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Decision

Matter of: DaeKee Global Co. Ltd.

File: B-402687.8

Date: January 3, 2012

Theodore P. Watson, Esq., and Idris S. Keith, Esq., Watson & Associates, LLC, for the protester.

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DIGEST

Protest of agency's past performance evaluation and source selection decision is denied where record reflects that evaluation and source selection were reasonable and consistent with the terms of the solicitation.

DECISION

DaeKee Global Co. Ltd., of Busan, Republic of Korea, protests the award of a contract, by the Department of the Navy, to Glenn Defense Marine-Asia PTE, Ltd. (GDMA), of Singapore, under request for proposals (RFP) No. N62649-09-R-0041 for maritime husbanding support to United States Navy and other ships visiting ports in East Asia, including services in support of Operations Other Than War (OOTW). The protester challenges the evaluation of the proposals and the cost/technical tradeoff award decision.

We deny the protest.

BACKGROUND

The RFP, issued on November 3, 2009, contemplates the award of four separate fixed-price, indefinite-delivery/indefinite-quantity contracts for a base year, with four 1-year options. The solicitation was issued to cover the following four regions within the Western Pacific and Indian Ocean: South Asia, Southeast Asia, Australia and the Pacific Islands, and East Asia. Offerors were required to submit a separate proposal for each region in which they were interested. The RFP contemplated four awards,

one for each region. RFP at 3. The award under the East Asia region is the subject of this protest. This region includes Japan, Korea, Russia, and Mongolia.

The RFP provided that the contract would be awarded on a best-value basis, considering, in descending order of importance, the factors of technical approach, past performance and price; the non-price factors, combined, were deemed to be significantly more important than price. RFP at 162. The solicitation described the evaluation of technical approach as follows:

The Government will evaluate the offeror's Technical Approach based on the offeror's understanding of what is required by the proposed contract, including the level of risk associated with the proposal. Technical Approach will be comprised of three parts: Understanding the Requirement; Management Approach; and Quality Assurance. Under the Technical Approach factor, each of the parts to be reviewed will be given equal consideration. Within each part, the elements making up the part will be given equal consideration. Equal consideration means equal importance.

Id. The solicitation required that offerors describe their approach in two separate parts. Offerors were required to provide an oral presentation addressing their understanding of the requirement, purchasing process, and port cost management/customer service practices. RFP at 156-158. Offerors were also required to submit written information with their proposals that further described their technical approach. The solicitation advised offerors to address in their written submissions their understanding of the requirement, including a description of key activities, work processes, major challenges, management approach, and quality assurance process. RFP at 159.

With regard to past performance, the solicitation required offerors to submit a past performance matrix. The solicitation stated in this regard:

The Offeror's Past Performance Matrix shall list and describe all directly related or similar Government or commercial contracts or subcontracts currently being performed, or completed in the past three years which are similar in scope, magnitude and complexity to that which is detailed in this solicitation.

RFP at 160. The four equally-weighted areas to be evaluated under this factor were: (1) level of capability, efficiency, and effectiveness in providing service; (2) conformance to the terms and conditions of the contract; (3) "level of reasonableness and cooperation;" and (4) level of commitment to good customer service. RFP at 161-162. The solicitation required that each offeror provide information concerning the subcontractors it intended to use. RFP at 160. The solicitation also stated that the offeror must provide past performance reference information sheets with contact information for at least three, but not more than

five, customers. Id. The solicitation provided notice that the government reserved the right to obtain past performance information from any or all sources, including sources outside the government. Id.

The solicitation also required that each offeror submit a security plan. This plan covered three areas: protection of ship schedule information, security screening of contractor and subcontractor employees, and contractor/subcontractor identification. RFP at 161. The security plan was to be rated as acceptable or unacceptable. RFP at 162.

The total evaluated price was calculated by applying the proposed unit prices for “targeted lots” to a sample of logistical requirements based upon historical port visit data for those “targeted lots.”

Three offerors, including DaeKee and GDMA, responded to the East Asia section of the solicitation. Only DaeKee’s and GDMA’s proposals were included in the competitive range. After discussions were conducted and final proposal revisions received, the proposals of DaeKee and GDMA were evaluated as follows:¹

Offeror	Evaluated Price	Technical	Past Performance	Security Plan
GDMA	\$21,610,287	Better	Better	Acceptable
DaeKee	\$67,852,688	Better	Outstanding	Acceptable

AR, Tab 6, Post Negotiation Business Clearance Memorandum, at 6.

The technical evaluation board (TEB) identified 27 strengths, including 13 major strengths, and 1 minor weakness in DaeKee’s technical proposal, which supported its better rating. Id. at 7-8. The TEB identified 23 strengths, including 8 major strengths, and 2 minor weaknesses in GDMA’s proposal, which supported GDMA’s

¹ The source selection plan, which was not included in the solicitation, provided that the following adjectival ratings would be used in evaluating the technical approach of each offeror: outstanding, better, acceptable, marginal, and unacceptable. Agency Report (AR), Tab 5, attach. 2, Source Selection Plan, at 6-7. The source selection plan also stated that the following adjectival ratings would be used by the past performance evaluation team (PPET): outstanding [very low performance risk], better [low performance risk], satisfactory [moderate performance risk], less than satisfactory [high performance risk], and neutral. Id. at 9-10. To the extent that the protester argues that the agency did not disclose its “scoring methodology” to offerors in the solicitation, we note that unlike evaluation factors for award, an agency is not required to disclose its specific rating methodology in the solicitation. ABB Power Generation, Inc., B-272681, B-272681.2, Oct. 25, 1996, 96-2 CPD ¶ 183 at 4.

better rating. Id. at 6-7. When comparing the technical approaches of DaeKee and GDMA, the agency noted that many of the strengths for the two proposals were similar regarding understanding of the requirements, subcontractor control, support of OOTW and quality assurance. Id. at 16. A distinguishing strength for DaeKee was its knowledge and understanding of cultural sensitivities and agreements between the U.S. Government and host nations for East Asia. The contracting officer considered the two proposals to be relatively equal in most regards, but noted that DaeKee had a “slight edge” under the technical factor when it came to host nation relationships. Id.

The PPET also found differences between the past performance of the two proposals, which are reflected in the ratings and documented. GDMA, which received a rating of better, was considered reliable, provided timely goods and services, had good communications, and had a high commitment to customer satisfaction. Id. In contrast, DaeKee received an outstanding rating because DaeKee was found to have performed at “an even higher level, consistently exceeding the Government’s contract requirements.” Id. The PPET found that DaeKee’s performance on previously awarded relevant contracts “met or exceeded all the requirements and provided exceptional performance/quality results.” Id.; AR, Tab 6, attach. 7, Final Past Performance Evaluation Report, at 45.

In reviewing the outcome of the evaluation, DaeKee’s proposal was considered superior to GDMA’s under the non-price factors, although the contracting officer noted that GDMA was considered to present low performance risk, and possess good customer service practices. Since GDMA’s evaluated price was more than \$ 46 million lower than DaeKee’s evaluated price, the contracting officer performed a tradeoff analysis. Notwithstanding DaeKee’s recognized superiority under the non-price factors, the contracting officer determined that, “the price difference [was] so substantial that the benefits to be derived [could] not justify the price difference. AR, Tab 6, Post Negotiation Business Clearance Memorandum, at 16-17.

The record also shows that the contracting officer was concerned about GDMA’s responsibility, and, in particular, its ability to sustain the low prices it proposed over a 5-year period. There were communications after the close of discussions between the agency and GDMA in order to provide the contracting officer with sufficient information on which to make a determination concerning GDMA’s responsibility. The communications addressed the extent to which GDMA had financial resources sufficient to sustain performance over the potential life of the contract. AR, Tab 6, attach. 9, Correspondence with GDMA Regarding Responsibility. Based on his review of GDMA’s response, the contracting officer determined that GDMA had the “financial resources to absorb any potential losses under the East Asia contract without any risk to contract performance or any significant deterioration to GDM’s financial stability.” AR, Tab 6, Post Negotiation Business Clearance Memorandum, at 18-21.

After weighing the tradeoff information, and considering GDMA's responses to questions about its responsibility, the contracting officer decided to make award to GDMA, concluding that that firm was responsible and that its proposal represented the best value to the government. This protest followed.

DISCUSSION

The protester raised numerous objections to the agency's conduct of this procurement, including the agency's past performance evaluation of the awardee, the agency's communications with the awardee after final proposal revisions, and the source selection decision. We have reviewed all of the protester's arguments, and have found none that provide a basis to sustain DaeKee's protest. We discuss some examples below.²

Past Performance

The protester raises several challenges to the evaluation of GDMA's past performance. The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

For example, the protester asserts that GDMA submitted past performance reference information sheets (PPRIS) for more than five contracts, including some outside the 3-year range allowed by the solicitation. This argument is not supported by the facts. The record shows that GDMA submitted only five PPRISs, all within the timeframe allowed by the solicitation. See Supp. AR at 8.

The protester also argues that the agency inappropriately considered GDMA's reference to the employment history of its Republic of Korea manager, as part of the past performance evaluation for GDMA. Protester's Comments at 13. The protester notes in this regard that the solicitation states, "[t]he Government will not evaluate an offeror's past performance on the basis of the personal past performance of the offeror's key personnel." RFP at 163. The agency, in discussions with GDMA, stated

² To the extent DaeKee argues that GDMA's price was unrealistically low, as noted by the agency, there was no evaluation factor included in the solicitation that provided for the evaluation of price realism.

that it “[did] not appear to have any experience in South Korea,” and asked the firm to state its plans or infrastructure that it would put into place to satisfactorily perform in South Korea’s “frequently used ports.” AR, Tab 6, attach. 6, Response to Discussion Letter From GDMA. In its response, GDMA referenced the employment history of its Republic of Korea manager. There is no indication in the record that the PPET considered this response to the discussion question as part of its past performance evaluation of GDMA. Moreover, the declaration from the TEB chairman indicates that the TEB considered the response as part of its evaluation of GDMA’s technical approach. Supp. AR, Declaration from TEB Chair at 3. Based on the foregoing, we have no basis to conclude that the agency evaluated the past performance of GDMA in a manner inconsistent with the solicitation.

Finally, the protester generally argues that GDMA’s past performance should have received a rating lower than better, given its lack of experience in this region, and specifically in the Republic of Korea. However, our review indicates that the PPET found that GDMA’s past performance under relevant contracts met or exceeded most of the agency’s requirements, and that it documented why GDMA’s past performance warranted a better rating. While the protester disagrees with the PPET’s past performance evaluation, it has not shown that the rating was not reasonably based.

Communications Regarding GDMA’s Responsibility

Next, the protester contends that the agency held unequal discussions because the agency engaged in additional discussions with DaeKee regarding its financial resources after discussions had been completed.

As set forth above, the communications here arose due to the contracting officer’s concern about whether GDMA had sufficient resources to perform the contract at the prices it offered. Therefore, the agency sent GDMA a letter after final proposal revisions were submitted, in which he clearly explained that it was a request for additional information “[i]n order to make an affirmative determination of responsibility for Regional Husbanding services for East Asia.” Supp. AR at 12. GDMA provided the requested information, but was not permitted to amend its proposal or to submit an updated final proposal revision in conjunction with providing the information. Id.

It is well established that the communications with offerors concerning responsibility matters are not considered discussions, and do not trigger the need to reopen discussions with all competitive range offerors. See General Dynamics-Ordnance & Tactical Sys., B-295987, B-295987.2, May 20, 2005, 2005 CPD ¶ 114 at 9-10. Therefore, there is no merit to this protest ground.

Cost/Technical Tradeoff

The protester also challenges the reasonableness of the agency's tradeoff determination in which the source selection authority concluded that the protester's higher ratings were not worth paying an additional \$ 46 million for these services.

An agency properly may select a lower-rated, lower-priced proposal, even where price is a less important evaluation factor than technical merit, where it reasonably concludes that the price premium involved in selecting the higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Thus, a protester's disagreement with the agency's determination as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

The record reflects that the contracting officer specifically considered DaeKee's outstanding past performance and recognized its marginally better technical rating in making the source selection decision, yet concluded that these did not outweigh GDMA's very significant price advantage. While DaeKee disagrees, we have no basis to object to the agency's decision.³

The protest is denied.

Lynn H. Gibson
General Counsel

³ While DaeKee also argues that the evaluation and source selection are not adequately documented, our review of the record shows that the agency's documentation reasonably support its evaluation judgments.