to provide more explanation or revise its proposal. In response, Centerra provided further explanation and also increased its FTEs by a small number. We find that this small increase was not the result of coercion, and instead reflected Centerra's business decision to increase its staffing.⁹

⁸ Specifically annex 1300000 galley, annex 1402000 unaccompanied housing, and annex 1601000 utilities management. AR, Tab 13, Centerra Discussion Items, at 3.

⁹ We note that the Navy conducted similar discussions with KBR. For both offerors, the agency raised concerns regarding staffing levels on certain PWS annexes, and provided the offeror with an opportunity to explain its staffing or revise its proposal. In response, both offerors provided further explanation of their staffing levels and a small increase in staffing. Ultimately, the agency accepted both offerors' staffing approach.

Moreover, given the size of the staffing increase ([DELETED] FTEs), we do not conclude that the resulting price increase had a prejudicial impact on Centerra's overall chance at an award.

Centerra's Technical Approach/Management Approach

The protester argues that the Navy should have assigned its proposal a higher rating under the technical approach/management approach factor. In this regard, Centerra notes that, as the incumbent, it received highly favorable past performance ratings and also that its proposal received one strength and no weaknesses under the technical approach/management approach factor. In addition, the protester asserts that the agency unreasonably failed to credit Centerra with additional strengths for several proposal aspects that exceeded the solicitation requirements.

In reviewing protests challenging an agency's evaluation, we will not substitute our judgment for that of the agency regarding the merits of proposals; we will only review the evaluation to determine whether it was reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws and regulations. Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 3. In evaluating proposals, it is well-established that adjectival ratings are merely guides for intelligent decision making in the procurement process. Environmental Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. Moreover, there is no legal requirement that an agency award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. Further, a protester's disagreement with the agency does not render the evaluation unreasonable. Caterpillar, Inc., B-280362, B-280362.2, Sept. 23, 1998, 98-2 CPD ¶ 87 at 6.

The record here demonstrates that the agency reasonably evaluated Centerra's technical approach/management approach. In this regard, while Centerra was the incumbent contractor, the solicitation called for the evaluation under this factor to be based on whether proposals demonstrated an acceptable understanding of the requirements set forth in the PWS, not on the offerors' past performance or experience. See RFP at 564. In addition, while Centerra received one strength and no weaknesses for its approach, the agency considered this fact, but ultimately concluded that the strength at issue, proposing four quality control personnel, was "not sufficient to raise the rating" for the technical approach/management approach factor beyond acceptable. AR, Tab 19, Source Selection Evaluation Board (SSEB) Report, at 6; AR, Tab 20, Addendum to SSAC Report, at 7. We find this conclusion to be reasonable.

With regard to the assertion that the agency should have credited, as a strength, other aspects of the protester's proposal that exceeded the RFP requirements, our Office has previously noted that "the agency was not required to reach such a conclusion unless it also concluded that these features would be advantageous to the government." Avon Prot. Sys., Inc., B-411569.2, Nov. 13, 2015, 2016 CPD ¶ 33 at 8. Here, the record

evidences that, while the Navy reviewed the specific proposal features at issue, the agency did not conclude that such features would be of value to the government. See Contracting Officer (CO) Decl. ¶¶ 7-11.¹⁰ While the protester disagrees with that assessment, we do not conclude that such disagreement renders the evaluation unreasonable. See Caterpillar, Inc., supra.

For instance, Centerra argued that its proposed approach of a [DELETED]-day transition period exceeded the RFP requirement of a 60-day transition period, and would provide value to the agency because it would reduce disruption and would decrease the time that the agency would need to pay both the incoming and outgoing personnel. The CO responded to this point by noting that the agency did not consider this shorter transition period to be of additional value because the agency was concerned with the contract's overall period of performance and therefore was willing to provide for a 60-day transition period to ensure adequate time for the contractor to prepare. CO Decl. ¶ 7. With regard to the potential savings resulting from a shorter transition period, the CO noted that the agency had not created separately priced line items for phase-in and phase-out costs, and therefore had given offerors the opportunity to include such prices within their price proposals in whatever manner they chose. Id. Additionally, the agency considered and took into account the overall price differences between the offerors as part of its best-value determination. See AR, Tab 21, Source Selection Decision Document (SSDD) at 2-4. The record therefore supports that the agency reasonably considered the transition approach proposed by Centerra, but ultimately did not find that it warranted the assignment of a strength.

Evaluation of KBR's Staffing

Finally, the protester argues that the agency erred in concluding that KBR proposed an adequate level of staffing, particularly in light of the staffing proposed by Centerra, the incumbent contractor. Centerra additionally argues that the agency unequally evaluated proposals by rating both Centerra and KBR acceptable under the technical approach/management approach factor, when it should have found KBR to be

¹⁰ At our Office's request, the Navy submitted a sworn declaration from the CO, who was also the SSEB chairperson, to explain why the agency did not credit Centerra with strengths for the proposal features highlighted by the protester. Our Office has stated that post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions where, as here, those explanations are credible and consistent with the contemporaneous record. APlus Techs., Inc., B-408551.3, Dec. 23, 2013, 2014 CPD ¶ 12 at 10 n.11. While the protester discounts the declaration because the CO was not a technical evaluator, we note that the SSEB, which included the technical evaluation team, was tasked with evaluating Centerra's proposal and incorporating that evaluation into a consolidated report. AR, Tab 19, SSEB Report, at 1. We therefore do not have reason to discount the CO's explanation for the agency's determination not to assign Centerra further technical strengths.

unacceptable based on its inadequate staffing. The protester asserts that, while the agency initially raised concerns with KBR's staffing under six of the PWS annexes, ultimately the agency unreasonably accepted the explanation provided by KBR in its FPR. The protester also argues that the Navy did not document, or provide a substantive explanation, for its conclusion that KBR had proposed adequate staffing levels.

In order for a protest ground to be considered by our Office, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. Bid Protest Regulations, 4 C.F.R. §§ 21.0(a)(1), 21.1; Design Eng'g, Inc., B-408336.3, May 6, 2014, 2014 CPD ¶ 144 at 10. A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the protester would be in line for award if its protest were sustained. Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 9.

Here, we find that Centerra is not an interested party to raise the above challenges to the evaluation of KBR's staffing. In this regard, Centerra was ranked fourth overall by the agency, putting it behind not only KBR for award, but also two other offerors. See AR, Tab 21, SSDD, at 3. Centerra has not challenged the evaluations of the two intervening offerors whose proposals were higher-ranked than Centerra's. We therefore conclude that even if Centerra successfully challenged the agency's evaluation of KBR's staffing, the protester would still not be in line for award.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel