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Decision

Matter of: Cyberdata Technologies, Inc.

File: B-417084

Date: February 6, 2019

Edward J. Tolchin, Esq., Offit Kurman Attorneys at Law, for the protester.
David B. Dixon, Esq., Meghan D. Doherty, Esq., Robert Starling, Esq., and Toghrul Shukurlu, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Ace Info Solutions, Inc., the intervenor.

Florence N. Bridges, Esq., Department of Commerce, for the agency.
Paula J. Haurilesko, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency failed to look behind the adjectival ratings in making its selection decision is sustained, where the evaluation record contained no explanation for why the proposals were determined to be technically equal.

DECISION

CyberData Technologies, Inc., of Herndon, Virginia, protests the issuance of a task order to Ace Info Solutions, Inc., of Reston, Virginia, under request for quotations (RFQ) No. EG-133W-17-RQ-1234, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), for weather and climate computing infrastructure services. CyberData challenges the evaluation of its proposal and the best-value tradeoff decision.

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

BACKGROUND

The RFQ was issued as an 8(a) small business set-aside on July 11, 2017, to holders of the National Institutes of Health Information Technology Acquisition and Assessment Center Chief Information Officer--Solutions and Partners 3 small business government-wide acquisition contracts. Agency Report (AR), Tab 1, RFQ, at 3. The RFQ contemplated the issuance of a task order with fixed-price and time-and-materials

contract line item numbers for information technology support services for NOAA’s weather and climate computing infrastructure services program. Id.

The RFQ provided that a task order would be issued to the vendor whose quotation represented the best value to the government, considering technical approach, corporate experience, and price.¹ Id. at 6. The non-price factors, when combined, were significantly more important than price. Id. The RFQ stated that price would be evaluated for reasonableness. Id.

NOAA received two quotations. AR, Tab 2a, Technical Evaluation Team (TET) Consensus Report, at 5. After the agency conducted discussions, amended the RFQ, and evaluated vendors’ revised quotations, the TET assigned the following adjectival ratings to the offerors’ quotations:

	CyberData	Ace
Technical Approach	Acceptable	Acceptable
Corporate Experience	Good	Good
Overall	Good	Good
Price	\$104,350,117	\$102,053,881

AR, Tab 2b, Post Negotiation Business Case Memorandum, at 7.

The selection official reviewed the findings of the TET and the price evaluation team, and noted that both vendors received an overall rating of good. Id. at 21. The selection official stated that CyberData’s overall rating was driven by the fact that its quotation contained a combination of significant strengths and “some strengths,” and did not contain any weaknesses, significant weaknesses, or deficiencies. Id. The selection official also stated that Ace’s overall rating was driven by the fact that its quotation contained a combination of significant strengths and “several strengths,” and also did not contain any weaknesses, significant weaknesses, or deficiencies. Id. The selection official noted that both vendors provided highly relevant corporate experience and presented a low risk of unsuccessful performance. Id. The selection official concluded that, because both offerors were rated good, the determining factor became price. Id. The selection official determined that issuing a task order to Ace was in the best interests of the government because of its lower price. Id.

After a debriefing, CyberData protested to our Office.²

¹ The RFQ did not state the relative importance of the technical approach and corporate experience factors. See RFQ at 6; Contracting Officer’s Statement (COS) at 2.

² This protest is within our jurisdiction to hear protests of task orders valued in excess of \$10 million placed under civilian agency indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(2).

DISCUSSION

CyberData argues that NOAA failed to conduct its best-value tradeoff analysis in accordance with the terms of the solicitation. CyberData also argues that NOAA failed to consider whether Ace's lower price demonstrated an understanding of the solicitation requirements, and held improper discussions with Ace. Based on CyberData's argument concerning the best-value tradeoff analysis, we sustain the protest.

Selection Decision

CyberData contends that NOAA abandoned the best-value selection process to select the lowest-priced vendor because the adjectival ratings were equal. Protest at 6; Protester Comments at 3. CyberData argues that the agency failed to look behind the adjectival ratings in making the selection decision. Protester Comments at 3-4.

NOAA states that it properly considered both the non-price factors as well as price in determining which quotation provided the best value to the government. Memorandum of Law at 5. The agency asserts that the selection official's acknowledgement that CyberData's overall rating was driven by its significant strengths and "some" strengths, and that Ace's overall rating was driven by its significant strengths and "several" strengths shows that the respective strengths were considered in the selection decision. Id. at 6-7. The agency contends that the contracting officer had the authority to make price a discriminator when considering two quotations that are rated good and deemed essentially technically equal. Id.

In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7. While an agency is not obligated to extensively document every consideration made in its tradeoff decision, it is required to adequately explain and document the basis for its source selection determination. VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 at 11. An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Arctic Slope Tech. Servs., Inc., B-411776, B-411776.2, Oct. 20, 2015, 2017 CPD ¶ 6 at 5.

Moreover, our Office has consistently explained that evaluation ratings are merely guides for intelligent decision-making in the procurement process; the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 19. It follows that the point scores (or the number of strengths) assigned to proposals are not dispositive metrics for an agency to express a proposal's merit. See enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 8. What is important is not the scores

themselves, but the underlying substantive merits of the proposals as embodied in, or reflected by, the scores. Id. Additionally, agencies may find that offerors' proposals or vendor's quotations are technically equivalent; however, the selection official must explain the basis for why proposals are considered technically equivalent. See Arctic Slope Tech. Servs., Inc., supra., at 7.

Here, the portion of the selection decision provided by the agency does not demonstrate that the selection official meaningfully looked behind the adjectival ratings and beyond the number of strengths assessed to each vendor's quotation to determine that the vendors' quotations were technically equal.³ As noted above, the selection decision simply acknowledged that the overall rating for CyberData's quotation under the non-price factors was based on a combination of significant strengths and "some strengths," whereas the overall rating for Ace's quotation was based on a combination of significant strengths and "several strengths." See AR, Tab 2b, Post Negotiation Business Case Memorandum, at 21. The selection official concluded that because both offerors received an overall rating of good, the determining factor became price. Id. Because the record does not demonstrate that the selection official considered the qualitative value of the vendors' quotations, we sustain this protest ground.

Other Issues

CyberData also argues that Ace's proposal did not present a realistic price to accomplish the RFQ's requirements. Protest at 4. CyberData contends that Ace would not be able to retain the personnel from the incumbent contract at the price Ace proposed, and therefore would not meet a requirement of the technical approach factor.

Where a solicitation contemplates the award of a fixed-price contract or task order, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring a vendor's understanding of the requirements or to assess price risk in its quotation. OBXtek, Inc., B-415258, Dec. 12, 2017, 2017 CPD ¶ 381 at 9. In

³ In responding to the protest, NOAA provided a selection decision document that redacted all discussion of the awardee's quotation, even though our Office issued a protective order in this protest that would have prevented dissemination of the information in the selection document beyond the attorneys admitted to the protective order. See AR, Tab 2b, Post Negotiation Business Case Memorandum, at 3-21. With respect to the selection decision, the agency provided only a two-paragraph award recommendation that did not discuss the merits of the two proposals; we have no basis to know whether other portions of this selection document might have provided further support for the agency's decision. Id. at 21. While our Bid Protest Regulations, 4 C.F.R. § 21.3(d), only require agencies to produce documents in response to a protest that are relevant to the allegations raised, an agency's overly aggressive efforts to limit document production risk frustrating the mandate of the Competition in Contracting Act, 31 U.S.C. §§ 3551-3556, for our Office to resolve bid protests. CORTEK, Inc., B-412047 et al., Dec. 17, 2015, 2015 CPD ¶ 397 at 3.

the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the solicitation states that a quotation can be rejected for offering low prices. Id.

The record shows that a price realism analysis was not required by the terms of the solicitation. The RFQ provided for the evaluation of vendors' prices for reasonableness, not realism. See RFQ at 6. In addition, to the extent that CyberData contends that the agency's evaluation of quotations under the technical approach factor requires price realism analysis, Response to Dismissal Request at 3, the protester has identified no language in the RFQ that would require such analysis. Although CyberData argues that the agency is required to consider the technical impacts of the awardee's low price, CyberData's argument is, 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.⁴ See NJVC, LLC, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8 (noting that an allegation that the agency failed 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). As noted above, however, the solicitation did not provide for a price realism assessment. The solicitation also did not require the agency to consider a vendor's price in the agency's technical evaluation. Moreover, the relative difference in these prices is not so disparate as to provide any reasonable basis to conclude that one of them is unrealistic, and one is not. Accordingly, we conclude that these arguments lack a valid basis of protest and are dismissed. See 4 C.F.R. § 21.1(f) and (i); PricewaterhouseCoopers Public Sector LLP, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3.

Finally, CyberData argues that NOAA's discussions were improper. Protest at 7. In this regard, CyberData contends that NOAA engaged in discussions in order to improve Ace's quotation and thus favored Ace's quotation over CyberData's. Id. CyberData bases this contention on the fact that Ace's quotation for the preceding contract had been found unacceptable. Id.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

⁴ Although CyberData cites to our decision in General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45, in support of its position, the facts are inapposite. In General Dynamics One Source, the solicitation expressly provided for a price realism analysis. Id. at 8.

Here, CyberData again fails to state a valid basis of protest. The fundamental purpose of discussions is to afford offerors the opportunity to improve their proposals or quotations to maximize the government's ability to obtain the best value, based on the requirement and the evaluation factors set forth in the solicitation. See Olgoonik Global Security, LLC, B-414762, B-414762.2, Sept. 8, 2017, 2017 CPD ¶ 282 at 3 n.1. Therefore, CyberData's assumption that Ace's quotation was improved as a result of discussions does not provide a basis for protest.

Moreover, to the extent that CyberData is alleging bad faith on the part of the agency, we conclude that CyberData fails to meet the standard to support such an allegation. In this regard, government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Independent Sys., Inc., B-413246, Sept. 15, 2016, 2016 CPD ¶ 260 at 7 n.14. The protester's speculation concerning the conduct of discussions does not provide a valid basis of protest. 4 C.F.R. § 21.1(c)(4) and (f).

In this regard, we note that CyberData relies on its knowledge of Ace's rating in a prior procurement to support its allegation of improper discussions. Protest at 7. However, we have repeatedly observed that each procurement stands alone, and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under the present procurement. Midwest Tube Fabricators, Inc., supra. Thus, the rating assigned to Ace's quotation in response to another solicitation does not provide a basis to question the agency's decision to hold discussions in this procurement.⁵

RECOMMENDATION

We recommend that NOAA perform and document a new selection decision in accordance with the terms of the solicitation and this decision. In the event CyberData's quotation is found to represent the best value to the government, Ace's task order should be terminated for the convenience of the government and a new task order should be issued to CyberData in accordance with the terms of the RFQ. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d). The protester's certified claim

⁵ In addition, the agency explains that the requirements of the prior procurement differed from the current procurement. Request for Dismissal, Attach. 7, COS in Support of Dismissal, at 5.

for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and dismissed in part.

Thomas H. Armstrong
General Counsel