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Decision

Matter of: Computer World Services Corporation--Reconsideration

File: B-420777.4

Date: May 9, 2023

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Kara L. Daniels, Esq., and Cate Baskin, Esq., Arnold & Porter Kaye Scholer, LLP, for Ideation Solutions JV, LLC, the intervenor.

Ethan Chae, Esq., and Jon Gottschalk, Esq., Department of Health and Human Services, for the agency.

April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the requester has not shown that our prior decision contained any error of fact or law that warrants reversal or modification.

DECISION

Computer World Services Corporation (CWS), a small business of Falls Church, Virginia, asks that we reconsider our decision in *Computer World Servs. Corp.*, B-420777.2, B-420777.3, Feb. 7, 2023, 2023 CPD ¶ 37, in which we denied CWS's protest of the issuance of a task order to Ideation Solutions JV, LLC, also a small business of Falls Church, Virginia, under task order request for proposals (TORP) No. C-89192-SB. The Department of Health and Human Services, National Institutes of Health (NIH) issued the solicitation for information technology (IT) computer support services. CWS contends that our decision contains errors of fact and law that warrant reconsideration.

We deny the request.

BACKGROUND

Using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation on March 11, 2022, to small businesses holding contracts under

the NIH's Chief Information Officer Solutions and Partners 3 (CIO-SP3) indefinite-delivery, indefinite-quantity (IDIQ) governmentwide acquisition contract. Agency Report (AR), Tab 2, TORP at 333, 345.¹ The TORP sought proposals to provide service desk support services--such as staffing service desk support and various key personnel--to NIH's Center for Information Technology and other NIH institutes and centers.² *Id.*

The solicitation anticipated the issuance of a single task order with fixed-price and time-and-materials contract line item numbers, with a base period of 1 year and two 12-month options. TORP at 2. Award was to be made on a best-value tradeoff basis considering the following evaluation factors, in descending order of importance: technical/management approach and expertise of proposed staff (technical/management approach); corporate experience and certifications; and price/cost. *Id.* at 341. The technical/management approach factor was significantly more important than the corporate experience and certifications factor, which was significantly more important than price/cost. *Id.* When combined, all non-price factors were significantly more important than price/cost. *Id.* The solicitation also provided, however, that between proposals of substantially equal technical merit, price/cost would become a more significant factor. *Id.*

NIH received timely submitted proposals from seven offerors, including CWS and Ideation. Contracting Officer's Statement (COS) at 2. After evaluating proposals, the agency decided to issue the task order to CWS as the best-value offeror. *Id.* On May 25, Ideation filed a bid protest with our Office, challenging the agency's evaluation of proposals and award decision. *Id.* The agency elected to take voluntary corrective action in the form of a reevaluation of proposals, and our Office dismissed the protest as academic. *Ideation Sols. JV, LLC, B-420777, June 7, 2022* (unpublished decision).

Following a reevaluation of initial proposals, the agency conducted discussions with the offerors in the competitive range and requested final proposal revisions (FPRs). AR, Tab 5, Request for FPR (CWS); AR, Tab 6, Request for FPR (Ideation). Both CWS and Ideation submitted timely FPRs. The technical evaluation group (TEG) convened to review the evaluation results and develop a consensus of the findings for the offerors' technical proposals. AR, Tab 12, TEG Consensus Report at 1-2.

The TORP provided for the assignment of overall technical proposal ratings of high confidence, confidence, or low confidence. TORP at 345; AR, Tab 12, TEG Consensus

¹ Citations to the TORP are to the conformed copy provided at tab 2 of the agency report. In addition, citations to documents in the agency report are to the Adobe PDF page numbers.

² NIH's IT service desk provides technical support to NIH, and responds to over a thousand requests for service every day. As reflected in the service objectives of the solicitation's performance work statement (PWS), NIH sought a contractor that could provide high-level service efficiently, effectively, and at reduced costs. TORP, PWS at 222-223.

Report at 2. The TEG found that CWS's FPR addressed the four weaknesses and one clarification question identified by the contracting officer during discussions, and assessed an overall rating of high confidence for CWS's revised technical proposal. *Id.* at 5. Similarly, the technical evaluators found that Ideation's FPR addressed the seven weaknesses and one clarification question identified in its initial proposal, and assessed an overall rating of high confidence for Ideation's technical proposal. *Id.* at 6-7. In assessing these ratings, the TEG also identified several strengths for each offeror. *Id.* at 5-7. Ultimately, however, the TEG concluded that the two proposals were essentially technically equal. In making the source selection, the contracting officer concurred with the TEG's evaluation and ratings of the proposals as essentially technically equal, and therefore, did not conduct a best-value tradeoff between Ideation's and CWS's proposals. Because Ideation's proposed price/cost of \$56,025,741 was approximately \$1.5 million less than CWS's proposed price/cost of \$57,594,151, the contracting officer determined that Ideation's proposal provided the best value to the government. AR, Tab 13, Source Selection Decision at 3-4.

The agency notified CWS on October 28 that its proposal had not been selected for award. AR, Tab 14, Unsuccessful Offeror Letter at 1. After requesting and receiving a debriefing, CWS filed a protest with our Office.³ In that protest, CWS challenged the agency's evaluation of proposals, conduct of discussions, and best-value tradeoff and award decision. Of relevance here, CWS contended that the agency failed to conduct meaningful discussions by failing to raise with CWS a concern the agency identified in CWS's proposal regarding a lack of innovation. Specifically, CWS argued that the agency's decision to limit discussions to four weaknesses and one request for clarification, none of which identified innovation as a concern, denied CWS the chance to address the agency's concern regarding innovation. In our decision, we concluded that the record did not support the protester's argument that NIH failed to conduct meaningful discussions. *Computer World Servs. Corp.*, *supra* at 4-6. This request for reconsideration followed.

DISCUSSION

CWS alleges that our decision is based on an error of fact and an error of law with respect to the denial of its discussions challenge. Under our Bid Protest Regulations, to prevail on a request for reconsideration, the requesting party must show that our decision contains errors of fact or law, or present information not previously considered, that would warrant reversal or modification of our earlier decision. 4 C.F.R. § 21.14(a), (c). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Id.*; *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

³ The awarded value of the task order at issue here is \$56,025,741, and, accordingly, the protest was within our jurisdiction to hear protests of task order placed under civilian agency IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(2); AR, Tab 15, Debriefing Letter at 1.

First, CWS contends that our decision contains an error of fact. CWS argues that our decision improperly “credited” the agency’s arguments that, in CWS’s view, contradicted the contemporaneous record and, therefore, “should have been afforded little weight.” Req. for Recon. at 3-4.

Here, the agency’s arguments were credible and consistent with the contemporaneous record. We note that, 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, 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.

The record shows that the evaluators assigned a rating of “high confidence”--the highest possible rating--to CWS’s proposal. The evaluators further concluded that this rating was “slightly diminished by the absence of innovation” but that would have “little or no impact on contract performance.” AR, Tab 12, TEG Consensus Report at 5-6. This is consistent with the agency’s arguments, as discussed in our decision, that innovation was not an issue that the TEG or the contracting officer believed needed to be addressed by CWS in its final proposal as it “did not impact [CWS’s] rating or evaluation” and CWS “received the highest technical rating.” COS at 3; Memorandum of Law (MOL) at 4. CWS’s disagreement about the weight our Office afforded the agency’s arguments does not demonstrate any error of fact here.

Second, CWS argues that our decision “erred as a matter of law when it applied FAR part 15 definitions to this FAR part 16 procurement.” Req. for Recon. at 1.

Our decision recognized that the regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task order competitions conducted under FAR part 16, such as the procurement here. See *NCI Info. Sys., Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. In this regard, FAR subsection 16.505 does not establish specific requirements for discussions in a task order competition; nonetheless, when exchanges with the agency occur, they must be fair and not misleading. *Id.*; *General Dynamics Info. Tech., Inc.*, B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 7. Our decision explained that where, as here, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements under FAR part 15. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7.

In its request for reconsideration, CWS recognizes that our decision acknowledges this distinction between the regulations, yet argues that we should have applied the less

rigorous standard. Specifically, CWS asserts that the regulations concerning discussions under FAR part 15 are “procedurally rigorous” compared to those under FAR subpart 16.5, which afford more “flexibility” and “broad discretion” and have “no minimum disclosure requirement.” Req. for Recon. at 2. In this context, we do not find persuasive CWS’s contention that applying a standard that would have given the agency more, rather than less, flexibility would have changed the outcome of its protest in its favor.

Moreover, at the root of CWS’s request is its allegation, repeated from its protest filings, that the discussions were “unfair” because “Ideation was able to respond to weaknesses in its proposal during discussions but CWS was not.” Req. for Recon. at 3; see also Comments and Supp. Protest at 5, 15. As explained in our decision, when holding exchanges, procuring agencies are not permitted to engage in conduct that favors one offeror over another. *Deloitte Consulting, LLP*, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 17. Our decision also explained that an agency is not required, however, to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score. Further, an agency is not required to advise of a weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. *Education Dev. Center, Inc.*, B-418217, B-418217.2, Jan. 27, 2020, 2020 CPD ¶ 61 at 5-6.

As discussed in our decision, the TEG found that both CWS and Ideation, in their FPRs, addressed weaknesses that were raised during discussions and received technical ratings of high confidence. AR, Tab 12, TEG Consensus Report at 5-7. The record shows and the agency explains that the identified issue regarding innovation in CWS’s proposal was neither a significant weakness or deficiency, nor an issue that the TEG or the contracting officer believed needed to be addressed by CWS in its final proposal. *Id.* at 5-6; COS at 3; MOL at 4. In other words, that the agency did not raise a concern identified in CWS’s proposal regarding innovation does not demonstrate an error of law in our decision--which concluded, ultimately, that the agency provided CWS with all required information during discussions. See also, e.g., *Cynergy Pro. Sys., LLC--Recon.*, B-418367.8, Sept. 22, 2020, 2020 CPD ¶ 300 at 5 n.2 (reiterating that FAR section 16.505 does not establish specific requirements for conducting discussions and that, where an agency conducts a delivery order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements).

All in all, as our decision neatly summarized, “although the contracting officer could have discussed other aspects of CWS’s proposal, including any concerns regarding innovation, there was no requirement that she do so.” *Computer World Servs. Corp.*,

supra at 5-6. CWS has not established any errors of fact or law that warrant reversal or modification of our decision.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel