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Decision

Matter of: Sayres & Associates Corporation

File: B-418374

Date: March 30, 2020

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Maria L. Panichelli, Esq., Obermayer Rebmann Maxwell & Hippel LLP, for Reliability and Performance Technologies, LLC, d/b/a RP Technologies, the intervenor.
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DIGEST

Protest challenging the agency's cost realism evaluation is sustained where the agency's evaluation failed to reasonably evaluate the protester's proposed escalation rate.

DECISION

Sayres and Associates Corporation, of Washington, D.C., protests the issuance of a task order to Reliability and Performance Technologies d/b/a RP Technologies (RP), of Dublin, Pennsylvania, under request for proposals (RFP) No. N00164-18-R-3007, issued by the Department of the Navy, Naval Sea Systems Command, for engineering support services. The protester argues that the agency's cost realism evaluation was unreasonable.

We sustain the protest.

BACKGROUND

The Navy issued the RFP on June 20, 2018, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to holders of Navy Seaport-e indefinite-delivery, indefinite-quantity (IDIQ) contracts.¹ The RFP anticipated issuing a single cost-plus-fixed-fee task order,

¹ Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors" who submit "quotations" and are "issued" task orders, the

with a 1-year base period and four 1-year options, to provide engineering services to support technical integration, management, testing, and evaluation services to assist the “PMS 500”² in accomplishing its objectives. Agency Report (AR), Tab 1, RFP at 4, 11.³

The task order was to be issued on a best-value tradeoff basis, considering the following factors: technical and management, past performance, and total evaluated cost (TEC). RFP at 83-84. Under the technical and management factor, proposals would be assigned an adjectival rating of outstanding, good, acceptable, marginal or unacceptable.⁴ Id. For the past performance factor, proposals would be assigned a confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 86.

In terms of relative importance, the technical and management factor was more important than the past performance factor, which was more important than TEC. Id. at 84. The technical factors, when combined, were deemed significantly more important than the TEC. Id. With regard to cost, the agency was to evaluate the reasonableness, realism, and completeness of the cost data provided. Id. at 88.

Only Sayres and RP timely submitted proposals in response to the RFP. COS/MOL at 2. The Navy evaluated proposals, with the following results:

record and the parties briefing primarily use the terms “offerors,” “proposals,” and “award.” For the sake of consistency with the record, we refer to the firms as offerors who submitted proposals for award of a task order.

² The RFP explains that the “mission of PMS 500 is to maintain ship design, and build, outfit, test, and introduce to the fleet ‘DDG 1000’ [d]estroyer [c]lass ships.” RFP at 11.

³ The Navy amended the solicitation twice to make changes responsive to questions received and once to extend the due date for the submission of proposals. Contracting Officer’s Statement/Memorandum of Law (COS/MOL) at 2. Our citations to the RFP are to the conformed version provided as part of the agency report. For consistency, all page citations to the record are to the PDF page numbers, rather than any numbers that may appear on the face of the pages themselves.

⁴ The technical and management factor was divided into three subfactors: technical capabilities and approach, management approach, and personnel. RFP at 83-84.

	Sayres	RP
Technical and Management	Good	Outstanding
Past Performance	Satisfactory	Substantial
Total Proposed Cost	\$40,333,075	\$41,215,323
Total Evaluated Cost	\$42,485,798	\$41,843,330

AR, Tab 9, Best-Value Determination, at 3-6.

The source selection authority (SSA) reviewed the Technical Evaluation Team's and Cost Evaluation Team's (CET) analyses and performed an integrated assessment of proposals against the RFP's evaluation criteria. Id. at 3. The SSA concluded that RP's proposal represented the best value to the agency. Id. at 6. In making award, the SSA stated that RP's proposal was technically superior under both non-price factors and had a lower total evaluated cost (TEC) than Sayres' proposal. Id. at 7.

On November 27, Sayres was notified of the agency's decision to issue the task order to RP. AR, Tab 2, Sayres Debrief Letter, at 1. Sayres submitted a written request for a debriefing the following day, which the agency provided to Sayres on December 2. Id. Pursuant to the terms of the enhanced debriefing provided by the agency, Sayres was permitted to ask questions related to the debriefing. Id.

Sayres submitted two questions as part of its enhanced debriefing. AR, Tab 14, Sayres Enhanced Debrief Questions and Answers, at 3. The agency provided responses to Sayres' questions on December 5. Id. at 1-2. On December 10, Sayres filed a protest with the agency. COS/MOL at 6. The agency dismissed Sayres' protest for lack of jurisdiction on December 17. Id. at 7. This protest to our Office followed.⁵

DISCUSSION

Sayres challenges the agency's cost realism analysis, specifically contending that the Navy unreasonably rejected Sayres' proposed escalation rate. Protest at 7-11. For the reasons that follow, we sustain Sayres' protest.⁶

⁵ The awarded value of the task order at issue exceeds \$25 million, and was placed under an IDIQ contract established by the Navy. Accordingly, our Office has jurisdiction to consider Sayres' protest. 10 U.S.C. § 2304c(e)(1)(B).

⁶ In its comments on the agency report, Sayres challenges, for the first time, the reasonableness of agency's upward adjustment of its proposed subcontractor costs. Protester Comments at 8. We agree with the agency that this allegation is untimely. As part of Sayres' debriefing, the agency provided a table with a breakdown of all of the adjustments made to Sayres' proposed costs, including an upward adjustment of \$[DELETED] to Sayres' proposed subcontractor costs. AR, Tab 3, Sayres Debrief, Cost

The RFP established that the agency would perform an analysis of the realism of each offerors' proposed costs. RFP at 75. Based on this realism analysis, proposed costs would be adjusted to derive the most probable cost to the government of performing this task order. Id. at 88. The solicitation advised that the "burden of cost credibility rests with the [o]fferor to demonstrate the realism of its proposed costs" and required that offerors submit substantiating cost data for every cost element proposed. Id. at 75. The RFP warned offerors that providing insufficient information to substantiate the realism of their proposed costs could result in a cost adjustment, or no longer being considered for award. Id.

Relevant here, with regard to the escalation rate of proposed wages, the RFP provided as follows:

Escalation: Offerors are encouraged to propose a reasonable and realistic escalation factor consistent with company practices and estimated future increases in wages. Each [o]fferor shall provide rationale or historical information to substantiate the proposed escalation rate(s).

Id. at 78 (emphasis omitted). The RFP also stated that "[i]n the absence of historical rates supporting the [o]fferor's proposed escalation rate, the [g]overnment will use current market data to evaluate the [o]fferor's proposed escalation." Id. at 88.

The CET reviewed Sayres' cost proposal and made several upward adjustments, including to Sayres' proposed escalation rate, the firm's general and administrative rate, and its subcontractor costs. AR, Tab 5, CET Report, at 5. The total effect of the agency's realism analysis was an upward adjustment of \$2,152,723 to Sayres' proposed costs (\$40,333,075), or a 5.34 percent increase. This resulted in Sayres having a TEC of \$42,785,798. Id.

With regard to Sayres' proposed escalation rate, the CET report explained that in determining the most probable cost to the agency, "when historical data was not provided to substantiate a proposed escalation rate below [the] Global Insight Rate for the appropriate year of performance the CET made adjustments to the proposed

Evaluation Attachment, at 3. Thus, at the time it filed its agency-level protest (which challenged the agency's upward adjustment of its proposed escalation rate), Sayres also knew, or should have also known this basis of protest, i.e., that the agency had also upwardly adjusted Sayres' proposed subcontractor costs. Thus, Sayres was required to raise this protest ground within 10 days after its debriefing. 4 C.F.R. § 21.2(a)(2). Since Sayres did not raise this allegation in its agency-level protest (nor in its initial protest to GAO, for that matter), this allegation to our Office is untimely. 4 C.F.R. § 21.2(a)(2)-(3); see MediaNow, Inc., B-405067, June 28, 2011, 2011 CPD ¶ 133 at 3 (dismissing protest as untimely where issue, not otherwise timely, was not raised in agency-level protest).

escalation rate up to the recommended Global Insight Rate”⁷ Id. at 4. In reviewing Sayres’ proposed escalation rate of [DELETED] percent, the CET stated:

The [c]ontract [s]pecialist reviewed IHS Global Insight under [p]rofessional, [s]cientific, and [t]echnical [s]ervices, under which the requirement was solicited, and determined that an escalation rate of 3.30 [percent] is realistic for the work to be performed. Since the proposed rates are lower than the IHS escalation rate and Sayres did not provide substantiating data to justify its proposed escalation rate, the [c]ontract [s]pecialist upwardly adjusted the escalation rates to reflect the IHS rates.

Id. at 5.

As the Navy did not accept Sayres’ proposed escalation rate of [DELETED] percent, it applied the IHS escalation rate of 3.30 percent to Sayres’ labor costs for each option year. Id. at 5. The Navy explains that this upward adjustment resulted in an increase to Sayres’ proposed costs of \$[DELETED].⁸ AR, Tab 4, Contracting Officer (CO) Declaration, at 1-4.

Sayres contends that the agency unreasonably rejected its proposed escalation rate. The firm argues that it provided detailed historical data, consisting of the salaries of each of Sayres’ staff and their respective salary increases from 2014-2018. Protester Comments at 3 (citing AR, Tab 7, Sayres Historical Escalation Support). Sayres explains that this data demonstrates that the increases provided to its staff averaged just under [DELETED] percent during the five year period. Id. The firm argues that this information adequately substantiates its proposed escalation rate of [DELETED] percent.⁹ Id.

⁷ The CET report states that IHS Global Insight is the “world’s leading company for economic and financial analysis and forecasting” and that its figures are frequently used by the Defense Contract Management Agency and the Defense Contract Audit Agency as a forecasting tool to determine direct labor escalation. AR, Tab 5, CET Report at 3.

⁸ The parties initially disputed the effect of this upward adjustment, with Sayres contending the effect was actually \$[DELETED]. Protester Comments at 8 (citing Exh. A, Decl., at 11-13). As part of its report, the Navy provided a detailed calculation showing that the application of 3.30 percent escalation to Sayres’ proposed costs resulted in an increase of \$[DELETED]. AR, Tab 4, CO Decl. at 1-4; AR, CO Supp. Decl. at 1. In its subsequent submissions, Sayres does not substantively challenge the agency’s calculation that the rejection of its proposed escalation rate resulted in an increase to Sayres proposed costs of \$[DELETED]. Accordingly, our analysis uses the \$[DELETED] amount advanced by the agency.

⁹ Sayres also challenges the agency’s rejection of its proposed escalation rate on the basis that, in several recent procurements, the Navy found the same historical data provided in response to this solicitation sufficient to substantiate its proposed escalation

In answering the protest, the agency responds that the “source of the numbers” that Sayres provided in its cost proposal were “unverified.” COS/MOL at 11. The agency asserts that “Sayres could have provided screenshots of the salaries from year to year to verify” the salary data that Sayres submitted. Id. Thus, the agency argues that it was reasonable for it to conclude that the data provided was insufficient and, consistent with the solicitation, to adjust Sayres’ proposed escalation rate up to the IHS Global Insight Rate. Id. (citing RFP at 88; Logistics Management Institute, B-417601 et al., Aug. 30, 2019, 2019 CPD ¶ 311 at 9).

Where an agency evaluates proposals for the award of a cost-reimbursement contract or order, the agency is required to perform a cost realism evaluation to determine the extent to which each offeror’s proposed costs represent what the contract costs are likely to be. FAR §§ 16.505(b)(3), 15.404-1(d); Smartronix, Inc.; ManTech Advanced Sys. Int’l, Inc., B-411970 et al., Nov. 25, 2015, 2015 CPD ¶ 373 at 5 (considering FAR part 15 cost realism standards in a FAR part 16 task order procurement). While an agency’s cost realism analysis need not achieve scientific certainty, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. Tantus Techs., Inc., B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 10. Our review of an agency’s cost realism evaluation is limited to determining whether the cost analysis is reasonably based. TriCenturion, Inc.; SafeGuard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 6.

We find that the contemporaneous record fails to establish the reasonableness of the agency’s rejection of Sayres’ proposed labor escalation rate. See Smartronix, Inc.; ManTech Advanced Sys. Int’l, Inc., supra (sustaining protest of agency’s cost realism evaluation where the agency failed to contemporaneously document its assessment of the realism of the awardee’s proposed labor rates). The RFP expressly requested that offerors “propose a realistic escalation factor consistent with company practices and estimated future increases in wages” and that offerors provide historical data to substantiate their proposed escalation rate. RFP at 78. The record shows that Sayres’ proposed an escalation rate substantiated by five years of detailed historical data which indicated its average escalation rate was slightly under [DELETED] percent. AR, Tab 7, Sayres Historical Escalation Report. The record also shows that Sayres articulated the bases for its proposed escalation rate in its cost narrative, explaining the various

rate of [DELETED] percent. Protester Comments at 5-6. We find no merit to this assertion. As our Office has consistently noted, each procurement stands alone; an agency’s actions in other procurements are not relevant to our consideration of the agency’s actions here. See, e.g., Genesis Design and Development, Inc., B-414254, Feb. 28, 2017, 2017 CPD ¶ 79 at 3 n.2.

strategies it employs to attract and retain a competitive workforce while maintaining its escalation rate.¹⁰ AR, Tab 6, Sayres Cost Narrative, at 5-6.

Despite the provision of this historical data and narrative explanation, the record does not demonstrate that the agency actually assessed whether Sayres' supporting data adequately substantiated its proposed escalation rate. In evaluating Sayres' cost proposal, the CET only provided the following rationale for rejecting Sayres' proposed escalation rate: "Since proposed rates are lower than the IHS escalation rate and Sayres did not provide substantiating data to justify its proposed escalation rate, the [c]ontract [s]pecialist upwardly adjusted the escalation rates to reflect the IHS rates." AR, Tab 5, CET Report at 5 (emphasis added). This lone statement is the entirety of the agency's contemporaneous evaluation of Sayres' escalation rate. The record is devoid of any other documentation reflecting the agency's acknowledgement of the substantiating data provided by Sayres, let alone, any consideration of the information provided.

While the RFP advised offerors to substantiate their proposed escalation rate, the contemporaneous record is silent as to why the information that Sayres provided was viewed as inadequate. Cf. Logistics Management Institute, supra, at 8-9 (finding unobjectionable agency's upward adjustment of proposed escalation rates where the contemporaneous record documented why the agency found the data provided was inadequate to substantiate the proposed low escalation rates). In the absence of any contemporaneous analysis, our Office has no basis to find that the agency's rejection of Sayres' proposed escalation was reasonable.

Only in response to Sayres' protest does the agency, for the first time, assert that Sayres' substantiating information was "unverified," and that the firm could have provided "low[er] level source documentation to authenticate" the salary data the firm provided. COS/MOL at 11. In addition to having no basis in the contemporaneous record, this justification for rejecting Sayres' proposed escalation rate is inconsistent with the terms of the RFP, which did not notify offerors that such "low level source documentation" would be necessary to support or "authenticate" their historical salary data. In this regard, the RFP contained no requirement that offerors provide additional "source documentation" to verify their historical salary data. See Valkyrie Enterprises, LLC, B-415633.3, July 11, 2019, 2019 CPD ¶ 255 at 9 (sustaining protest of agency's cost realism analysis where the agency's justifications for rejecting the protester's cost data were inconsistent with the solicitation). Thus, we sustain Sayres' challenge to the agency's rejection of the firm's proposed escalation rate.

¹⁰ Among other things, Sayres' cost narrative explained:

[DELETED]. Each major team member was asked to propose escalation that was supported by historical performance. Each affirmed that the escalation each proposed was reasonable and realistic based upon their respective historical performance.

AR, Tab 6, Sayres Cost Narrative, at 5-6.

Competitive Prejudice

The agency contends that, even if its evaluation erred in rejecting Sayres' proposed escalation rate, Sayres' cannot establish competitive prejudice. COS/MOL at 14-15. The agency explains that accepting Sayres' escalation rate would only lower Sayres' TEC by \$[DELETED]. Id. at 15. Reducing Sayres' TEC by this amount would make its TEC \$[DELETED], or only \$[DELETED] ([DELETED] percent) lower than RP's TEC of \$41,843,330. Id. The agency argues that this difference is "statistically insignificant" and, given RP's clear technical superiority, Sayres' cannot establish that it would have a substantial chance of receiving award even had the agency accepted its escalation rate. Id.

Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving an award. Octo Consulting Grp., Inc., B-413116.53, B-413116.55, May 9, 2017, 2017 CPD ¶ 139 at 10. When performing this analysis, GAO will resolve doubts regarding prejudice in favor of the protester; a reasonable possibility of prejudice is sufficient to sustain a protest. Alutiiq-Banner Joint Venture, B-412952 et al., July 15, 2016, 2016 CPD ¶ 205 at 11.

As noted above, award was to be made on a best-value tradeoff basis. RFP at 83. The solicitation stated that if one offeror had both better technical ratings and a lower TEC, that offer would be deemed the best value. Id. However, if an offeror had superior technical ratings and a higher TEC, the agency was required to perform a tradeoff determination to ascertain whether this offeror's technical superiority justified its price premium. Id.

Here, the Navy initially found RP's proposal had both a lower total evaluated cost and higher technical ratings, and, accordingly, the agency did not perform a tradeoff between Sayres and RP. AR, Tab 9, Best Value Determination, at 6-7. Had the agency accepted Sayres' proposed escalation rate, however, Sayres' TEC would have been lower than RP's TEC, requiring the agency to perform a tradeoff analysis. As it stands, the record does not contain a tradeoff analysis and thus we cannot ascertain whether the agency might have selected Sayres for award had the agency engaged in such an analysis. See Kellog Brown & Root Servs., Inc., B-298694 et al., Nov. 16, 2006, 2006 CPD ¶ 160 at 8 (finding that the protester was competitively prejudiced by agency's actions where unreasonable cost realism evaluation obviated the need for agency to perform a tradeoff analysis between the protester and awardee). Although, as the agency notes, the difference in costs is admittedly close, we will not step into the role of the source selection authority for this procurement and perform a tradeoff analysis where one is absent. Rather, our role is only to determine the reasonableness of such a determination, when properly challenged. Under these circumstances, we find that

Sayres has demonstrated a reasonable possibility that it was prejudiced by the agency's actions.

RECOMMENDATION

We recommend that the agency perform and document a new cost realism evaluation, as well as a new source selection decision, in accordance with the terms of the solicitation and this decision. In performing the new cost realism evaluation, the agency should, among other things, document its consideration of any substantiating data provided by offerors to justify their proposed escalation rates. In making the new source selection decision, if the agency determines that a firm other than RP represents the best value, we further recommend that the agency terminate the contract awarded for the convenience of the government and make award to the firm selected, if otherwise proper. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d). The protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel