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Decision

Matter of: Arch Systems, LLC

File: B-417110.5; B-417110.6

Date: May 23, 2019

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DIGEST

Protest that agency misevaluated task order proposals and made an unreasonable source selection decision is denied where the evaluation was reasonable and consistent with the solicitation criteria, and where the agency's source selection decision reasonably determined that protester's and successful vendor's task order proposals were essentially technically equal, and the selection of the successful vendor based on its lower evaluated price/cost was consistent with the solicitation.

DECISION

Arch Systems, LLC, of Baltimore, Maryland, a small business, protests the issuance of a task order to Sparksoft Corporation, of Catonsville, Maryland, also a small business, under task order request for proposals (TORP) No. 180323, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), to obtain operation, maintenance, and development of the multidimensional information data analytics system (MIDAS) for CMS's Center for Consumer Information and Insurance Oversight (CCIIO). The protester contends that CMS misevaluated both its and Sparksoft's proposals, evaluated proposals unequally, and made a source selection decision that was inconsistent with the criteria in the TORP.

We deny the protest.

BACKGROUND

The TORP was issued on April 13, 2018, to 47 women-owned small businesses that hold CMS's strategic partners acquisition readiness (SPARC) contracts. The TORP sought proposals to provide services related to MIDAS, a cloud-based data platform for capturing, sharing, aggregating, and analyzing health insurance and related information, sometimes referred to as “[m]arketplace data,” to assist CCIIO in implementing the Affordable Care Act. Supp. Agency Report (AR) Legal Memo at 5; Contracting Officer's Statement (COS) at 1. The TORP anticipated the issuance of a task order for a 1-year base period and three 1-year options consistent with the competition requirements of Federal Acquisition Regulation § 16.505. COS at 2; TORP at 15.

The TORP provided that a hybrid fixed-price/cost-plus-award-fee task order would be issued to the vendor whose proposal provided the best value under four technical factors, in descending order of significance: technical understanding and approach, personnel qualifications and management plan, past performance, and section 508¹ compliance--product accessibility template. Id. at 3. The technical factors were to be assessed using adjectival ratings of excellent, highly acceptable, acceptable, or unacceptable. Id. When combined, these factors were to be significantly more important than evaluated cost/price. Id.

The evaluation of price/cost was to combine a vendor's fixed-prices for operation and maintenance elements of the statement of work (SOW)² with the estimated costs for the software development elements. Those cost-reimbursement elements were also to be evaluated to assess whether the costs were realistic. TORP at 17-18.

CMS received proposals from 15 SPARC contractors and, after an initial evaluation, eliminated vendors whose proposals were rated unacceptable in any of the technical factors. COS at 2-3. CMS also amended the TORP to eliminate past performance as an evaluation factor, and to revise the SOW to remove aspects of the software development requirements, among other things. Id. at 3. CMS held discussions with the remaining vendors, including Arch and Sparksoft, and requested revised proposals. Id.; Supp. AR Tab 21A, Final TEP Report, at 1.

¹ This factor is referred to in the TORP and agency record by varying labels, including “508 compliance,” “project accessibility template,” “Section 508 and VPAT [voluntary project accessibility template],” and “Section 508 compliance.” See TORP at 16; AR Tab 15, Source Selection Decision, at 6; Tab 21A, Final Technical Evaluation Panel (TEP) Report, at 2, 4. For the sake of consistency (except where directly quoting the record), our decision labels the factor “section 508 compliance.” Section 508 of the Rehabilitation Act of 1973, as amended, generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

² Citations to the SOW are to the November 15, 2018 revision, exhibit 9F to the AR.

In evaluating the revised proposals, the TORP provided that CMS would consider whether the proposed technical approach was “specifi[c], detailed, and complete, including a full explanation of the techniques and procedures proposed,” would assess the offeror’s understanding of the work and ability to provide efficient, low-risk performance, and would evaluate the vendor’s approach to the tasks in the SOW and understanding of the requirements. TORP at 16. Under the personnel qualifications and management plan factor, CMS would assess multiple elements, including the level of effort, mix of labor categories, management of staff, and the qualifications and utilization of key personnel. Id.

Additionally, the agency would evaluate whether the management plan supported “a reasonable, logical, and technically sound approach to managing all aspects of the project within the required timeframes.” Considerations here included having well-defined lines of authority, responsibility, and communication; the level and balance of effort; the number of hours required to accomplish the work; descriptions of the labor categories to be utilized; and a complete staffing chart by task and subtask. Id. at 16-17. For the Section 508 compliance factor, proposals were to be evaluated based on submission of a completed [product accessibility template] and an assessment of the vendor’s “ability to demonstrate compliance with the established [electronic information technology] accessibility standards during the period of performance of the task order.” Id. at 17.

The initial evaluation resulted in Arch’s proposal being rated unacceptable under the Section 508 factor, and CMS issuing the task order to Sparksoft. Arch filed a protest with our Office, challenging that evaluation as unreasonable. CMS then took corrective action that included holding discussions, and then requesting and evaluating revised proposals.

The contracting officer reviewed the evaluations of the revised proposals and, with regard to Arch and Sparksoft, determined that each was rated acceptable under each factor, and each was assessed a single strength under the technical approach factor. AR Tab 15, Source Selection Decision, at 7-8, 11-12. The final ratings were as follows:

	Technical Approach	Personnel/ Management	Section 508 Compliance	Evaluated Price/Cost
Arch Systems	Acceptable	Acceptable	Acceptable	\$39.99 million
Sparksoft	Acceptable	Acceptable	Acceptable	\$38.50 million

Id. at 6.

The contracting officer noted the basis for the strengths assessed both for Arch and for Sparksoft, and concluded that the two firms were essentially equal except for their evaluated prices. Accordingly, based on Sparksoft’s lower price, the contracting officer

selected it for award.³ Arch requested and received a debriefing. AR Tab 17, Debriefing Letter from Contracting Officer to Arch, Feb. 7, 2019, at 1. This protest followed.⁴

PROTEST

In its initial protest, Arch challenged the evaluation of its proposal under the technical approach and understanding factor and under the personnel qualifications and management plan factor. The protester also challenged the evaluation of Sparksoft's proposal on the basis that Sparksoft allegedly lacked technical expertise, which should have resulted in an unacceptable rating, and proposed an unrealistically low price that showed that it would propose insufficiently skilled personnel. Finally, the protester argued that CMS abandoned the source selection criteria to allow it to treat the proposals as essentially equal, and then to make award to Sparksoft simply on the basis of its submission of the lowest-priced technically acceptable proposal. Protest at 10-17.

CMS requested dismissal of all grounds of protest, arguing that Arch failed to show a factual and legal basis to question the agency's evaluation and source selection judgment. Request for Dismissal at 2-6. Our review showed that Arch did not provide a factual basis to challenge the evaluation of Sparksoft's proposal; rather, Arch based its contentions on its belief that Sparksoft had not performed any comparable cost-reimbursement contracts (or task orders), its personnel allegedly lacked expertise, and its price was lower than Arch's, which together should have led CMS to evaluate Sparksoft's proposal as deficient and risky. However, Arch's contentions did not provide a sufficient factual basis to challenge the reasonableness of CMS's evaluation judgments. Accordingly, we did not require the agency to respond to Arch's challenges to the evaluation of Sparksoft's proposal in the agency report and we dismiss those arguments. 4 C.F.R. § 21.5(f). Notice of GAO Views on Dismissal Request, Mar. 7, 2019, at 2. Nevertheless, we denied CMS's other dismissal arguments because the initial protest provided a sufficient basis to challenge the evaluation of Arch's own proposal and to the reasonableness of the source selection decision. Id. at 1.

After receiving the agency report, Arch filed a supplemental protest, arguing that CMS had abandoned the evaluation criteria in the initial TORP. Specifically, Arch argues that the agency misevaluated both Arch's and Sparksoft's proposals under the past performance and Section 508 compliance factors, improperly deleted the past performance factor on the basis of the allegedly-defective evaluation, and failed to

³ One vendor, identified in the redacted record as "Offeror E," received higher ratings than Sparksoft. CMS explains that the contracting officer conducted a tradeoff in selecting Sparksoft's task order proposal over Offeror E's higher-priced task order proposal. AR Legal Memo at 18 n.6.

⁴ The task order at issue is valued at more than \$10 million, so our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106.

properly assess proposals under the Section 508 compliance factor as specified in the TORP. Arch also contends that CMS misevaluated Sparksoft's proposal by unfairly assessing a strength under the technical approach and understanding factor based on Sparksoft's past performance, despite the deletion of the past performance evaluation factor. Protester's Comments & Supp. Protest at 3-9. As explained below, based on our review of the record, we conclude that the evaluation and source selection were reasonable, and we deny the protest.

Evaluation of Arch's Proposal

Arch challenges the evaluation of its proposal under the technical understanding and approach, and the personnel qualifications and management plan factors,⁵ and argues that the agency's evaluation was unreasonable in multiple respects by failing to appreciate, or entirely overlooking, multiple strengths in the firm's proposal, and by failing to assess it a rating better than acceptable. Arch contends that a reasonable evaluation under those two factors would have resulted in an assessment of excellent under both the technical and management factors, and would have concluded that Arch's proposal was superior to Sparksoft's. Id. at 22-23; Protest at 15-17.

Specifically, Arch first argues that its proposal merited strengths in several areas: its approach to remedying data inadequacies in the MIDAS system through use of an experienced data management firm; its use of machine learning to address data security problems in MIDAS; its emphasis on human-centered system design; its engagement of an experienced subcontractor with deep understanding of the CMS business processes; and an approach that combined risk reduction strategies with continuous improvement. Protest at 10-12. Second, Arch argues that in evaluating revised proposals, CMS improperly removed a strength that had been assessed in the initial evaluation for its approach to data integration, collaboration, and aggregation (DICA). Protester's Comments & Supp. Protest at 12-16. Third, Arch argues that its proposal was misevaluated under the personnel qualifications and management plan factor because CMS allegedly overlooked strengths, particularly in regard to the candidate for the chief data architect position. Id. at 12-13.

CMS responds that its evaluation of Arch under both factors was reasonable, and appropriately reflected the quality of Arch's approach under the changed requirements of the revised SOW. AR Legal Memo at 12, 14. First, with respect to Arch's claim that the evaluation undervalued a strength arising from Arch's use of an experienced data management firm, CMS argues that Arch's proposal indicated that the firm would be

⁵ In its supplemental protest, Arch alleges that CMS improperly limited ratings under the Section 508 compliance factor to acceptable or unacceptable, and that its task order proposal should have received a higher rating under that factor. Protester's Comments & Supp. Protest at 4. Arch knew that its proposal had been rated acceptable under the section 508 compliance factor when it filed its initial protest, but did not raise this issue until it filed its supplemental protest. As a result, this issue is untimely and will not be addressed. 4 C.F.R. § 21.2(a)(2).

involved in none of the operations and maintenance aspects of this work, and less than 12 percent of the work. As a result, the agency assessed a strength, rather than a significant strength for Arch's use of the data management firm, because the advantages of the firm's abilities would have limited effect on performance. Id. at 9; COS at 5-6.

Second, with respect to Arch's argument that CMS improperly deleted a strength from the final evaluation that had been assessed earlier for its approach to DICA, the agency explains that the strength arose from Arch's data governance approach to DICA. The agency explains that the most relevant requirement to create a new data governance approach had been removed from the SOW, even though some software development requirements remained. Accordingly, CMS argues that it reasonably determined that the advantages originally identified with Arch's approach to DICA were no longer significant enough to support the evaluation of a strength, and the decision not to assess such a strength in the final evaluation was thus a reasonable evaluation judgment. Supp. AR at 8-10 (quoting AR Tab 8A, Initial TEP Report, at 15); see also Supp. COS at 4.

Third, the agency argues that Arch's contentions that it should have received strengths for its candidate for chief data architect, and for its approach to management to reduce risk and increase efficiency, do not show that the evaluation was unreasonable. CMS asserts that the TEP considered the qualifications of Arch's chief data architect and found that they did not merit a strength because the candidate lacked leadership experience in an environment comparable to MIDAS, and lacked a professional credential relevant to supporting cloud-based services. AR Tab 18, Statement of TEP Member, at 5; Supp. AR Legal Memo at 12; Supp. AR Tab 20, Supp. Statement of TEP Member, at 5. With respect to the firm's approach to management, CMS argues that the evaluators reasonably concluded that Arch's proposal identified techniques that were merely consistent with expected practices, and thus did not provide a basis for assessment of an additional strength. AR Tab 18, Statement of TEP Member, at 5. Accordingly, CMS argues that the evaluation was reasonable and does not support Arch's challenges to the evaluation of its proposal.

The evaluation of task order proposals in a task order competition, including the determination of the relative merits of each, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 15 (applying principle in analogous context involving evaluation of quotations). Accordingly, our Office will review evaluation challenges in task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. However, a protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id. at 15-16.

Our review of the contemporaneous record provides no basis to sustain the protest on the challenges raised by Arch to the evaluation of its proposal. Notwithstanding Arch's arguments that the benefits of its utilization of [DELETED] for some aspects of the work

were significantly higher than 12 percent, the contemporaneous record shows that CMS had a reasonable basis for its evaluation judgment that assessment of a significant strength was not merited. Arch's final proposal did not identify a material contribution by [DELETED] in performing task area 2, which the evaluators considered to be the essential area of the revised SOW's operation and maintenance requirement. At the same time, the evaluation adequately advised the source selection authority of the significance of a data management firm to the value of Arch's technical approach. In short, the evaluation of a strength, rather than a significant strength, was reasonable.

On the second point, we agree with CMS that the record reasonably supports the agency's judgment that Arch's DICA approach did not merit assessment of a strength in the final evaluation. While we recognize that CMS had assessed a strength for Arch's DICA approach in the initial evaluation, and that not all of the software development requirements were deleted from the revised SOW, Arch has not shown that CMS was unreasonable in not assessing a strength in this area. CMS viewed the advantages of Arch's DICA approach as insufficient to merit assessment of a strength in the final evaluation, particularly in the context of the revised SOW, which no longer anticipated the contractor instituting a new data governance approach. See AR Tab 9E, Redlined Revised MIDAS SOW at 6-7 (deletion of data integration and data governance requirements).⁶ The record thus supports CMS's evaluation judgment in this respect, given the different circumstances presented by the revised SOW.

On the third point, our review of the contemporaneous record also supports the reasonableness of CMS's evaluation of Arch's proposal under the personnel qualifications and management plan factor. The TORP provided for the agency to evaluate the qualifications and utilization of any proposed key personnel. CMS considered the significance of the role of Arch's chief data architect to the revised SOW and the candidate's qualifications, and found that assessment of a strength was not merited. Similarly the evaluators assessed Arch's management techniques as consistent with the expected approach, but concluded that these techniques would not merit assessing a strength. Based on the contemporaneous record, our review provides no basis to question CMS's evaluation judgment in these respects. Accordingly, we deny Arch's challenges to the evaluation of its proposal.

⁶ Although Arch argues that CMS has mischaracterized whether the revised SOW reduced the significance of DICA to performance, our review concludes that CMS's judgment that the benefit of Arch's advantage in DICA was diminished in the revised SOW. Arch does not dispute that the revised SOW removed a requirement for CMS to employ the contractor to make recommendations on the overall data governance approach, even though as Arch argues, operations and maintenance portions of the revised SOW do continue to require implementation of data governance, and DICA as an element of that. Protester's Supp. Comments at 14-15.

Evaluation of Sparksoft's Proposal

Arch also challenges the basis for CMS's assessment of a strength for Sparksoft's proposal under the technical understanding and approach factor. CMS assessed the Sparksoft proposal a strength because the firm proposed staff in leadership positions that had direct experience with MIDAS, which would provide an enhanced understanding of relevant marketplace data and lead to better results from MIDAS. AR Tab 21A, Final TEP Report, at 42. Arch argues that assessing this strength effectively reinstates the consideration of past performance only for Sparksoft, and that equal treatment of Arch should have resulted in the assessment of a strength for the protester on the same basis. Protester's Comments & Supp. Protest at 3-9.

CMS maintains that the evaluation of Sparksoft's proposal was reasonable, and was consistent with the TORP, while Arch's proposed personnel lacked direct experience with supporting the operation and maintenance of MIDAS, and thus, did not merit a corresponding strength. Supp. AR Legal Memo at 11-12. CMS notes that the revised SOW required the contractor to "provide the necessary data analysis and technical expertise to enable CCIIO to host data and conduct data mining and analysis functions." Id. at 11 (quoting AR Tab 9F, Revised SOW, at 5). Given that requirement, CMS argues that the assessment of a strength for Sparksoft under the technical understanding and approach factor was appropriate.

The contemporaneous record again supports the reasonableness of CMS's evaluation of Sparksoft under the technical understanding and approach factor, and does not support Arch's allegation of unequal treatment. The TORP emphasized the need for the contractor's personnel to have appropriate certifications and experience for their roles, and emphasized that key personnel "shall have previous experience in the same or similar role of the same size and scope of project." Id. at 33. As a result, it was reasonable and consistent with these requirements for CMS to assess a strength to a vendor that proposed an approach that provided an enhanced understanding of the MIDAS system. The strength was assessed based on the firm's understanding of the requirements and likelihood of obtaining better results, rather than Sparksoft's past performance.⁷ AR Tab 21A, Final TEP Report, at 42; AR Tab 20, Supp. Statement of TEP Member, at 5. In short, the record provides no support for Arch's claim that the

⁷ Arch also argues that the source selection decision was flawed because the agency incorrectly identified Sparksoft's "significant and comprehensive experience with Marketplace data." Protester's Supp. Comments at 16 (quoting AR Tab 15, Source Selection Decision, at 12). Arch argues that assessing this strength again improperly evokes the deleted past performance factor, and reflects a misinterpretation of the evaluation record. We disagree. The record reasonably supports the conclusion that the strength in Sparksoft's proposal was related to its understanding of the SOW; specifically, the contracting officer described Sparksoft's "ability to perform the services." AR Tab 15, Source Selection Decision, at 12. As such, Arch's argument does not provide a basis to sustain the protest.

assessment of a strength for Sparksoft relied on unstated evaluation criteria, or that it reintroduced the evaluation of past performance selectively only for Sparksoft.

The record also does not support the argument that the evaluation reflected unequal treatment when Arch was not also assessed a strength for expertise in managing marketplace data. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014 CPD ¶ 169 at 8-9. As discussed above, the record supports CMS's conclusion that Sparksoft's technical understanding and approach merited a strength, derived from its personnel having direct experience with MIDAS; Arch has not shown that its technical approach provided an equivalent level of technical understanding or experience with marketplace data.

Source Selection Decision

Finally, Arch argues that the source selection decision was unreasonable because it was based on the allegedly defective evaluation record discussed above. We disagree.

The source selection decision reflects that the contracting officer discussed "the noteworthy attributes of each revised proposal by element," which were drawn from the evaluation of both vendors' proposals. AR Tab 15, Source Selection Decision, at 6-8, 11-12. The contracting officer first conducted a tradeoff involving a third SPARC vendor (Offeror E) and Sparksoft. The contracting officer reasoned however, that Offeror E's higher-rated proposal was not a better value when considering the difference between its higher price and Sparksoft's. Next, with respect to Arch, the contracting officer considered that Arch's and Sparksoft's proposals had each been assessed a single technical strength and determined that the value of each firm's technical evaluation was essentially equal overall. Id. at 13. Based on that judgment, the contracting officer determined that no further tradeoffs were necessary, and that the task order should be issued to Sparksoft on the basis of its lower price. Id. at 14. Although Arch's protest has challenged the underlying evaluation as discussed above, it has not shown that the source selection rationale was unreasonable or inconsistent with the TORP. Since we deny Arch's other challenges, we likewise deny its challenge to CMS's source selection.

The protest is denied.

Thomas H. Armstrong
General Counsel