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Decision

Matter of: Netizen Corporation

File: B-418281; B-418281.2; B-418281.3

Date: February 21, 2020

Marc Lamer, Esq., Kostos and Lamer, PC, for the protester. Jonathan T. Williams, Esq., Matthew E. Feinberg, Esq., Meghan F. Leemon, Esq., and Patrick K. Burns, Esq., Piliero Mazza PLLC, for BreakPoint Labs, LLC, the intervenor. Walker Moller, Esq., Department of the Army, for the agency. Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Challenge to the agency's evaluation of the awardee's corporate experience is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's standards for relevancy.
2. Allegation that the agency failed to conduct a price realism analysis is denied because the protester has not alleged or demonstrated that the awardee's price was unrealistic.

DECISION

Netizen Corporation, a small business of Allentown, Pennsylvania, protests the issuance of a task order to BreakPoint Labs, a small business of Dunn Loring, Virginia, under request for proposals (RFP) No. RFQ1394381¹, issued by the Department of the Army, Corps of Engineers (Corps), for cybersecurity support services at the Corps' Engineer Research and Development Center's Information Technology Laboratory. The protester contends that the agency's evaluation of BreakPoint's proposal was unreasonable and that the Corps did not perform a price realism analysis as required by the solicitation.

We deny the protest.

¹ Though the solicitation number suggests that this acquisition was issued as a request for quotations (RFQ), the record reflects that the solicitation was, in fact, a request for proposals (RFP).

BACKGROUND

The agency issued the solicitation on September 11, 2019, pursuant to the procedures in Federal Acquisition Regulation subpart 8.4, as a total small business set-aside for contractors holding General Services Administration (GSA) Federal Supply Schedule contracts under schedule 70, Information Technology. Agency Report (AR), exh. 1, RFP, at 2; Contracting Officer's Statement (COS) at 1-2. The RFP contemplated the issuance of a single fixed-price task order, with a 1-year base period and a 1-year option period, for risk assessment and security engineering services for the Corps' mission-critical activities. RFP at 4. Specifically, the solicitation required contractor support for computer network assessments of the management, operational, and technical security controls employed by the Corps' information systems, to determine the overall effectiveness of those controls. Id.

The solicitation advised that award would be made to the offeror whose proposal represented the best value to the agency, considering price and other factors. Id. at 32. In addition to price, proposals were to be evaluated based on the following five factors, listed in descending order of importance: technical approach; corporate experience; key personnel; staffing plan and qualifications; and past performance. Id. The solicitation advised that the non-price factors, when combined, were significantly more important than price. Id.

As relevant to this protest, under the corporate experience factor, each offeror was required to "identify up to three (3) relevant projects within the last three years" that "provide a comprehensive description of the offeror's significant capabilities and relevant corporate experience performing projects similar to the [performance work statement] requirements." Id. at 29. The solicitation defined relevant corporate experience as "experience within the last three years that is of the same or similar technical scope to the work described in the Performance Work Statement, and is of the same or similar contractual complexity (contract type) and magnitude (size)." Id. The solicitation further advised that an offeror would be evaluated on its "ability to describe its relevant corporate experience in performing services similar to the [performance work statement] requirements" and that a proposal demonstrating relevant corporate experience utilizing Enterprise Mission Assurance Support Service (eMASS) would be rated more favorably. Id. at 32.

The solicitation provided that the Corps would assign an adjectival rating for each of the non-price factors.² Id. at 33-34. As relevant to this protest, an outstanding rating would

² For the non-price factors other than past performance, the agency used an adjectival rating scheme with the following rating combinations: outstanding; good; acceptable; marginal; and unacceptable. RFP at 33-34. For past performance, the Corps utilized an adjectival rating scheme reflecting the agency's confidence assessment of an offeror's past performance, using the following rating combinations: substantial

be assigned when a proposal “meets [the solicitation’s] requirements and indicates an exceptional approach and understanding of the requirements[,]” when the “[s]trengths far outweigh any weaknesses[,]” and where the “[r]isk of unsuccessful performance is very low.” Id. at 33. Concerning the evaluation of price, the solicitation stated that the Corps would determine the reasonableness of an offeror’s proposed price, and that “[p]rices that are excessively high or low may be considered unrealistic and unreasonable, and may receive no further consideration.” Id. at 31-32.

The Corps received proposals from multiple offerors, to include Netizen, the incumbent contractor, and BreakPoint, by the September 25 submission deadline. COS at 2. The following is a summary of the final ratings of the proposals of Netizen and BreakPoint:

	Netizen	BreakPoint
Technical Approach	Good	Good
Corporate Experience	Outstanding	Outstanding
Key Personnel	Acceptable	Acceptable
Staffing Plan and Qualifications	Acceptable	Good
Past Performance	Substantial Confidence	Substantial Confidence
Price	\$9,226,080	\$8,328,840

AR, exh. 25, Evaluation Summary and Decision Document (ESDD) at 261.

In its evaluation, the source selection authority noted that BreakPoint’s and Netizen’s proposals received the same ratings for four of the five technical factors, including for corporate experience, but that BreakPoint received a higher rating under the staffing plan and qualifications factor. Id. at 275. Moreover, BreakPoint’s offered price was less than Netizen’s proposed price. Id. The agency concluded that with all non-price factors and price considered, “BreakPoint Labs provides the best overall value to the Government.” Id.

The Corps issued the task order to BreakPoint on November 7. AR, exh. 2, Task Order Award, at 1. This protest followed on November 15.

DISCUSSION

Netizen contends that the agency’s evaluation and source selection decision were unreasonable and not in accordance with the terms of the solicitation. Protest at 5; Comments & Second Supp. Protest at 2-4. The protester argues it should have received a higher corporate experience rating than the awardee, because its experience was superior to BreakPoint’s and the awardee’s offered experience failed to meet the relevancy requirements stated in the solicitation. Comments & Second Supp. Protest

confidence; satisfactory confidence; limited confidence; no confidence; and unknown/neutral confidence. Id. at 34.

at 3. Netizen also argues that the agency failed to conduct a price realism evaluation.³ Id. at 4-7; Protester's Supp. Comments, Jan. 3, 2020, at 1-2. We have reviewed all of Netizen's allegations and find that none provide a basis to sustain the protest.

Corporate Experience

Netizen argues that the agency's evaluation of BreakPoint's proposal under the corporate experience factor was flawed. Protest at 5; Comments & Second Supp. Protest at 2-3. In this regard, the protester argues that it deserved a higher rating than BreakPoint because Netizen, as the incumbent contractor, had performed similar services for the Corps for the past three years, while BreakPoint "was only a subcontractor to Netizen" on that contract. Protest at 5. Moreover, the protester contends that, as a subcontractor, BreakPoint performed only a small portion of that contract, and as such, its corporate experience "does not fall within the relevancy requirement" of the solicitation.⁴ Comments & Second Supp. Protest at 3.

³ While Netizen challenged the agency's evaluation under the staffing plan and qualifications factor, and alleged that BreakPoint should have been deemed ineligible because of an organizational conflict of interest, the protester withdrew these protest allegations. Comments & Second Supp. Protest at 1. The protester also challenged the agency's evaluation of proposals under the past performance factor. Protest at 5. The Corps provided a detailed response addressing this challenge. COS at 14-15; Memorandum of Law (MOL) at 16-18. Netizen's comments on the agency report provide no substantive response in connection with its challenge; in our view, Netizen abandoned this allegation. Where an agency provides a detailed response to a protester's allegations and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper, and we therefore find this protest ground abandoned and do not consider it further. See 4 C.F.R. § 21.3(i)(3); KSJ & Assocs., Inc., B-409728, July 28, 2014, 2014 CPD ¶ 222 at 5.

⁴ The agency and intervenor argue, through multiple rounds of briefing, that Netizen's challenge to the agency's evaluation of BreakPoint's corporate experience is untimely because the protester did not raise this allegation until its comments on the agency's report, more than 10 days after the basis of protest was known. See Intervenor's Comments at 3; Supp. MOL, Dec. 31, 2019, at 7-8; Intervenor's Supp. Comments, Jan. 3, 2020, at 2-4; Second Supp. MOL, Jan. 29, 2020, at 5-7; Intervenor's Supp. Comments, Jan. 31, 2020, at 6-7. Although a close call, we conclude that Netizen's protest alleged, with sufficient information, the factual predicate which forms the basis of its protest argument concerning the Corps' evaluation of BreakPoint's proposal. See Protest at 5 (challenging the Corps' corporate experience evaluation where Netizen alleges that BreakPoint performed about 12 percent of the work on the predecessor contract). To the extent the protester challenges the evaluation of its own proposal under the corporate experience factor, we dismiss the allegation because it fails to state a valid basis of protest. 4 C.F.R. § 21.5(f). In this regard, Netizen does not provide any

The agency argues that its evaluation was reasonable and consistent with the terms of the solicitation. COS at 12; Memorandum of Law (MOL) at 10-15. Concerning corporate experience, the Corps acknowledges that the awardee's experience concerned its work as a subcontractor, but argues that subcontractor experience was expressly permissible under the terms of the RFP. MOL at 11-12. The agency further contends that the evaluation record sufficiently reflects that BreakPoint's proposal "demonstrated relevant corporate experience in performing services that are essentially the same as those depicted in the [Performance Work Statement]" and that it had experience utilizing eMASS, which was to be given favorable consideration under the terms of the RFP. AR, exh. 25, ESDD, at 265. As such, and consistent with the terms of the solicitation, the agency argues that it reasonably assigned BreakPoint's proposal an outstanding rating. COS at 12.

The evaluation of proposals, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion. Sevatec, Inc., B-416617, B-416617.2, Nov. 1, 2018, 2018 CPD ¶ 379 at 6; Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather, examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Trandes Corp., B-411742 et al., Oct. 13, 2015, 2015 CPD ¶ 317 at 6. An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Based on our review of the record, we find reasonable the agency's conclusion that BreakPoint's proposal warranted an outstanding rating under the corporate experience factor. Both Netizen and BreakPoint had only one of their offered projects--the predecessor contract--deemed relevant under the corporate experience factor. AR, exh. 25, ESDD, at 270. Under this contract, Netizen, the prime contractor, performed approximately 65 percent of the value of the contract, while BreakPoint, a subcontractor, performed approximately 15 percent. Comments & Second Supp. Protest, attach. A, at 1. While the protester highlights that BreakPoint was a subcontractor to Netizen on the predecessor contract, the solicitation did not require prime contractor experience, nor did it establish additional credit for work performed as a prime. See RFP at 29 (allowing offerors to submit projects demonstrating corporate experience as "prime contractor[s] and major subcontractors"). Netizen's argument that BreakPoint could not have received an outstanding rating under the corporate experience factor because it was a subcontractor is, therefore, not supported by the solicitation.

specific information to challenge the Corps' evaluation of its proposal or the assignment of an outstanding rating (the highest possible rating), nor does Netizen explain how it was prejudiced by the agency's actions.

We find similarly unpersuasive Netizen's argument that BreakPoint's experience was not relevant, as defined by the solicitation. As noted above, relevant corporate experience was defined as "experience within the last three years that is of the same or similar technical scope to the work described in the Performance Work Statement, and is of the same or similar contractual complexity (contract type) and magnitude (size)." Id. The protester's allegation is, in effect, that BreakPoint's work on the predecessor contract is not relevant because the awardee's work as a subcontractor--which amounted to approximately 15 percent of the total value of the contract--was not of the "same or similar" magnitude/size to the work to be performed under this contract. See Comments & Second Supp. Protest at 2-4.

The record reflects that BreakPoint's incumbent contract experience concerns work performed within the past three years and is of the same technical scope and complexity as this effort. See AR, exh. 5, BreakPoint's Technical Proposal, at 15-16; AR, exh. 25, ESDD, at 265-266. While the protester is correct that BreakPoint, as a subcontractor, only performed approximately 15 percent of the total value of the prior contract, under the terms of the solicitation, a finding of relevancy--concerning contract magnitude--was not limited strictly to the dollar amount of work an offeror performed. See RFP at 29. Indeed, as evidenced by the record, the agency's evaluation team examined a number of factors to gauge magnitude/size relevancy, to include total dollar value, number of project tasks performed, breadth of capabilities utilized, and variety of project contributions. See AR, exhs. 40-43, Declarations of Evaluators, at 675-686 (explaining what aspects each evaluator considered to determine relevancy, with respect to magnitude/size); Second Supp. MOL, Jan. 29, 2020, at 1-5.

Using these metrics, the agency determined that BreakPoint's work as a subcontractor met all the relevancy requirements stated in the solicitation, and concluded that its proposal warranted an outstanding rating under the corporate experience factor. AR, exh. 25, ESDD, at 265-266; AR, exh. 43, Declaration of Contracting Officer/Source Selection Authority, at 1-2. While the protester disagrees with the evaluation team's approach and contends that the agency never meaningfully addressed relevancy with respect to magnitude/size, such disagreement with the agency's judgment, without more, is insufficient to render the evaluation unreasonable.⁵ WingGate Travel, Inc.,

⁵ Netizen contends that the declarations from the agency's evaluators and source selection authority are post hoc explanations that should be entitled to no weight. Protester's Comments, Jan. 31, 2020, at 1. In reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties' arguments and explanations. Science Applications Int'l Corp., Inc., B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 8 n.12. Although we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, see Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of the rationality of selection decisions,

B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4-5; see also United Medevac Solutions., Inc., B-417032, B-417032.2, Jan. 24, 2019, 2019 CPD ¶ 70 (finding contract value as low as 17 percent not so low as to be inherently irrelevant); Northrop Grumman Sys. Corp., B-412278.7, B-412278.8, Oct. 4, 2017, 2017 CPD ¶ 312 at 17 (finding reference contracts ranging from 11.5 to 24.5 percent of the estimated award value not so disparate in magnitude as to be irrelevant). On this record, we cannot conclude that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation.

Price Realism Analysis

The solicitation provided that “[p]rices that are excessively high or low may be considered unrealistic and unreasonable, and may receive no further consideration.” RFP at 32. Netizen maintains that while the agency performed a price reasonableness analysis, the record is devoid of information to suggest the Corps examined whether BreakPoint's proposed price was realistic.⁶ Id.; Protester's Comments, Jan. 3, 2020, at 1-3.

Where, as here, an RFP contemplates the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal.⁷ Ball

so long as those explanations are credible and consistent with the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12. Here, the evaluators' explanations are credible and consistent with the contemporaneous record.

⁶ The agency argues that Netizen's price realism argument is untimely. Supp. MOL, Dec. 31, 2019, at 1-2. In this regard, the agency contends that because Netizen's price realism challenge concerns a comparative assessment between BreakPoint's proposal and its own, Netizen should have raised this argument when it first learned of the awardee's price, rather than waiting until Netizen filed its comments on the agency's report. Id. at 2; see also Intervenor's Comments, Jan. 3, 2020, at 2-4. While a close question, it is not evident that the protester knew or should have known that BreakPoint's price--disclosed to Netizen through the agency's explanation of the award decision--included plug-numbers for travel expenses. The protester maintains that this only became known after Netizen received the agency report. Accordingly, we are not prepared to dismiss this protest allegation as untimely.

⁷ Notwithstanding the agency's assertions to the contrary, we conclude the solicitation contemplated a price realism evaluation of the awardee's offered price. The solicitation provided that “[p]rices that are excessively high or low may be considered unrealistic and unreasonable, and may receive no further consideration.” RFP at 32. Implicit in the solicitation's warning that excessively low prices may be deemed unrealistic is a presumption that the agency would--as a condition precedent to determining if prices

Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Logistics 2020, Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7-8.

Here, as an initial matter, Netizen has failed to allege facts that would support a conclusion that BreakPoint's price was unrealistic. In this regard, the protester has not marshalled any arguments concerning how BreakPoint's price was unrealistic, how the awardee's proposal demonstrated a lack of understanding of the solicitation's requirements, or how BreakPoint's proposal represented a risk to successful performance of the contract, notwithstanding that the record included the awardee's staffing levels, staffing mix, and proposed labor rates. The only information Netizen, arguably, provides in support of its protest allegation was that BreakPoint's total price was "only roughly 89% of the total dollar value of the labor generated during the similar period under the prior contract." Comments & Second Supp. Protest at 7.

Moreover, the protester does not substantively address the source selection authority's contention that BreakPoint's low cost was realistic due to the firms' use of "less costly personnel who could satisfy the [RFP's] requirements" and that BreakPoint's "competitive price was due predominately to [its] unique staffing solution, which was deemed sufficient to accomplish the work" as provided in the solicitation.⁸ AR, exh. 39,

were, in fact, unrealistic--first undertake an analysis to determine if an offeror's low price was excessively low. We consider this analysis to be a price realism analysis. Both the agency and intervenor point to our decision in Harmonia Holdings Group, LLC, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 at 15, as supporting its contention that a price realism analysis was not required. We note that Harmonia Holdings Group, LLC is distinguishable because in that decision, we concluded that offerors were not provided sufficient notice that a price realism evaluation would occur because the solicitation was ambiguous as to whether the agency would conduct a price or cost realism analysis. Id. Such ambiguity is not present in the solicitation here.

⁸ The evaluation record does not include a contemporaneous discussion of the agency's price realism evaluation regarding BreakPoint's price. Rather, the source selection authority asserts that she did not believe the RFP required a formalized price realism analysis, but that "before making award, [the Corps] determined that [BreakPoint's] price was not unrealistically low." AR, exh. 39, Email from Source Selection Authority to Agency Counsel, Dec. 31, 2019. The protester asserts that the source selection authority's statement is nothing more than a post hoc rationalization and that there is "not a shred of contemporary documentation reflecting" a pre-award price realism evaluation. Protester's Supp. Comments, Jan. 3, 2020, at 2-3. While our Office will accord lesser weight to post hoc arguments or analyses made in response to protest allegations, see Boeing Sikorsky Aircraft Support, supra, at 15, we will consider the explanation if it is credible and consistent with the contemporaneous record. SENTEL

Email from Source Selection Authority to Agency Counsel, Dec. 31, 2019. Netizen simply fails to identify any substantive flaws with the basis of the agency's analysis. See Protester's Supp. Comments, Jan. 3, 2020, at 2-3. Based on our review of BreakPoint's technical solution and the record as a whole, we cannot conclude that the agency's analysis was unreasonable. Accordingly, and in the absence of a supported allegation that the awardee's price is unrealistic, our Office has no basis to sustain the protest.⁹

The protest is denied.

Thomas H. Armstrong
General Counsel

Corp., B-407060, B-407060.2, Oct. 26, 2012, 2012 CPD ¶ 309 at 9 n.6. Here, the contemporaneously documented price evaluation suggests that the agency did, in fact, consider price realism, as reflected by the agency's concerns with the low labor rates of another offeror. See AR, exh. 25, ESDD, at 271 (noting that the GSA schedule labor rate discounts proposed by the lowest priced offeror would not be "competitive when hiring quality employees" and characterizing the proposed low labor rates as "Marginal"). No such concerns were documented with BreakPoint's labor rates, which offered similar percentage labor rate discounts as compared to those offered by Netizen. Id. at 272-273; AR, exh. 39, Email from Source Selection Authority to Agency Counsel, Dec. 31, 2019. Moreover, the details of the source selection authority's explanation of her analysis are consistent with the information in the technical evaluation, price evaluation, and the firms' proposals. Accordingly, we are willing to consider this information, in this context. See, e.g., GloTech, Inc., B-416967, Jan. 15, 2019, 2019 CPD ¶ 59 at 5 n.10.

⁹ Netizen argues that the Corps' evaluation errors rendered the best-value decision unreasonable. Protest at 5. Since, as discussed above, we find the protester's arguments concerning the evaluation of BreakPoint's proposal without merit, we have no basis to conclude that the agency's best-value decision was unreasonable.