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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Environmental Restoration, LLC

File: B-406917

Date: September 28, 2012

Russ Gulledge for the protester.

Stanley R. Soya, Esq., Michael R. Golden, Esq., Heather Kilgore Weiner, Esq., and Samuel W. Jack, Esq., Pepper Hamilton LLP, for Environmental Quality Management, Inc., an intervenor.

Jonathan S. Baker, Esq., Environmental Protection Agency, for the agency.

Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's technical and price evaluations and source selection decision is denied where the agency reasonably evaluated proposals consistent with the solicitation's evaluation criteria.

DECISION

Environmental Restoration, LLC, (ER) of St. Louis, Missouri, protests the award of a contract to Environmental Quality Management, Inc., (EQM) of Cincinnati, Ohio, under request for proposals (RFP) No. SOL-R9-11-00003, issued by the Environmental Protection Agency (EPA) for emergency and rapid response services (ERRS).

We deny the protest.¹

BACKGROUND

The RFP provided for the award of a fixed-rate, indefinite-delivery/indefinite-quantity contract, with a cost-reimbursable element, for a 2-year base period with two 2-year

¹ Because a protective order was not issued in connection with this protest, our discussion is necessarily general.

option periods and one 1-year option period. RFP at 5. A detailed performance work statement (PWS) was provided that described the required emergency environmental response cleanup services and technical services supporting government enforcement proceedings for EPA Region 9.² PWS at 1, 7, 16.

Offerors were informed that award would be made on a best value basis considering price, technical, and past performance factors. See RFP at 142. The RFP stated that the technical factor was significantly more important than the past performance and price factors combined, which were of equal value. Id. at 142-43. The RFP also identified the following subfactors under the technical factor: technical ability, pop quiz response, personnel, corporate experience, and contract management. Id. at 143. Offerors were informed that the technical ability subfactor was significantly more important than all other technical subfactors combined, which were of equal value. Id.

As relevant here, the RFP required offerors to propose, for each performance period, fixed hourly and overtime rates for 10 contract line items (CLINs) for specified labor categories, and fixed daily and weekly rates for 59 CLINs for various types of trucks, trailers, heavy equipment, and field and safety equipment.³ RFP, Schedule, at 5-25, 132. Offerors were also required to complete a hypothetical pricing scenario for cost/price evaluation purposes. Id. at 132. This scenario identified five labor categories and associated estimated hours for each category, and requested offerors' fully burdened, fixed hourly rates for each category. Id. The scenario also provided dollar amounts for specified subcontracts and ODCs, for which the scenario requested offerors' G&A rates.⁴ Id. The RFP informed offerors that the agency would evaluate their prices for reasonableness and realism. Id. at 135-36, 147.

The agency received proposals from four offerors, including EQM and ER, which were evaluated by the agency's technical evaluation panel (TEP). Contracting

² EPA Region 9 includes California, Nevada, Arizona, Hawaii, Guam, and American Samoa.

³ The offerors' fixed hourly and overtime labor rates were required to include all indirect costs and profit. RFP at 5. Offerors were also required to propose percentages for the general and administrative (G&A) expense to be applied to RFP-identified "plug numbers" for travel, subcontracts, and other direct costs (ODC). Id. at 25.

⁴ Due to the uncertain nature of the requirements, the agency used the hypothetical pricing scenario to objectively compare each offeror's proposed rates for a routine removal or emergency response task order that includes the most common labor categories, subcontracts costs, and ODCs. See Agency Report (AR), Tab 6, Source Selection Decision, at 26.

Officer's (CO) Statement at 2. EQM's and ER's proposals were evaluated as follows:⁵

		EQM	ER
Technical		Outstanding	Fair
	Technical Ability	Outstanding	Excellent
	Pop Quiz Response	Outstanding	Fair
	Personnel	Outstanding	Fair
	Corporate Experience	Outstanding	Good
	Contract Management	Outstanding	Fair
Past Performance		Excellent	Excellent
Scenario Price⁶		\$38,502	\$39,194

AR, Tab 5, TEP Report, at 2-3; Tab 6, Source Selection Decision, at 22, 24, 39.

EQM's outstanding overall technical rating reflected the TEP's assessment that the firm proposed a broad range of experienced personnel, technical knowledge and skills, and training capability, which exceeded the PWS requirements. See AR, Tab 6, Source Selection Decision, at 38. ER's fair overall rating reflected the TEP's assessment that ER's proposal presented some strengths and a number of weaknesses under the technical subfactors. See id. Among the weaknesses identified in ER's proposal was its deficient approach to staffing and emergency response personnel, unclear management structure (including how subcontractors would be managed), and failure to describe how the firm would provide required personnel. See id.

Price proposals were evaluated by the contracting officer. See id. at 39. With respect to the hypothetical pricing scenario, EQM proposed the lowest total price (\$38,502) and ER proposed the second lowest total price (\$39,194). The

⁵ An outstanding rating reflected a proposal that was superior in most features; an excellent rating reflected a proposal that was good with some superior features and provided generally clear information and an acceptable approach with the possibility of more than adequate performance; a good rating reflected an adequate proposal that met the specifications and requirements overall, such that the offeror could meet the minimum requirements; and a fair rating reflected a proposal that was incomplete, unclear, or indicated an inadequate approach or understanding, such that there was a question as to whether the offeror would be able to perform satisfactorily. See RFP at 142-43.

⁶ The RFP advised offerors that, while their fully burdened fixed rates would be considered confidential business information and would not be released, their proposed total scenario price would be provided to unsuccessful offerors. RFP at 132.

contracting officer compared the offerors' labor and equipment rates for all CLINs, and compared the rates to those in the current contract, the independent government cost estimate (IGCE), ERRS contracts for other EPA regions, and General Service Administration Federal Supply Schedule (FSS) contracts.⁷ See id. at 25-40. The contracting officer concluded that EQM proposed the lowest daily equipment rates for most equipment, as well as the lowest rate for various labor categories compared to the current contract and the lowest G&A rates for two of the most commonly used subcontracted activities.⁸ Id. at 32, 38, 40. The contracting officer determined that EQM's proposed rates were realistic, and fair and reasonable. See id. at 25-26, 32-34; CO's Statement at 5.

Award was made to EQM, and this protest followed.

DISCUSSION

Environmental Restoration raises a number of challenges to the agency's technical and price evaluations, and to its selection decision. We have considered all of ER's arguments, although we discuss only the primary ones, and we find no basis to sustain the protest.

Technical Evaluation

ER complains that the agency deviated from the stated evaluation criteria by failing to give significantly more weight to the technical ability subfactor, as required by the RFP. See Protest at 3-4. The protester contends that its proposal should have received a higher overall technical rating, based upon its excellent rating under the technical ability subfactor. See id. at 3. ER states that it does not dispute the ratings or assessed strengths and weaknesses identified under the technical subfactors, but argues that it was entitled to an overall higher rating under this factor. See Protester's Comments at 3-4. The protester also contends that the agency failed to evaluate properly any of the proposals, and urges that the agency start over. See id. at 5-6.

⁷ Because the RFP requested rates for 27 new pieces of equipment, offerors' equipment rates were compared to the current contract rates for only 32 of the 59 required pieces of equipment. AR, Tab 6, Source Selection Decision, at 37.

⁸ The agency states that equipment rates will be a major cost component under the new contract and that daily rates are most commonly used because most emergency environmental responses last a week or less. See AR, Tab 6, Source Selection Decision, at 34, 40. In this respect, the agency concluded that it would benefit EPA to award a contract to an offeror with lower overall equipment rates. Id. at 37.

The agency responds that it reasonably evaluated proposals and argues that the protester provides no substantive basis to support its contention that its overall technical rating should change. AR at 4-5. In this respect, the agency maintains that ER's overall technical rating was based upon an evaluation of ER's technical proposal as a whole and that, even if the agency increased ER's overall technical rating, EQM's proposal would still be considered technically superior to ER's.⁹ See id. at 5-6.

The essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. Stateside Assocs., Inc., B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 8. It is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. Burchick Constr. Co., B-400342.3, April 20, 2009, 2009 CPD ¶ 102 at 4-5. There is no legal requirement that an agency must award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. See Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. Thus, in reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4.

Here, the record shows that the agency gave ample consideration to the qualitative differences between offerors' proposals. See AR, Tab 5, TEP Report, at 3-23; Tab 6, Source Selection Decision, at 6-22; see also QinetiQ North America, Inc., B-405163.2, et al., Jan. 25, 2012, 2012 CPD ¶ 53 at 15 (protest of agency's technical evaluations denied where record shows that agency reasonably evaluated proposals consistent with evaluation criteria, extensively documenting qualitative differences between the protester's and awardee's proposals). Moreover, contrary to the protester's assertion, the record reflects that the agency devoted considerably more analysis to the evaluation of proposals under the technical ability subfactor than under the other technical subfactors, consistent with the relative importance of the subfactor as stated in the RFP. Compare AR, Tab 5, TEP Report, at 3-6 and Tab 6, Source Selection Decision, at 9-12 (evaluation of ER's proposal under technical ability subfactor) with TEP Report at 7-12 and Source Selection Decision at 16-17, 19-21 (evaluation of ER's proposal under remaining subfactors); see also TEP Report at 3-6; Source Selection Decision at 3, 6, 37 (restating significant importance of technical ability subfactor relative to other technical subfactors). The record further shows that the agency's consideration of offerors' technical proposals

⁹ The protester also argues that assigning an overall technical rating is contrary to the RFP, which, according to the protester, required the agency to separately evaluate each subfactor. See Protester's Comments at 4.

“as a whole” reflected its consideration of the proposals under all of the subfactors to determine the respective technical merit of the competing proposals. See id.

Apart from disagreeing with the technical rating assigned to its proposal, the protester identifies no aspect of its proposal that it alleges should have been viewed as superior to EQM's. Thus, ER's arguments reflect only disagreement with the agency's evaluation ratings and selection decision, which does not demonstrate that the agency's judgment was unreasonable. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11; Impregilo Edilizia S.p.A., B-292468.4, Nov. 25, 2003, 2003 CPD ¶ 216 at 5 n.5.

Price Evaluation

The protester also contends that EPA did not evaluate or compare CLIN prices, but only relied on the pricing scenario to conclude that ERQ submitted the lowest-priced offer. Protester's Comments at 9-11; see Protest at 4-5. In this respect, ER complains that the pricing scenario did not provide for evaluation of equipment pricing. Protester's Comments at 12.

The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Computer Sys. Int'l, Inc., B-276955, B-276955.2, Aug. 13, 1997, 97-2 CPD ¶ 49 at 3. It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. S. J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. Among the price analysis techniques that may be used are comparison with other prices received under the solicitation and comparison of proposed prices with IGEs. See FAR § 15.404-1(b)(2).

The record here simply does not support any of the protester's challenges to the agency's price evaluations. With respect to the agency's use of the hypothetical pricing scenario, offerors were specifically informed that the agency would consider offerors' pricing scenario prices in evaluating proposals, see RFP at 132, and the protester cannot now timely object that EPA has used the scenario pricing in its evaluation and selection decision. Furthermore, as discussed above, the record shows that the agency performed a detailed comparison of offerors' labor and equipment rates--for all CLINs--to each other's rates, and to rates contained in the current contract, the IGCE, other ERRS regional contracts, and FSS contracts. Moreover, the record shows that the agency evaluated offerors' G&A rates and ODCs, including for subcontracted activities. AR, Tab 6, Source Selection Decision,

at 38-40. Contrary to ER's allegations, EPA's price evaluation was not solely based upon the offerors' pricing scenarios.¹⁰

Source Selection Decision

Finally, ER challenges the agency selection decision, asserting that it was flawed because it was based on technical and price evaluations that, according to the protester's arguments described above, were inconsistent with the RFP. Protest 6; Protester's Comments at 14. As discussed above, we find no merit in ER's objection to the agency's technical and price evaluations. Thus, there is no basis to question the agency's source selection decision.

The protest is denied.

Lynn H. Gibson
General Counsel

¹⁰ To the extent that ER complains that the agency did not consider whether EQM submitted unbalanced prices or rates, see Protester's Comments at 13, the protester has not identified any prices or rates that it asserts are unbalanced. In any event, we do not find from our review of EQM's cost/price proposal that EQM proposed unbalanced pricing or rates. See AR, Tab 4, EQM's Proposal, at 5-56.