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Decision

Matter of: NOVA Corporation

File: B-408046; B-408046.2

Date: June 4, 2013

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DIGEST

Protest is sustained where the record does not demonstrate whether the source selection authority substantively considered the evaluated differences between the awardee's and protester's past performance records. Although the agency identified clear differences between the protester's higher-rated past performance record and the awardee's lower-rated record, the source selection authority did not document her basis for concluding that the differences were not significant and that selection of the protester's higher-priced proposal was not justified.

DECISION

NOVA Corporation, of Albuquerque, New Mexico, protests the award of a task order to Digital Management, Inc., (DMI) of Bethesda, Maryland, by the Department of Defense, Defense Information Systems Agency (DISA), under request for proposals (RFP) No. EG0330.00 for operations and information technology support services for the Theater Enterprise Computing Center--Central Region in Juffair, Bahrain. NOVA challenges the agency's evaluation of the offerors' proposals and award decision.

We sustain the protest.

DISA issued the RFP on April 26, 2012, to companies holding 8(a) Streamlined Technology Acquisition Resources for Services (STARS) II, Constellation I,

Functional Area 4, government-wide acquisition contracts.¹ RFP Amend. 4, at 1. The solicitation contemplated the issuance of a fixed-price task order for a base year and four 1-year options. Id. The RFP advised that the task order would be issued to the best value offeror based upon an evaluation of three factors: (1) technical/management approach, (2) past performance, and (3) cost/price.² Id. at 2. For purposes of award, the RFP stated that the technical/management approach factor was more important than the past performance factor, and when combined, the non-cost factors were significantly more important than the cost factor. Id. at 2-3.

The solicitation stated that the agency's evaluation of an offeror's proposal under the technical/ management factor would consider three subfactors: (1) Performance Work Statement (PWS) Task 3--Configuration Control, (2) PWS Task 4--System Installation and Administration, and (3) PWS Task 5--Database Support. Id. at 2. The RFP advised that an offeror's past performance would be evaluated based upon its existing and prior contracts for similar services, and that more "recent and relevant performance" would have "a greater impact" on the performance confidence assessment. Id. at 3. Offerors could receive one of the following ratings for past performance: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown (neutral) confidence. RFP Amend. 4, Attachment 5, Evaluation Tables, at 2. As relevant here, the RFP stated that a substantial confidence past performance rating would be assigned where, "[b]ased on the offeror's recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort." Id. A satisfactory confidence past performance rating would be assigned where, "[b]ased on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort." Id.

¹ The STARS II contracts are multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts awarded by the General Services Administration for various information technology services and service-based solutions.

² Although the solicitation anticipated the issuance of a task order under an ID/IQ contract, the evaluation record here refers to "offerors" and "proposals." For the sake of consistency, and because the distinction between a quotation and a proposal has no bearing on our analysis in this protest, we adopt the usage of the terms offerors and proposals in this decision.

DISA received proposals from five offerors, including NOVA and DMI.³ The agency found that both NOVA's and DMI's proposals merited green/acceptable ratings under the technical/management factor,⁴ that neither proposal had any weaknesses or strengths, and that, for both offerors, the "[r]isk of unsuccessful performance is no greater than moderate." Agency Report (AR), Tab 6, Evaluation Team Selection Recommendation, at 2-3, 5-6.

The evaluation team assessed each of the offerors' past performance references, for recency, relevancy, and quality, which resulted in the following ratings:⁵

	Reference No.	Recency	Relevancy	Quality
DMI	1	Yes	Somewhat Relevant	Satisfactory
	2	Yes	Somewhat Relevant	Satisfactory
	3	Yes	Relevant	Very Good
	4	Yes	Relevant	Very Good
	5	Yes	Somewhat Relevant	Satisfactory
NOVA	1	Yes	Relevant	Excellent
	2	Yes	Relevant	Very Good
	3	Yes	Relevant	Very Good
	4	Yes	Somewhat Relevant	Satisfactory

Id. at 8.

Based upon the past performance assessment above, the evaluation team assigned DMI a satisfactory confidence rating, finding that "[i]n all five references the efforts are recent, but in some cases the data fails the relevance requirements . . . namely in the area of scope." Id. at 11. The evaluation team assigned NOVA a

³ The agency received initial proposals on May 29, 2012. After conducting discussions with the offerors, the agency received final proposal revisions on January 8, 2013. Both NOVA and DMI submitted timely final proposal revisions.

⁴ For the technical subfactor evaluation, offerors could receive one of the following ratings: blue/outstanding, purple/good, green/acceptable, yellow/marginal, and red/unacceptable. RFP, Amend. 4, Attach. 5, Evaluation Tables, at 1.

⁵ A past performance reference could receive the following relevancy ratings: relevant, somewhat relevant, and not relevant. A past performance reference could receive the following quality ratings: exceptional, very good, satisfactory, marginal, unsatisfactory, and not applicable. RFP, Amend. 4, Attach. 5, Evaluation Tables, at 1-2.

substantial confidence rating, finding that “[t]he record submitted show[s] that NOVA has met the requirements in their past performance record.” Id. at 15.

The evaluation team assigned the following overall ratings, which were presented to the source selection authority (SSA):

	Technical	Confidence	Total Cost
DMI	Green / Acceptable	Satisfactory	\$12,743,699
NOVA	Green / Acceptable	Substantial	\$13,601,923

Id. at 1-2.

The evaluation team recommended that DMI receive the task order, based upon its finding that “DMI presented a proposal that was technically acceptable in all evaluated areas and met all the requirements of this solicitation.” Id. at 21. The recommendation acknowledged that NOVA was the only vendor to achieve a substantial confidence rating, while DMI achieved a lower satisfactory confidence rating. Id. Notwithstanding the different past performance ratings, the evaluation team characterized NOVA’s past performance as “slightly better” than DMI’s, and noted that the difference was not significant enough to warrant paying the higher evaluated price. Id.

The SSA reviewed the evaluation team’s assessments and concurred with the evaluation results. AR, Tab 7, Price Negotiation Memorandum, at 7. The SSA’s award decision noted that the protester and awardee had both received acceptable ratings under the technical/management factor, and that the rationale for award was based on a tradeoff between the offerors’ past performance ratings and price, as follows:

For past performance, NOVA was the only vendor to achieve a “Substantial Confidence” rating, while DMI achieved a “Satisfactory Confidence” rating.

Based on this satisfactory confidence assessment, the government has a reasonable expectation that DMI can perform as proposed and as described in the PWS. The overall evaluation [] finds DMI, the lowest priced offeror, to be the best value for the Government. NOVA’s slightly better past performance ratings were not significant enough to warrant paying the higher evaluated price of \$858,224.64. The DMI proposal represents the best value to the government. This is the evaluation team’s recommendation for award and I concur with their recommendation.

Id. at 6-7.

On February 22, 2013, DISA notified DMI that it had received the task order, and also notified NOVA of the award. NOVA received a debriefing on February 26, and subsequently filed a protest with our Office on March 1.

DISCUSSION

NOVA challenges DISA's evaluation of the offerors' proposals and the agency's best value tradeoff decision. With regard to the agency's tradeoff decision, NOVA argues that DISA's decision was inadequately documented, and therefore unreasonable. Specifically, NOVA contends that the SSA stated that the difference between the awardee's and protester's past performance was "not significant enough" to warrant selecting the protester's higher-priced proposal, but did not explain the basis for this conclusion. We have considered each of the protester's allegations and sustain the protest based on the agency's tradeoff decision. We deny NOVA's remaining allegations.

The task order competition here was conducted among ID/IQ contract holders pursuant to Federal Acquisition Regulation (FAR) part 16. In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7; Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 6-7; Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. In this regard, FAR part 16 requires that agencies document the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. FAR § 16.505(b)(7). An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

In general, evaluation ratings are merely guides for intelligent decision-making in the procurement process; the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 19. While an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced proposal must acknowledge and document any significant advantages of the higher-price, higher-rated proposal, and explain why they are not worth the price premium. For example, in Blue Rock Structures, Inc., B-293134, Feb. 6, 2004, 2004 CPD ¶ 63, our Office sustained a challenge to an agency's selection of a lower-rated, lower-priced proposal, finding that the decision was inadequately documented because the SSA failed to acknowledge the evaluated advantages of the

higher-rated proposal, and furnish an explanation as to why the protester's higher-rated proposal's advantages were not worth price premium. In contrast, our Office held in Phoenix Group of Virginia, Inc., B-407852, Mar. 12, 2013, 2013 CPD ¶ 80, that the selection of a lower-rated, lower-priced proposal was unobjectionable where the record showed that the SSA considered evaluated differences in quotations, documented her deliberations and rationale, and concluded that a slight technical advantage was not worth a substantial price premium. See also General Dynamics Info. Tech., Inc., B-406030, B-406030.3, Jan. 25, 2012, 2012 CPD ¶ 55 (selection of a lower-rated, lower-priced proposal was unobjectionable where the SSA's tradeoff decision included a detailed comparative analysis of the quotations, and set forth ten bullet-points supporting the agency's conclusion that the value of the proposed enhancements did not justify the price premium).

Here, the RFP stated that the technical/management approach factor was more important than the past performance factor, and when combined, the non-cost factors are significantly more important than the cost factor. RFP Amend. 4, at 2-3. The SSA's award decision, which was based upon the evaluation team's assessments, assigned equal technical ratings for NOVA's and DMI's proposals. The SSA's decision acknowledged that the proposal of NOVA received a substantial confidence past performance rating, while DMI received a lower satisfactory confidence rating. Notwithstanding this difference, the SSA found that DMI's proposal, which was \$858,224 lower than NOVA's proposal, provided the best value for the Government because NOVA's "slightly better" past performance ratings were not significant enough to warrant paying the higher evaluated price. AR, Tab 7, Price Negotiation Memorandum, at 7.

NOVA contends that the record does not explain why the SSA concluded that the protester's past performance was only "slightly better" than the awardee's. We agree. As discussed above, the record shows that the agency identified clear differences between the offerors' past performance records. The evaluation team's assessment found that three of NOVA's four references were relevant to the current requirement; in contrast, only two of DMI's five references were relevant, and the remaining three were somewhat relevant. AR, Tab 6, Evaluation Team Selection Recommendation, at 8. Similarly, as discussed above, NOVA's references received one excellent, two very good, and one satisfactory quality ratings, while DMI's references received two very good and three satisfactory quality ratings. Id. These substantive differences resulted in the agency's evaluation team concluding that NOVA's past performance references provided a high expectation of successful performance (substantial confidence); in contrast, the evaluation team concluded DMI's past performance references provided a reasonable expectation of successful performance (satisfactory confidence). Id., at 11, 15. Despite these differences, neither the contemporaneous record nor the agency's response to the protest, explain whether the SSA meaningfully considered the differences between the offerors' past performance. For this reason, the record does not support the SSA's conclusion that NOVA's past performance was only "slightly better" than

DMI's past performance, and not worth the price premium for the protester's proposal.⁶

In addition, the protester also asserts that the agency failed to acknowledge or consider other substantive differences between NOVA's past performance references and DMI's references relating to DMI's reliance on subcontractor references. In this regard, NOVA argues that the agency could not reasonably have determined that NOVA's past performance references were only slightly better than DMI's because each of NOVA's four references were for its own work, while four out of DMI's five references were based upon the work of DMI's proposed subcontractors. See AR, Tab 6, Evaluation Team Selection Recommendation, at 8-11. Our Office has held that, in the absence of any prohibition in the solicitation, an agency may properly evaluate and give weight to the past performance of a proposed subcontractor. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 5-6. In this regard, FAR §15.305(a)(2)(iii) expressly provides that agencies "should take into account past performance [of] . . . subcontractors that will perform major or critical aspects of the requirement." FAR § 15.305(a)(2)(iii).

NOVA contends that it was improper for the agency to view its past performance record as only slightly better than DMI's record because the agency had no basis to establish whether DMI's proposed subcontractors' past performance was relevant for the work they were to perform; in this regard, the RFP did not require offerors to address the specific tasks that subcontractors would perform and DMI's proposal did not provide this information.⁷ Because, as discussed above, the record here does not demonstrate whether the agency considered the evaluated differences between the offerors' past performance in the selection decision, we recommend that the agency consider the protester's argument here as part of its corrective action.

⁶ Additionally, this is not a situation where the SSA can claim to have relied on a tradeoff prepared by underlying evaluators. While the evaluation team found that "[b]oth contractors have proven in their past performance, their background and understanding that they can support this contract," this type of analysis does not support a best value trade-off. AR, Tab 6, Evaluation Team Selection Recommendation, at 21. Rather, in our view, this generic statement concerning the offerors' ability to meet the minimum performance requirements does not demonstrate that the agency substantively considered the evaluated differences between the offerors' past performance.

⁷ In its response to NOVA's supplemental protest, the agency acknowledges that the RFP did not require offerors to address the work that subcontractors would perform. Supp. AR (May 2, 2013) at 13.

In sum, we find the source selection tradeoff is devoid of any substantive consideration or comparative assessment as to the evaluated differences of the offerors' past performance. The tradeoff makes no reference to any of the differences between the two proposals, and simply dismisses NOVA's substantial confidence past performance rating as "not significant" and only "slightly better" than DMI's satisfactory confidence past performance rating without any justification. These general statements fall short of the requirement to adequately document the basis for a best value award. See Johnson World Control Servs., supra; Blue Rock Structures, Inc., supra. Because the record does not show whether the SSA reasonably considered the relative merits of the proposals, we sustain the protest.

In addition to its argument concerning the tradeoff decision, NOVA also challenges DISA's technical evaluation, alleging that DISA failed to recognize what the protester contends was NOVA's very detailed technical proposal, and DMI's vague and general technical proposal. For example, NOVA contends that the agency's evaluation of the offerors' proposals improperly focused on the three technical sub-factors set forth in the solicitation, while disregarding the rest of the offerors' proposals in its evaluation. We find no merit to this argument.

The RFP stated that technical proposals should include "all information the offeror wants the Government to consider and evaluate regarding its company's ability to perform all required tasks and conform to all required terms and conditions." RFP, Amend. 4, at 2. The solicitation also explained that offerors' technical proposals should address all aspects of the PWS, "making special note of the evaluation factors." Id. Despite the general instruction for offerors to address all areas of the PWS in their proposals, the RFP advised that the agency would "use the following evaluation factors to determine an offeror's relative ability to accomplish the tasks set forth in the PWS, specifically the three sub-factors of technical/management factor, each of which referenced a specific PWS task: (1) PWS Task 3--Configuration Control, (2) PWS Task 4--System Installation and Administration, and (3) PWS Task 5--Database Support. Id.

To the extent that NOVA contends that the agency's technical evaluation failed to consider the offerors' entire proposal, instead focusing exclusively on the three technical sub-factors, we find this to be an untimely challenge to the terms of the solicitation. NOVA's assertion is contrary to the clear terms of the solicitation, and thus, at best, identifies a patent ambiguity. If NOVA believed that the RFP required the agency's technical evaluation to include more than the three sub-factors provided, NOVA was required to challenge the solicitation's terms prior to the time for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2013). Furthermore, with regard to NOVA's assertions that it should have received a higher technical rating, we have reviewed the record and find that NOVA's disagreement with the agency's findings does not provide a basis to sustain the protest.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the selection decision was not adequately documented, and was therefore unreasonable. We recommend that DISA make a new source selection decision that adequately documents the comparative merits of the proposals and the agency's rationale for award. If the new source selection decision determines that a proposal other than DMI's represents the best value to the government, we recommend that the agency terminate the award to DMI and make award to the offeror selected. We also recommend that the agency reimburse NOVA's costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with section 21.8(f) of our Regulations, NOVA's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling
General Counsel