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Decision

Matter of: Tetra Tech EC, Inc.

File: B-406975; B-406975.3; B-406975.4

Date: October 9, 2012

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DIGEST

Protest that the agency improperly evaluated the awardee's proposal is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Tetra Tech EC, Inc., of Lakewood, Colorado, protests the Department of the Army, U.S. Army Materiel Command's award of a contract to Navarro Research and Engineering, Inc., of Oak Ridge, Tennessee, under request for proposals (RFP) No. W9125F-11-R-0002, for environmental cleanup services at the Rocky Mountain Arsenal, Commerce City, Colorado. The protester asserts that the agency improperly evaluated the awardee's proposal and conducted an improper cost/technical tradeoff.

We deny the protest.

BACKGROUND

The Rocky Mountain Arsenal is a former chemical weapons production facility that has undergone a 15 year environmental remediation program. Tetra Tech is the incumbent contractor. While the environmental clean-up is now complete, with most of the facility transferred to the U.S. Fish and Wildlife Service, the Army retains

responsibility for a small portion of the former arsenal and will conduct operations such as groundwater treatment for the foreseeable future. This RFP is for an operations and maintenance contract to perform those services.

The solicitation provided for the award of a cost plus incentive fee (CPIF) contract (with fixed price elements), with a base period of 3 years with two 3-year options. The cost portion of the proposal included direct productive labor hours (DPLH) and the associated labor burden rate.

Award was to be made to the offeror whose proposal represented the best value to the government considering the following four evaluation areas: management; technical; cost/price; and performance risk. Management was more important than any other area. Technical and cost/price were of equal importance, and each was more important than performance risk. The non-cost/price areas, when combined, were significantly more important than cost/price. Management and technical were to be assigned an adjectival rating of excellent, good, acceptable, marginal or unacceptable, while performance risk was to be evaluated as low, moderate, high or unknown.

The agency received offers from five firms, including the protester and the awardee. The proposals of Tetra Tech and Navarro were evaluated as follows:

Offeror	Management	Technical	Cost/Price	Performance Risk
Tetra Tech	Excellent	Excellent	\$78,117,000	Low
Navarro	Good	Good	\$68,507,000	Low

Source Selection Decision Document (SSDD) at 2.

The agency recognized that “[a]lthough the Cost Area is equal in importance to the Technical Area. . . there was one Offeror that had a significantly lower cost than the other Offerors.” SSDD at 19. Accordingly, the agency began its tradeoff analysis by comparing the offeror with the lowest cost, Navarro, against each of the other offerors. Under this approach, if an offeror with a higher cost offered a better value than the lowest cost offeror, the offeror with the lowest cost would be eliminated. The process was to be repeated until a best value determination could be made. SSDD at 19.

The initial recommendation of the Source Selection Evaluation Board (SSEB) was that award be made to Tetra Tech. Agency Report (AR) at 13. However, when the SSEB and the Source Selection Advisory Council were requested to “identify those distinguishing characteristics of the Tetra Tech proposal that would provide such benefit as to readily offset the higher cost,” they were unable to identify tangible benefits warranting the higher cost. SSDD at 27; AR at 13.

In this regard, the agency recognized the superiority of Tetra Tech's proposal under the management and technical areas. In particular, the agency recognized Tetra Tech's demonstrated very clear understanding of the solicitation requirements, and its proposed senior technical advisors, corporate resources and company support. However, the agency noted that both proposals relied heavily on the incumbent (contract) staff at Rocky Mountain Arsenal, and both were evaluated as having low performance risk. In addition, the agency viewed favorably Navarro's plan to use [DELETE] percent of its award fee to [DELETED], and the fact that Navarro is a small business and its project manager will have direct access to company resources. SSDD at 20-22. The agency concluded that, notwithstanding Tetra Tech's management and technical superiority,

the two firms are proposing very similar staffs and the additional benefits provided by the non-cost elements from [Tetra Tech] are simply not significant enough to justify the additional cost of \$9,610,000 (or 14%) above [Navarro's] cost.

SSDD at 23. Upon learning of the resulting award to Navarro, Tetra Tech filed this protest with our Office.

DISCUSSION

Navarro's Most Probable Cost

The protester challenges the agency's evaluation of the most probable cost of Navarro's proposal. When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§15.305(a)(1); 15.404-1(d); Palmetto GBA, LLC, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR §15.404-1(d)(1). In this regard, an agency is not required to conduct an in-depth cost analysis, see FAR §15.404-1(c), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. As explained below, we find no basis here to question the agency's evaluation of the awardee's most probable cost; we consider, in turn, allegations that the agency failed to consider that the awardee underestimated its general and administrative costs, that the agency failed to consider that the awardee reduced its direct productive labor hours, and that the awardee failed to

comply with a material term of the solicitation regarding calculation of a certified fixed burden rate.

General and Administrative Expenses Allocation

Tetra Tech asserts that the agency failed to account for the fact that Navarro's proposal indicated that Navarro's accounting practice is to allocate general and administrative (G&A) expenses to reimbursable expenses and subcontractor costs. In this regard, during proposal review, the agency asked offerors to

confirm that per your accepted accounting practices for the Division under which this Contract would be awarded, that no overhead or G&A costs would be applied to Team Member Subcontract costs or to any of the other reimbursable costs under [contract line item number (CLIN)] series 0007 through 8007.

AR, Tab 12, at 2 and Tab 16, at 3, Letters from Contracting Officer to Offerors, Feb. 29, 2012. The awardee responded that "[t]he Navarro Division where this contract will be located will not apply any overhead or G&A costs to Team Member [subcontractor] or to any of the reimbursable costs under CLIN series 0007 through 8007." AR, Tab 12, at 1, Undated Letter from Navarro to Contracting Officer. Noting that the awardee's response did not confirm that foregoing G&A on reimbursable expenses and subcontractor costs "[was] its standard accounting practice," the protester asserts that Navarro therefore in fact will incur and be reimbursed for these expenses in accordance with its standard accounting practices, increasing its actual G&A and costs by \$2.4 million.¹ Second Supplemental Protest, Aug. 16, 2012, at 18.

As noted by the agency, however, the protester's response to the agency's request for confirmation did not meaningfully differ from the awardee's. In this regard, Tetra Tech responded that it "does not apply any overhead or G&A costs to Team Members Subcontract costs or to any of the reimbursable costs under CLIN series 0007 through 8007." AR, Tab 16, Letter from Awardee to Contracting Officer, Mar. 5, 2012. While neither offeror confirmed that its proposed approach was consistent with its standard accounting practices, both stated that they would not apply G&A to subcontractor or other reimbursable costs, and the agency accepted both representations. We agree with the agency that, given Navarro's commitment in its revised proposal that it would not apply G&A to subcontractor and other reimbursable costs, there is no basis for concluding that the government in fact will incur any such G&A costs.

¹ The protester calculated this figure by multiplying Navarro's estimated 2011 G&A rate by its proposed reimbursable expenses and subcontractor costs. See Second Supplemental Protest, Aug. 16, 2012, at 18 n.4.

Direct Productive Labor

Tetra Tech asserts that the agency failed to consider the effect on Navarro's probable costs resulting from Navarro reducing the level of direct productive labor hours from its original proposal to its final proposal. Direct productive labor hours are defined in the solicitation as actual hours worked, exclusive of vacation, holidays, sick leave, and other absences. RFP ¶ L7.2(d). When, in its final proposal, Navarro provided for additional employee vacation time, its proposed direct productive labor hours per employee declined from [DELETED] to [DELETED]. AR, Tab 11, Awardee's Final Proposal, Vol. III, Cost and Price at iii. The protester asserts that Navarro's final proposal understated the costs of performance by failing to account for the reduction in effort per employee. As noted by the agency, however, notwithstanding the decrease in productive hours per employee, Navarro's total annual proposed level of effort increased from [DELETED] hours in its original proposal to [DELETED] hours in the final proposal. Second Supplemental AR at 14; Compare Vol. III, Cost and Price, B-1 Staff Matrix of Original and Final Proposal Revision. In these circumstances, we find no basis to question the agency's position that Navarro proposed (and costed) an adequate overall level of effort in its final proposal.

Certified Fixed Burden Rate

Tetra Tech asserts that Navarro failed to comply with a material term of the solicitation regarding calculation of a "certified fixed burden rate." The RFP required offerors to complete a Staff Matrix containing a "Burden Rate" column (Column 12) for each labor category, and to enter in that column their "current certified fixed burden rates for allowable indirect costs on cost reimbursement contracts with the Government." RFP ¶ L7.5.2.1. If the offeror "does not currently have a certified fixed burden rate," the RFP required that the offeror "shall calculate one (subject to audit) and provide the basis in the 'Comments on Pricing' section of the proposal." Id. The protester interprets the RFP to require an offeror to provide either a certified rate or "sufficient information such that the rate could [be] reliably verified by an auditor." Second Supplemental Protest, Aug. 16, 2012, at 27. Tetra Tech asserts that Navarro's proposal was unacceptable because it neither included a certified fixed burden rate nor sufficient information for an audit.

We agree with the agency, however, that the protester's argument is based on an unreasonable interpretation of the solicitation. We instead find reasonable the agency's position that the parenthetical phrase "subject to audit" simply advised offerors that their calculated rates should be supportable according to government contracting standards, without requiring offerors to submit information necessary for such an audit or requiring the agency to perform one, and that the required "basis" was simply the specific underlying indirect rates, e.g., the overhead, fringe benefits and G&A rates, comprising the overall burden rate. Second Supplemental AR at 18. Since Navarro furnished the requested underlying specific indirect rates, Tetra

Tech's argument provides no basis to question the agency's determination that Navarro's cost proposal was acceptable in this regard.

Cost/Technical Tradeoff

The protester challenges the reasonableness of the agency's allegedly "merely perfunctory" cost/technical tradeoff, asserting that the agency elevated price to be the most important evaluation factor in violation of the terms of the RFP. Second Supplemental Protest, Aug. 16, 2012, at 6. In this regard, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. A protester's disagreement with the agency's judgment is not sufficient to establish that the tradeoff was unreasonable. MRC Federal, LLC, B-401954.2, Aug. 17, 2010, 2010 CPD ¶ 196 at 11.

Here, Tetra Tech has not shown the cost/technical tradeoff to be unreasonable. Tetra Tech asserts that beginning with a lower-priced proposal and asking whether another proposal offered better value to the government improperly elevated price to be the most important evaluation factor and made Navarro the "presumptive favorite." Protester's Comments, Sept. 17, 2012, at 25. We disagree. A best value tradeoff necessarily begins with one competing proposal, which has a certain cost/price, to which other proposals are compared. The starting point for the analysis does not preordain an outcome; to suggest otherwise is to elevate form over substance. Further, we see no evidence in the record to support the assertion that the agency's conclusion necessarily followed from the format of the tradeoff analysis. Nor has the protester shown that the agency unreasonably determined that the advantages of its proposal under the management and technical factors did not warrant a 14 percent cost/price premium.

The protest is denied.

Lynn H. Gibson
General Counsel