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Decision

Matter of: Phoenix Group of Virginia, Inc.

File: B-407852

Date: March 12, 2013

Robert E. Korroch, Esq., Anthony H. Anikeeff, Esq., and William A. Wozniak, Esq., Williams Mullen, for the protester.

William H. Butterfield, Esq., United States Coast Guard, for the agency.

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DIGEST

Protest objecting to an agency's selection of a lower-priced, lower-rated quotation under a solicitation providing for the establishment of a blanket purchase agreement on a best-value basis is denied where the agency has reasonably determined that the price premium associated with the protester's more highly rated quotation is not justified.

DECISION

Phoenix Group of Virginia, Inc., of Chesapeake, Virginia, protests the establishment of a blanket purchase agreement (BPA) with the McHenry Management Group of Chesapeake, Virginia, under request for quotations (RFQ) No. HSCG23-12-Q-PAP059, issued by the United States Coast Guard for marine engineering and naval architecture support services. Phoenix challenges the agency's selection decision.

We deny the protest.

BACKGROUND

The RFQ was set-aside for small business vendors holding contracts under General Services Administration Federal Supply Schedule 871, professional engineering services, and provided for the establishment of a BPA for a base year and 4 option

years for services supporting the Coast Guard's Asset Project Office.¹ RFQ at 3, summary at 1. The RFQ advised vendors that the Coast Guard would issue fixed-price BPA calls (that is, task orders) for the services. RFQ at 4, 16; see Performance Work Statement (PWS) at 7. Vendors were informed that the BPA would be established on a best-value basis, considering the following factors, listed in descending order of importance: technical capability, past performance, and price. RFQ at 16. The non-price factors, when combined, were stated to be significantly more important than price. Id.

Vendors were instructed that technical quotations should demonstrate an understanding and the ability to meet all PWS requirements, and be sufficiently complete to demonstrate how the vendor would comply with requirements throughout the performance period. Id. at 14. Among other things, vendors were to describe their technical and management approach for accomplishing the required tasks. Id. The RFQ stated that the agency would evaluate the vendor's capability and understanding of the required engineering and logistical support services, as well as its overall management approach to accomplishing the tasks, in particular, meeting cost, schedule, and quality objectives under future task orders. Id. at 16.

With respect to the past performance factor, vendors were instructed to provide references for at least three contracts for the same services that were either currently being performed or had been completed during the past 3 years. Id. at 15. Vendors were informed that references would be contacted to determine the timeliness, quality, and overall customer satisfaction of the vendor's products and services. Id. The RFP stated that the agency's evaluation of the vendor's performance would focus on the quality of performance, relative to the size and complexity of the Coast Guard's requirement. See id. at 17.

The agency received quotations from six vendors, including Phoenix and McHenry (the incumbent). Contracting Officer's (CO) Statement at 1-2. After evaluating quotations, the Coast Guard determined that McHenry's quotation presented the best value to the government, and decided to establish the BPA with that firm. See id. Phoenix filed an agency-level protest challenging the agency's selection decision, in response to which the Coast Guard took corrective action by reevaluating all of the quotations received. See id. at 1; Agency Report (AR), Tab 5, Protester's Agency-Level Protest, at 4-19.

The agency's technical evaluation team (TET) reviewed the technical quotations and submitted its consensus ratings for each offer in a revised technical evaluation report to the contracting officer, who was the source selection official. See CO's Statement

¹ The Asset Project Office provides, among other things, engineering and logistical support for procuring and deploying new Coast Guard vessels. See PWS at 1.

at 3-4. The contract specialist evaluated the vendors' past performance and price and submitted separate reports for each to the contracting officer, who relied on these reports to make her selection decision. See id. at 4. All of the vendors' prices, including McHenry's, were found to be realistic, reflecting a clear understanding of the requirements, and consistent with their respective technical quotations.² Id.; AR, Tab 3, Amended Award Memorandum, attach. 2, Price Report Table, at 19. The adjectival evaluation ratings and evaluated prices did not change as a result of the reevaluation, although the strengths and weaknesses assessed in vendors' quotations did change in minor ways. Compare AR, Tab 3, Amended Award Memorandum at 3, 10, with Tab 7, Award Memorandum, at 3, 10.

The vendors' quotations were evaluated as follows:

	Technical	Past Performance	Total Evaluated Price
McHenry	Satisfactory	Exceptional	\$7,206,183
Offeror B	Satisfactory	Exceptional	\$7,226,706
Offeror C	Satisfactory	Exceptional	\$7,990,361
Offeror D	Satisfactory	Exceptional	\$7,023,963
Phoenix	Excellent	Exceptional	\$8,364,687
Offeror F	Satisfactory	Exceptional	\$8,966,580

AR, Tab 3, Amended Award Memorandum, at 3, 10.

Phoenix's excellent rating under the technical factor reflected the TET's assessment that Phoenix's quotation contained 13 strengths, including the firm's understanding of the PWS requirements, its strong team of proposed subcontractors, qualified program manager with extensive Coast Guard experience, and detailed management approach. See AR, Tab 4, Amended Technical Evaluation Report, at 6. The TET identified as weaknesses in Phoenix's quotation that it did not address certain process design changes/interfaces and that the vendor's proposed program manager did not have program experience outside of the Coast Guard or currently work for Phoenix. See id.

McHenry's satisfactory rating under the technical factor reflected the TET's assessment that McHenry's quotation contained nine strengths, including the firm's

² The contracting officer reviewed the price evaluation report, and concluded that McHenry had selected the appropriate labor categories from its FSS schedule contract to accomplish the work, that it understood the requirement, and that its price and labor rates were fair and reasonable. AR, Tab 3, Amended Award Memorandum, at 14.

experience with, and understanding of, the requirements, and its proposed program manager and subcontractors. See id. at 2. The TET assessed four weaknesses in McHenry's quotation: a management approach that was reactive, rather than proactive with regard to project or schedule management; a lack of experience outside of the Coast Guard; no clear demonstration of the extent of the firm's cataloging capability and experience; and no information concerning how the vendor would interact with its subcontractors. Id. at 4.

The contracting officer compared the vendors' technical quotations by considering the findings, conclusions, and ratings of the TET. CO's Statement at 4. While the contracting officer acknowledged Phoenix's excellent technical rating, she also found that McHenry's and Phoenix's quotations included similar strengths, and that, notwithstanding the number of strengths in each quotation, the TET had identified strengths in McHenry's quotation that were not found in Phoenix's quotation. She concluded that Phoenix's price, which was approximately 16 percent (or \$1.2 million) higher than McHenry's, was too much to pay for the 13 strengths identified in its quotation, in comparison to the 9 strengths found in McHenry's quotation. AR, Tab 3, Amended Award Memorandum, at 13. She also found that the technical weaknesses identified in McHenry's and Phoenix's quotations presented only a marginal difference, and concluded that the weaknesses would have a negligible impact on successful contract performance. See id. With respect to the two vendors' past performance ratings, the contracting officer noted that, although both were rated as exceptional, McHenry's success as the incumbent support contractor for the same services was worth considering, in comparison to Phoenix's lack of a proven past performance track record with the Coast Guard. See id.

The contracting officer again determined that McHenry's quotation provided the overall best value to the government, and the BPA was established McHenry. Id. at 13-14; CO's Statement at 1-5. This protest followed a debriefing.

DISCUSSION

Phoenix protests the Coast Guard's selection of McHenry's lower-rated, lower-priced quotation, arguing that the agency's best value decision placed too much emphasis on price, and was therefore inconsistent with the RFQ's weighting of non-price evaluation factors as significantly more important than price.³ Protest at 5-6; Comments at 2-3.

³ Phoenix does not directly challenge the Coast Guard's evaluation of its or McHenry's quotations, but rather, protests the manner in which the agency used the information provided in the evaluation record to make its best value determination.

The Coast Guard responds that the contracting officer carefully weighed strengths and weaknesses in the competing quotations, documented her deliberations and rationale in considerable detail, and, consistent with the RFQ's stated evaluation criteria, reasonably concluded that a slight technical advantage in Phoenix's quotation was not worth its substantial price premium. AR at 3-5.

Where, as here, an agency issues an RFQ to Federal Supply Schedule contractors under Federal Acquisition Regulation (FAR) subpart 8.4 and conducts a competition, we will review the agency's actions and source selection decision to ensure that the evaluation was fair and reasonable, and consistent with the terms of the solicitation. See Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; SI Int'l, SEIT, Inc., B-297381.5, B-297381.6, July 19, 2006, 2006 CPD ¶ 114 at 11. Where the procurement provides for award on a best value basis, it is the function of the source selection official to perform a price/technical tradeoff; that is, to determine whether one quotation's technical superiority is worth its higher price. InnovaTech, Inc., B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 2, 6 n.8; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13.

First, Phoenix argues that the re-evaluation conclusions that the agency reached during its corrective action should be "accord[ed] limited weight," because they were made "in the heat of an adversarial process." Comments at 2. This argument has no merit. The protester confuses the agency's corrective action--which was undertaken after the agency-level protest had been dismissed--with an agency's introduction of new evaluation conclusions during the course of a protest to defend an existing evaluation; these two circumstances are not the same. Here, after reviewing the agency-level protest, the agency determined it should conduct a new evaluation and source selection in order to correct any errors made during the initial evaluation and source selection; as such, the new evaluation and selection decision are subject to the same standards--and are given the same weight--as any other evaluation and selection decision. Further, the fact that a re-evaluation varies from an original evaluation does not constitute evidence that the re-evaluation was unreasonable. See, e.g., QinetiQ North America, Inc., B-405163.2 et al., Jan. 25, 2012, 2012 CPD ¶ 53 at 13. To the contrary, it is implicit that a reevaluation could result in different findings and conclusions. Sabre Sys., Inc., B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 5 n.3.

Next, Phoenix argues that the contracting officer "sought to minimize" the weaknesses that were identified in McHenry's quotation in the technical evaluation report, and to ignore the strengths found in Phoenix's quotation, in order to justify selecting McHenry; and that she considered "extraneous information" that was not part of McHenry's quotation or that was irrelevant to this procurement, inconsistent with the terms of the RFQ. Comments at 3. These arguments are not supported by the record.

Although Phoenix argues that the contracting officer improperly “relaxe[d] the requirements for [McHenry] in her effort to erase [McHenry’s] weaknesses,” see Comments at 4, the four weaknesses identified in McHenry’s quotation do not reflect RFQ requirements that were waived. For example, with respect to the weakness that McHenry’s approach to projects or schedule management was more reactive than proactive, there is no express requirement in the RFQ for a particular approach to schedule management. Rather, under the management approach subfactor, offerors were to document their management approach to accomplish PWS activities. RFQ at 15. The contracting officer’s best value analysis acknowledges that the evaluators found McHenry’s more reactive approach in this area to be a weakness, but concludes that the weakness does not raise concerns because McHenry “is currently successfully performing over 12 tasks for the [Asset Project Office] with this same approach.”⁴ AR, Tab 3, Revised Award Memorandum, at 12. Phoenix has not shown this analysis to be unreasonable. Given that the TET found, as a strength in McHenry’s quotation, that the vendor “clearly articulated a plan to manage, monitor cost, schedule and performance,” AR, Tab 4, Revised Technical Evaluation Report, at 2, Phoenix has not shown that the weight given to this weakness by the contracting officer in the overall assessment of McHenry’s quotation was unreasonable.

Phoenix’s similar complaints with respect to the contracting officer’s consideration of the other identified weaknesses also fail to show that the best value determination was improper. Briefly stated, the contracting officer found that McHenry’s lack of experience outside of the Coast Guard was mitigated by its exceptional performance as the incumbent; that the lack of information in McHenry’s quotation about how it would interact with subcontractors was overcome by its past performance ratings, which evinced no deficiency in this regard; and that any failure to demonstrate McHenry’s cataloguing experience and capabilities was overcome by the firm’s recent successful performance of this task (which task was not expected to be a significant requirement in any event). See AR, Tab 3, Revised Award Memorandum, at 12. Since the record shows that the source selection official considered the evaluators’ specific comments and weighed them in the context of additional knowledge of the vendor’s performance as the incumbent contractor, to arrive at a reasonable conclusion regarding the quotation’s overall relative value, the protester has provided no basis to object to the contracting officer’s judgment concerning the impact of these weaknesses.

The protester also argues that the contracting officer minimized or ignored strengths that were identified in Phoenix’s technical quotation. We find, to the contrary, that

⁴ Although Phoenix complains that it was improper for the contracting officer to take McHenry’s performance of similar requirements under its current contract into account in assessing the impact of these weaknesses, we disagree. See, e.g., J. A. Jones Grupo de Servicios, SA, B-283234, Oct. 25, 1999, 99-2 CPD ¶ 80 at 8.

the contracting officer acknowledged Phoenix's superior technical rating, and the identified strengths, but found they did not provide advantages that would justify the associated price premium. Although Phoenix disagrees with the contracting officer's judgment, it has not shown it to be unreasonable. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Phoenix also challenged the agency's price evaluation, alleging that the Coast Guard failed to consider whether McHenry's price was realistic for the work to be performed, as required by the RFQ. Protest at 6-7. The agency report, which the Coast Guard submitted to the parties in both hard copy and on diskette, addresses this argument in the contracting officer's statement and the legal memorandum, and includes the contract specialist's price evaluation (and re-evaluation) report. See AR, Tab 3, Amend. Award Memorandum, Attach. 2, Price Report; Tab 7, Award Memorandum, Attach. 2, Price Report. The report discusses, among other things, the agency's price realism analysis, and includes tables comparing vendors' prices to the independent government cost estimate for the procurement and documenting the agency's findings, as discussed above, that all prices quoted were realistic, reflected a clear understanding of the requirements, and were consistent with the vendors' respective technical quotations. However, Phoenix failed to substantively respond to the agency's arguments regarding its price realism evaluation in its comments, and is deemed to have abandoned this protest ground.⁵ See, e.g., Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3.

In sum, we find that the Coast Guard's best value determination and cost/technical tradeoff is unobjectionable, and deny the protest.

The protest is denied.

Susan A. Poling
General Counsel

⁵ Phoenix stated in its comments only that "the Agency Report does not contain any record of the [price realism] analysis being don[e]"; that the price report cited in the contracting officer's statement does not exist in the record; and reiterates its protest of the agency's price realism analysis. Comments at 7. As noted above, the agency report provided the contracting specialist's price report, which the protester failed to address.