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Decision

Matter of: Cyberdata Technologies, LLC

File: B-417816

Date: November 5, 2019

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DIGEST

Protest that the agency improperly excluded the protester from the competitive range is denied where the record shows that the agency's decision is reasonable and in accordance with the stated evaluation criteria.

DECISION

CyberData Technologies, LLC, of Herndon, Virginia, protests its exclusion from the competitive range by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), under request for proposals (RFP) No. ST-1330-18-RP-0041 for professional and engineering services in support of the National Weather Service (NWS). CyberData challenges the agency's evaluation of its proposal under various price and non-price factors.

We deny the protest.

BACKGROUND

The RFP, issued on August 6, 2018, sought proposals for a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) professional and technical services contract to support the agency's weather domain.¹ RFP at 7. The resulting contracts were to

¹ The solicitation was amended three times. Unless otherwise noted, citations are to the conformed solicitation provided at Tab 6 to the agency report (AR).

consist of a 2-year base period and three 1-year option periods. Id. The RFP explains that the professional and technical services solution, or ProTech, “is a suite of multiple-award [IDIQ] contracts consisting of five Domains: Satellite, Ocean, Fisheries, Weather, and Enterprise Operations.” Id. According to the RFP, each Domain has its own multiple-award IDIQ contracts; this solicitation seeks to procure services in support of the Weather Domain. Id. The agency refers to this acquisition as ProTech-Weather. Id.

The ProTech-Weather multiple-award contracts are intended to support “the full range of related requirements for weather, water and climate activities, including but not limited to developing, collecting, and analyzing decision-support data, executing operations and maintenance functions for non-IT [information technology] mission critical systems. . . and corporate administration and financial management.” Id. at 12. The statement of work (SOW) includes three support activities: scientific services; program and project management, consulting, and training; and engineering services for systems and facilities. Id. at 12-17. Each of these activities includes various services that could be performed under the resulting contract. Id.

According to the RFP, award was to be made neither on a lowest-price, technically-acceptable nor a tradeoff basis. Id. at 74. Instead, the RFP states that “the best value basis will be determined by the Highest Technically Rated Offerors with a Fair and Reasonable Price” under part 15 of the Federal Acquisition Regulation (FAR). Id. Determination of the highest technically rated offerors was to be based on the evaluation of three non-price factors, listed in descending order of importance: corporate experience and commitment (corporate experience); management approach; and past performance. Id. The non-price factors, when combined, were to be significantly more important than price, and were to “play a dominant role in the basis for award.” Id. However, an offeror whose proposed price was not found to be fair and reasonable “will not be awarded a contract regardless of the Government’s evaluation of the non-price factors of the Offeror’s proposal.” Id.

The agency received 31 offers in response to the solicitation, including one from CyberData. AR, Tab 13, Competitive Range Determination, at 1-2. An initial evaluation of the protester’s proposal resulted in marginal ratings under the corporate experience and management approach factors, a very good rating for past performance, and a determination that the firm’s proposed price was reasonable.² Id. at 3. The agency found that 22 offerors “presented strong enough technical experience and capability to be considered the most highly rated.” Id. at 11-12. CyberData was not among the 22 most highly-rated offerors. Id. On July 26, 2019, the agency informed the protester that

² Under the corporate experience and management approach factors, proposals could receive one of the following adjectival ratings: outstanding, good, acceptable, marginal or unacceptable. AR, Tab 2, Source Selection Plan, at 7. Proposals could receive one of the following adjectival ratings for past performance: exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. Id. at 8.

its proposal had not been selected for inclusion in the competitive range. AR, Tab 14, Notice of Exclusion, at 1. CyberData requested and received a pre-award debriefing. AR, Tab 15, Debriefing Letter, at 1. This protest followed.

DISCUSSION

CyberData challenges the agency's evaluation of its proposal under the corporate experience factor, arguing that the evaluation was inconsistent with the terms of the solicitation. Protest at 4-6. Specifically, the protester argues that the agency used an unstated evaluation criterion in evaluating proposals under the corporate experience factor. Comments at 1-3. The protester also challenges the competitive range determination arguing that the agency improperly based its decision solely on the merits of proposals under the corporate experience factor, and that the agency failed to adequately consider the remaining non-price factors and price in establishing the competitive range.³ Protest at 7-8; Comments at 3-5. We address each issue in turn.

Corporate Experience

CyberData challenges the assignment of a marginal rating to its proposal under the corporate experience factor. Specifically, the protester contends that "[t]he issue is whether the Agency used unstated evaluation criteria for rating corporate experience." Comments at 1. The protester argues that the agency improperly "penalized" the protester for making broad claims of capability even though the solicitation did not require offerors to address every element of the statement of work. Comments at 3. According to the protester, the evaluation was unreasonable because it "penalized" offerors that expressed an interest in performing more aspects of the scope of work. Id.

The agency asks that we deny this protest allegation "because it is based on a misstatement of the Solicitation's evaluation criteria, is not supported by the record, and otherwise represents a mere disagreement with NOAA's reasonable evaluation." MOL at 9. Pointing to various requirements of the solicitation, the agency asserts that the evaluation criteria notified offerors that it would "evaluate the depth and breadth of an offeror's experience against the individual elements of the statement of work that the offeror indicated it could perform." Id. at 9. According to the agency, it "ultimately found

³ In its protest, CyberData discussed specific challenges to several weaknesses and significant weaknesses identified in the firm's proposal under both the corporate experience and management approach factors. Protest at 4-6. The agency responded to each of the allegations raised in the protest in the agency report. See Memorandum of Law (MOL) at 8-18. The protester, however, did not provide responses to these issues in its comments, instead limiting its arguments to those discussed in this decision. See generally Comments. We conclude that CyberData abandoned these protest grounds and they will not be considered further. IntegriGuard, LLC d/b/a HMS Federal-Protest and Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5.

CyberData's proposal to be rated Marginal because it did not meet or demonstrate an adequate understanding of the requirements." Id. at 10.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. Agencies may properly evaluate a proposal based on considerations not expressly stated in the RFP where those considerations are reasonably and logically encompassed within the stated evaluation criteria and where there is a clear nexus between the stated and unstated criteria. Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 18.

Under corporate experience, the RFP states that the government "will evaluate the extent to which the Offeror has demonstrated the qualifications and corporate experience in performing work of the same or similar nature as that of the requirements of the SOW," including relevant elements set forth in section L of the solicitation. RFP at 75. Section L required offerors to provide a capability matrix detailing the elements of the SOW the offeror proposed to perform, and where in its proposal the offeror describes its experience and commitment for completing that specified work. Id. at 68. Offerors were required to describe the breadth and depth of their experience and qualifications working within the requirements of the SOW.⁴ Id. The RFP cautioned offers as follows:

While no single Offeror or Team is required to address every element of the SOW, an Offeror or Team must propose on at least one element of the SOW. If an Offeror does state that it can address all elements of the SOW, and evaluation of the proposal reveals significant weaknesses or deficiencies in the response, this could lead to the Offeror being found ineligible for award.

Id. at 69.

The evaluators found, and the record shows that "CyberData asserted its experience and qualifications as covering the entire array of efforts set forth in the SOW." AR, Tab 12, Initial Evaluation, at 1; see also AR, Tab 8, CyberData Proposal - Corporate Experience and Commitment Volume, at 1. Of the 33 elements of the SOW under which CyberData purported to have capabilities, the agency found significant

⁴ Breadth was defined as "the extent to which the Offeror's experience and qualifications correspond to the array of efforts set forth in the SOW." Id. at 69. Depth was defined as "the extent to which the proposed experience and qualifications fully address an individual type of effort set forth in the SOW." Id.

weaknesses with respect to 12 of the elements, and weaknesses under 17 of the elements. AR, Tab 12, Initial Evaluation, at 1-9. As described in the competitive range determination, while Cyberdata's proposal received two strengths under the corporate experience factor, those strengths were offset by, "numerous weaknesses and significant weaknesses in 9 of the 14 Scientific Services elements, 7 of the 10 Program and Project Management, Consulting and Training elements, and 6 of the 9 Engineering [S]ervices elements." AR, Tab 13, Competitive Range Determination, at 9. The evaluators found that Cyberdata's proposal did not clearly meet the requirements, and that the firm had not demonstrated an adequate understanding of the requirements. AR, Tab 12, Initial Evaluation, at 11. Based on these evaluation findings, the agency assessed Cyberdata's proposal a marginal rating under the corporate experience factor. Id.

Our review of the record does not cause us to question the agency's evaluation. Contrary to CyberData's claim that the agency improperly used an unstated evaluation criterion and "penalized" the protester for making broad claims of capability, our review shows that the agency evaluated the firm's proposal in accordance with the explicit terms of the solicitation. Comments at 3. Under the stated evaluation scheme, offerors were not simply to be evaluated on their expressed "belief that [they] could do a lot," as the protester asserts, but on the demonstrated experience and qualifications in performing the same, or similar work, as was being proposed under this procurement. Id.; RFP at 75. The record shows that the identified weaknesses, significant or otherwise, assigned to Cyberdata's proposal derived mostly from the firm's failure to fully demonstrate experience or capability with respect to various elements of the SOW.⁵ AR, Tab 12, Initial Evaluation, at 1-9. As the protester did not demonstrate experience and qualifications it claimed to possess, with respect to the elements of the SOW, the agency reasonably assigned weaknesses, as appropriate, to CyberData's proposal.

Moreover, the solicitation specifically notified offerors that if an offeror states that it can address all elements of the SOW, as CyberData did here, and evaluation of the proposal reveals significant weaknesses, as was the case with the evaluation of the protester's proposal, this could lead to the offeror being found ineligible for award. Id. at 69. While the agency did not declare CyberData's proposal ineligible for award, on this record, we conclude that the agency's decision to assign a marginal rating to the firm's proposal under the corporate experience factor was reasonable, and in compliance with the terms of the solicitation. See SRA Int'l, Inc., supra.

⁵ For example, one of the significant weaknesses highlighted in the competitive range determination, was the firm's "[DELETED]," which was an element under the scientific services scope of work. RFP at 13; AR, Tab 12, Initial Evaluation, at 1; Tab 13, Competitive Range Determination, at 9.

Competitive Range Determination

CyberData's remaining challenges are to the competitive range determination itself. First, the protester argues that the agency used only the evaluation of corporate experience in establishing the competitive range. Comments at 3. According to CyberData, "[t]he management approach evaluation scoring had no impact on the Agency's decision to include or exclude an offeror from the competitive range." Id. Second, the protester argues that the agency improperly failed to consider price in making its competitive range determination. Id. at 4.

The determination of whether a proposal is in the competitive range is principally a matter within the judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. We will review that judgment only to ensure that it was reasonable and in accord with the solicitation and applicable statutes and regulations. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4. Contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly rated. See FAR § 15.306(c)(1).

Consideration of the non-price factors

With respect to the protester's first allegation, the agency responds that "the record demonstrates that the contracting officer made the competitive range determination by comparing the proposals against one another on a qualitative basis for each evaluation criteria." MOL at 20. In this regard, the agency points to the methodology used by the contracting officer of evaluating proposals in groups based first on the rating received under corporate experience, as the most important factor, and then evaluating proposals based on the remaining two non-price factors, management approach and past performance. Id. at 20-21; see also AR, Tab 13, Competitive Range Determination, at 7-11. Ultimately, the agency explains, CyberData was not included in the competitive range "[a]s a result of the array of significant weaknesses" evaluated in its proposal. MOL at 21; see generally AR, Tab 12, Initial Evaluation.

The record shows that the agency evaluated offerors in groups based on their assigned adjectival rating under the corporate experience factor, and then, as a general matter, discussed the remaining aspects of the proposals, including management approach and past performance, within the context of those groups. See generally AR, Tab 13, Competitive Range Determination. The agency explains that it followed this methodology because the agency considered the differences between a rating of good or marginal for corporate experience as "very significant" because "the findings reflect the demonstrated qualifications and corporate experience" of each offeror. Id. at 7. The agency contrasted this with the differences between a rating of good and marginal for the management approach factor, which the agency found to be less significant because the differences there "centered on findings that were more readily correctable." Id.

Within the group of proposals that received a marginal rating under the corporate experience factor, eight of the proposals were included in competitive range based on the specific merits of their proposals under the corporate experience factor. Id. at 8-9. The record reflects that one of the offerors (Offeror A), was among the lowest-rated under the corporate experience factor, yet it was included in the competitive range because of the relative merits of its proposal under the management approach and past performance factors, which were rated, respectively, as good and exceptional.⁶ Id. at 8. The remaining four lowest-rated proposals that received a marginal rating under the corporate experience factor, including CyberData, were ultimately excluded from the competitive range.

Our review of the record supports the conclusion that each proposal was given meaningful, individual consideration under the evaluation factors in establishing the competitive range. See Declaration of the Source Selection Evaluation Board (SSEB) Chair, at 2-3; Declaration of the SSA, at 1-2; see also AR, Tab 13, Competitive Range Determination, at 7-11. The record also supports the conclusion that CyberData's proposal was among the lowest-rated proposals under the corporate experience factor, and that the agency reasonably excluded the firm from further consideration based on consideration of each of the non-price factors, including the various weaknesses evaluated in the firm's proposal under the corporate experience factor. See id. at 9. In this regard, the SSA explains that she considered the numerous significant weaknesses assigned to Cyberdata's proposal under the corporate experience factor, along with concerns over the firm's approaches to recruitment, training and retention of necessary staff under the management approach factor. Declaration of the SSA, at 2.

Ultimately, the SSA concluded that Cyberdata's limited strengths under the corporate experience factor were not sufficient to "form a basis for inclusion among the highest technically rated proposals." Id. Moreover, the SSA states that she did not see any aspect in the remainder of the protester's proposal that could offset the lack of capability in the highest-weighted, corporate experience factor. Id. As such, the SSA concluded that Cyberdata's proposal was not included in the competitive range. Id.; see also, Competitive Range Determination, at 9. We conclude that the record adequately supports the agency's competitive range determination.

Consideration of price

Finally, with respect to price, CyberData argues that the agency's evaluation improperly minimized the impact of price such that it became merely a nominal evaluation factor. Protest at 7. According to the protester, the agency's "failure to give cost or price

⁶ Unlike Offeror A, whose proposal was also included in the lowest-rated group but was admitted to the competitive range because of the higher ratings it received under the other two non-price factors, CyberData's proposal was found to be of lesser merit under the remaining non-price factors, which were rated, respectively, as marginal and very good. AR, Tab 13, Competitive Range Determination, at 3.

meaningful consideration in the source selection process constitutes a violation of the statutory requirements governing a best-value source selection decision.” Id. The agency responds referring to the terms of the solicitation, and argues that its “sole purpose of evaluating price was to determine whether the price was fair and reasonable.” MOL at 20. The agency asserts that the evaluation and source selection scheme is permitted by the FAR, and that it “properly considered CyberData’s price in accordance with the stated evaluation scheme when excluding CyberData from the competitive range.” Id. We agree.

All of the decisions cited by CyberData in support of its contentions concern best-value tradeoff selection processes, and are thus inapplicable to the evaluation scheme here. Our Office has recognized that the source selection methodology used here--of evaluating proposals based on highest technical merit with a fair and reasonable price--is a permissible methodology under the FAR. Sevatec, Inc. et al., B-413559.3 et al., Jan. 11, 2017, 2017 CPD ¶ 3, at 6-7; see also U.S. Electroynamics, Inc., B-414678, Aug. 1, 2017, 2017 CPD ¶ 252, at 9. This methodology does not consider a tradeoff between price and non-price factors, as would be the case when using a tradeoff selection process. See id. Specifically, with regard to the consideration of price under this type of source selection methodology, we have found the following:

Under the circumstances here, the RFP’s source selection methodology--which only considers the prices of the highest-rated offerors, and considers the prices insofar as they are “fair and reasonable”--conforms with the agency’s requirements to consider price under CICA [Competition in Contracting Act]. Insofar as the proposed source selection process considers the price of every awardee (and rejects those firms that lack fair and reasonable pricing), the agency has satisfied its requirement to consider price to the government.

Sevatec, Inc. et al., supra at 9.

Consistent with the terms of the solicitation, as the ultimate award decision would not consider price in a tradeoff with non-price factors, we see no reason why the agency would be required to consider the relative merits of price in the context of establishing a competitive range, as the protester urges. Here, the record clearly shows that the agency evaluated CyberData’s price in accordance with the terms of the solicitation and found it to be fair and reasonable.⁷ We conclude that the protester’s challenge to the

⁷ Specifically, in considering price, the agency reviewed and compared the proposed hourly rates submitted by each offeror in the required cost/price template provided by the RFP. AR Tab 12 at 17-18. Based on that data, the agency calculated a standard deviation to use in its analysis of price. The agency also used published price lists such as those derived from the General Services Administration CALC (Contract Awarded Labor Category) tool in performing its price evaluation. AR Tab 13 at 5-6. As explained (continued...)

agency's price evaluation is without merit.⁸ AR, Tab 13, Competitive Range Determination, at 3.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

by the agency, CyberData's price was found to be fair and reasonable and was not a basis for its exclusion from the competitive range. Id. at 9.

⁸ Protester expressly does not challenge the solicitation's source selection methodology. Comments at 5 ("There is nothing wrong with the procurement methodology used here.").