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Decision

Matter of: CyberData Technologies, Inc.

File: B-417084.3

Date: June 6, 2019

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Florence N. Bridges, Esq., Department of Commerce, for the agency.
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DIGEST

1. Protest challenging the agency's technical evaluation is dismissed where the protester had the information necessary to raise the challenges during a prior protest but failed to do so; or did so and was dismissed in a prior decision.
 2. Protest challenging the agency's best-value tradeoff decision is denied where the record reflects that the selection official reasonably found the quotations of the awardee and the protester to be essentially technically equal and selected the lower-priced proposal for award.
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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 technical evaluation and the best-value tradeoff decision.

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

BACKGROUND

The RFP was issued as an 8(a) small business set-aside on July 11, 2017, under the National Institutes of Health Information Technology Acquisition and Assessment

Center Chief Information Officer--Solutions and Partners 3 small business government-wide acquisition contract vehicle. Agency Report (AR), exh. 1, RFQ, at 3.¹ The RFQ contemplated the issuance of a single task order with fixed-price and time-and-materials provisions for information technology support services for NOAA’s weather and climate computing infrastructure services program. Id. at 3, 37.

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. Id. at 6. The non-price factors, when combined, were considered significantly more important than price. Id. The RFQ stated that price would be evaluated for reasonableness. Id.

NOAA received two quotations. AR, exh. 5a, Post-Award Business Case Memorandum (BCM), Sept. 27, 2018, at 5. After the agency conducted discussions, amended the RFQ, and evaluated the revised quotations, the technical evaluation team (TET) assigned the following adjectival ratings:

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

Post-Award BCM at 7.

The selection official, who also served as the contracting officer (CO), reviewed the findings of the TET and the price evaluation team (PET); noted that both vendors received an overall rating of good; and determined that issuing a task order to Ace was in the best interest of the government because of its lower price. Post-Award BCM at 21. After receiving notice of award and a debriefing, CyberData filed its first protest with our Office,² and the agency issued a stop-work order to Ace.

¹ For the purposes of clarity, we refer to all of the agency’s filings as one “agency report” throughout this decision. The agency filed a request for summary dismissal on May 2, 2019, to which the protester and intervenor responded on May 7. GAO determined that dismissal of all of the protest grounds was not appropriate and held a conference call with the parties during which the parties agreed to consider the agency’s request for dismissal as fulfilling the agency report requirement. The protester and intervenor then filed comments on May 20.

² That protest was 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)(1)(B).

On February 6, our Office sustained CyberData’s protest in part and dismissed it in part. CyberData Techs., Inc., B-417084, Feb. 6, 2019, 2019 CPD ¶ 34. In the decision, we explained that “the portion of the selection decision provided by the agency [did] 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.” Id. at 4. Because the record did not show that the selection official considered the qualitative value of the vendors’ quotations, we sustained the protest and recommended that the agency “perform and document a new selection decision[.]”³ Id. at 4, 6. We dismissed the remainder of CyberData’s protest, including, of relevance here, CyberData’s challenge to the agency’s technical evaluation of Ace’s quotation. This argument was dismissed because 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[.]” and because the record showed that a price realism analysis was not required, and therefore not permitted, by the terms of the solicitation. Id. at 5.

In accordance with our recommendation, the agency performed and documented a new selection decision. After reviewing the file, including the original TET and PET reports, the selection official “determined that a new evaluation was not necessary,” and “a new evaluation was not performed.” AR, exh. 10, CO Statement, May 1, 2019, at 2; AR, exh. 11, Supplemental CO Statement, May 8, 2019, at 1; see also AR, exh. 12, Statement of the TET, May 8, 2019, at 1. Therefore, the original adjectival ratings assigned by the TET were unchanged. AR, exh. 5b, Post-Award BCM, Revised, Apr. 9, 2019, at 7. The selection official then proceeded to summarize, in detail, the underlying original evaluation of both quotations, with which she expressly concurred. The selection official discussed various qualitative aspects of both quotations and recognized that neither quotation was assessed any significant strengths that would warrant consideration of a “good” rating under the technical approach factor. Post-Award BCM, Revised, at 21-24. Overall, the selection official concluded:

Based on my independent judgment, I have concluded that both quotes merit an overall rating of “good.” Both quoter[s] have demonstrated a firm understanding of all twenty-one (21) task areas and have extensive corporate experience managing work that is relevant to the [Weather and Climate Computing and Infrastructure Services] WCCIS requirements. It is, therefore, reasonable to assume that an award to either quoter would

³ The agency subsequently filed a request for reconsideration, arguing for the first time that additional information supporting the reasonableness of its evaluation was documented in the redacted portions of the selection decision. See Department of Commerce--Recon., B-417084.2, Mar. 21, 2019, 2019 CPD ¶ 112. In denying the request, our Office explained: “[I]t was incumbent upon NOAA to provide an adequate record and to justify the reasonableness of its selection decision. The agency, at its own peril, elected to submit a heavily redacted version of its contemporaneous rationale supporting its evaluation and selection decision.” Id. at 3.

result in a low risk of unsuccessful performance. Both quoters have solid staffing and transition plans that would be beneficial to the government and ensure system availability. I have considered the fact that [Ace] has a stronger technical approach than CyberData and agree that it is on the high side of the acceptable rating. However, I do not believe that the advantages in its technical quote would confer enough benefit to warrant a higher rating or significantly distinguish it from CyberData's quote for the purposes of this evaluation. The TET determined that neither quoter submitted a quote that merited significant strengths for the technical approach factor and I concur with their recommendation. Therefore, I have concluded that both quotes are essentially equivalent from a technical standpoint under the non-price factors.

Under these circumstances, price becomes a discriminator even though the technical non-price factors are significantly more important than price. In this instance, [Ace]'s total evaluated price of \$102,053,881.99 is considered fair and reasonable when based on adequate price competition, compared to published price lists[,] and is \$2,296,235.94 lower than CyberData's price. Since [Ace] is rated "good" overall, and there is no aspect of CyberData's quote that supports paying an additional \$2,296,235.94, I have determined that [Ace]'s solution is the best value to the government in accordance with the terms of the solicitation[.]

Post-Award BCM, Revised, at 24.

The agency again selected Ace's quotation as representing the best value to the government and, accordingly, cancelled the stop-work order. After receiving a debriefing, CyberData filed this protest with our Office.

DISCUSSION

CyberData argues that the agency's technical evaluation of both quotations and best-value tradeoff decision were unreasonable. As discussed below, we dismiss two of CyberData's protest grounds and deny the third.

Evaluation Challenges

First, CyberData challenges the agency's technical evaluation of both quotations. CyberData alleges that Ace should have received a lower rating under the technical approach factor because "the price quoted by Ace makes it clear that Ace does not understand the staffing issues" and, further, "the low price quoted by Ace will significantly increase the risk that Ace is unable to retain qualified personnel on the contract[.]" Protest at 8. CyberData also complains that it should have received "several significant strengths" and an overall rating of "no lower than 'good'" under the technical approach factor. Protest at 7-8.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, protests generally must be filed no later than 10 calendar days after the protester knew, or should have known, the basis of its protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Moreover, where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. International Code Council, B-409146, Jan. 8, 2014, 2014 CPD ¶ 26 at 3 n.3; Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 4.

Here, CyberData's evaluation challenges were known or should have been known to the protester from the record developed in response to the firm's earlier protest. First, CyberData's argument concerning the evaluation of Ace's quotation is essentially the same price realism argument that CyberData raised in its prior protest, and that we addressed and dismissed in our prior decision for failing to state a valid basis of protest. See CyberData Techs., supra, at 4-5; see also Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5-6 (dismissing argument that was previously addressed and denied in a prior decision).

Second, CyberData could have raised its challenge to the evaluation of its quotation in its prior protest but did not, and there is no apparent reason why CyberData could not have done so.⁴ CyberData now alleges that the CO stated during its debriefing that a reevaluation was conducted, and, thus, asserts that its present challenge to the evaluation of its quotation is "based entirely upon the reevaluation of its quotation performed after the corrective action." Protester's Response to Request for Dismissal, May 7, 2019, at 2-3; see also Protester's Additional Response to Request for Dismissal, May 9, 2019, at 1. As discussed above, the record shows that the agency did not conduct a reevaluation before making its revised selection decision; moreover, whether the CO suggested otherwise during CyberData's debriefing is a matter that concerns the adequacy of debriefings, which our Office generally does not review. See Hallmark Capital Grp., LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 4 n.4 ("errors or misstatements in a debriefing are procedural matters that do not affect the validity of an otherwise reasonable award"). Finally, even if the agency had conducted a reevaluation, we do not think that would provide the protester with a timely basis for raising an issue that could have been raised in the previous protest. See Savvee Consulting, supra, at 6-7 (protester's "assertion that it is timely protesting the agency's reevaluation--as opposed to protesting again the agency's initial evaluation--unreasonably reflects an elevation of form over substance"). Accordingly, we dismiss CyberData's evaluation challenges.

⁴ We note that, in its comments in its prior protest, CyberData asserted that it had "repeatedly stated that it does not protest the overall adjectival rating applied to either proposal submitted in response to the solicitation." Protester's Comments, B-417084, Dec. 13, 2018, at 3.

Selection Decision

Next, CyberData challenges the agency's revised best-value tradeoff decision because, in CyberData's view, "the agency has not provided any explanation as to how the relative strengths of CyberData's proposal compared to Ace's, or as to how the benefits of each quotation were considered."⁵ Protest at 10. CyberData further complains that the agency's determination "does not contain any substantive comparison or analysis of the offerors' quotations." Protester's Comments at 2. We disagree.

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.

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. Additionally, agencies may find that offerors' proposals or vendors' 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., B-411776, B-411776.2, Oct. 20, 2015, 2017 CPD ¶ 6 at 5. In this regard, in a negotiated procurement with a best-value evaluation plan--including task order procurements subject to the provisions of Federal Acquisition Regulation (FAR) subpart 16.5--where selection officials reasonably regard quotations as being essentially equal technically, price properly may become the determining factor in making award, and it is not necessary to perform a price/technical tradeoff. See Oracle America, Inc., B-417046, Jan. 31, 2019, 2019 CPD ¶ 74 at 15, citing Staff Tech, Inc., B-403035.2, B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6; see also Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 8 ("Since the record shows that the agency determined that the quotations, although different in content, relatively were equal under the non-price factors, its decision to make low price the deciding factor was fully consistent with the RFQ award criteria, and we have no basis to find any error in the source selection.").

⁵ CyberData also alleges that the agency's selection decision was based on "unreasonable and improper evaluations." Protest at 10. Because we dismiss the protester's evaluation challenges as discussed above, we do not consider this aspect of the protester's complaint here.

Here, although CyberData complains that the agency did not analyze or compare the quotations, the agency's revised selection decision demonstrates that the selection official reviewed the underlying evaluation results, considered the qualitative value of the vendors' quotations and reasonably determined them to be technically equal, and properly used price as the determining factor in making the award. For example, with regard to the technical approach, the selection official noted:

While CyberData does not have as many strengths in its technical approach factor [as Ace], it still offered a solid technical approach warranting a rating of "acceptable" for its revised quote. Like [Ace], CyberData demonstrated an adequate understanding and approach for all twenty-one (21) [performance work statement] PWS requirements and had no weaknesses, significant weaknesses, or deficiencies. As such, the technical quote represents a low risk of unsuccessful performance.

Post-Award BCM, Revised, at 22. Overall, the selection official "considered the fact that [Ace] has a stronger technical approach than CyberData" but "[did] not believe that the advantages in [Ace's] technical quote would confer enough benefit to warrant a higher rating or significantly distinguish it from CyberData's quote for the purposes of this evaluation." Id. at 24. On this record, we find the selection official's conclusions to be reasonable.

Finally, after determining that the quotations were technically equal, the selection official considered price as the determining factor. The selection official recognized that Ace's price was lower than CyberData's price and that "there is no aspect of CyberData's quote that supports paying an additional \$2,296,235.94." Id. at 24. In light of the fact that no tradeoff was required, the agency's decision to make low price the deciding factor was fully consistent with the solicitation, and we see no basis to conclude that the agency failed to adequately document its source selection decision here. See Oracle, supra, at 15; see also The MIL Corp., B-297508, B-209508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 14.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel