



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Sayres & Associates Corporation

File: B-408253; B-408253.2

Date: August 1, 2013

Andrew P. Hallowell, Esq., Pargament & Hallowell, PLLC, for the protester.
Cheryl R. Parker, Esq., Robert Schlesinger, Esq., Susanna Torke, Esq.,
Department of the Navy, for the agency.
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where agency misevaluated clearly presented information in protester's proposal, assigned a weakness inconsistent with the solicitation, and conducted a flawed cost/technical tradeoff.

DECISION

Sayres & Associates Corporation, of Washington, D.C., protests the issuance of a task order to Client Solutions Architects LLC (CSA), of Mechanicsburg, Pennsylvania, by the Department of the Navy, Space and Naval Warfare Systems Command (SPAWAR), under task order request for proposals (TORP) No. N00024-12-R-3240 for program management, business management, and executive level support services.¹ Sayres argues that the agency's evaluation of its technical proposal and best-value tradeoff decision were unreasonable.

We sustain the protest.
BACKGROUND

¹ The TORP was issued under the Navy's SeaPort-e multiple-award indefinite delivery/indefinite quantity (ID/IQ) contract schedule. The evaluated award value of the task order is \$70,537,006.38. Technical Evaluation Board (TEB) Report at 5. As a result, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. 10 U.S.C. § 2304c(e)(1)(B).

The Navy issued the TORP on December 21, 2012, as a service-disabled veteran-owned small business set-aside for the purpose of obtaining management support services for three Navy SPAWAR programs: SPAWAR 5.0 (Office of the Chief Engineer), SPAWAR 6.0 (acquisition and program management competency), and the SPAWAR Fleet Readiness Directorate (FRD). The TORP anticipated the issuance of a cost-plus fixed-fee task order for a one year base period plus two 1-year option periods and two award term years.²

The TORP provided that the task order would be issued on a best value basis considering five technical factors as well as cost, and that the technical factors, “when combined, are significantly more important than cost.” TORP at 50. The technical factors, in descending order of importance, were: (1) organizational experience; (2) personnel experience; (3) technical approach; (4) management approach; and (5) past performance. Concerning cost, the TORP advised that “proposed costs may be adjusted, for purposes of the evaluation, based on the results of cost realism analysis,” and that the “resulting realistic cost estimate will be used in the evaluation.” Id. at 52.

The Navy received six proposals in response to the TORP, including the proposals of Sayres and CSA. Following evaluation, three of the six proposals were considered unawardable. The three offerors remaining eligible for award were evaluated as follows:

	Sayres	CSA	Offeror A
Organizational Experience	Good	Good	[DELETED]
Personnel Experience	Acceptable	Outstanding	[DELETED]
Technical Approach	Marginal	Good	[DELETED]
Management Approach	Marginal	Good	[DELETED]
Past Performance	Satisfactory Confidence	Satisfactory Confidence	[DELETED]
Overall Technical	Acceptable	Good	[DELETED]
Proposed Cost	[DELETED]	\$70,149,044.76	[DELETED]
Evaluated Cost	[DELETED]	\$70,537,006.38	[DELETED]

² According to the TORP, “[a]ward terms are a contract-level incentive methodology,” authorizing “extension of the contract beyond the base and option periods for exceptional performance or reduction of the contract period of performance for unsatisfactory performance.” TORP at 3.

TEB Report at 5.

Following this evaluation, the source selection authority (SSA) concluded in the source selection decision document (SSDD) that the CSA proposal represented the best value to the government, where the overall technical merits of the CSA proposal warranted payment of a [DELETED] percent premium over the Sayres proposal.

The Navy made the award to CSA on April 10, 2013, and Sayres requested a debriefing the next day, April 11. The Navy provided a written debriefing on April 15, and this protest followed.

DISCUSSION

Sayres asserts that the Navy improperly assigned its proposal a significant weakness and a weakness under the management approach technical evaluation factor. In this regard, Sayres first challenges the agency's assignment of a significant weakness related to Sayres' presentation of two personnel allocation tables which the agency concluded were contradictory. Second, Sayres challenges the agency's assignment of a weakness for Sayres' proposal of [DELETED]. Sayres also challenges the agency's best value tradeoff decision.³

For the reasons discussed below, we agree with Sayres that the Navy erred in its evaluation of Sayres' proposal under the management approach technical factor, and that the Navy's best value tradeoff decision--premised in part on errors in the management approach evaluation--was flawed. We address Sayres' successful challenges to the agency's evaluation herein. To the extent that arguments presented by the protester are not discussed in this decision, we have reviewed the record and concluded that they are without merit.

The evaluation of an offeror's proposal is a matter within the agency's discretion. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest of an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the

³ Sayres initially protested the agency's technical evaluation under the personnel experience, technical approach, management approach, and past performance factors, as well as the agency's cost realism evaluation. We consider Sayres to have abandoned its challenges to the agency's technical experience factor and cost realism evaluations where the agency provided a substantive response to these issues in its report, and the protester did not further address the allegations in its comments. See Cedar Electric, Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.

stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5.

Personnel Allocation Tables

Concerning the personnel allocation tables--set forth as table 5 and table 6 of Sayres' proposal--the TEB report explained that the tables constituted a significant weakness because:

While Table 5 of the proposal allocates personnel to the various requiring offices, indicating a majority of staffing to FRD, which is roughly in line with the RFP labor category allocation, Table 6 contradicts Table 5 in allocation of personnel, implying the majority of personnel will be allocated to 6.0, with only a small portion of personnel available and qualified to staff FRD. The staffing plan articulated in these Tables indicates an inadequate understanding of the resource requirements needed to adequately staff this [performance work statement (PWS)].

TEB Report at 40. Similarly, in the SSDD, the SSA concluded that "the staffing plan articulated in Tables 5 and 6 in the proposal are contradictory and indicate an inadequate understanding of the resource requirements needed to adequately staff this PWS."

In response, Sayres asserts that the agency failed to reasonably review tables 5 and 6 of its proposal, which it argues were clearly presented, not contradictory, and responsive to two separate requirements of the TORP. We agree with Sayres that the agency failed to conduct a reasonable evaluation of its proposal under the management approach factor, and that a reasonable review of proposal tables 5 and 6 confirms that the tables were not contradictory.

As reflected in the record, tables 5 and 6 of Sayres' proposal addressed two separate aspects of the TORP. As relevant, the TORP first required offerors to provide "a detailed approach" to the "roles and responsibilities of all personnel assigned to perform the tasks in the PWS." TORP at 47 (emphasis added). Separately, offerors were to provide a list of the particular personnel expected to perform the awarded task order who had also worked on contracts identified as relevant experience in the past performance section of the offerors' proposals. Id.

In response to the first requirement, Sayres set forth “a workload distribution across the Sayres team,” presented in table 5 of its proposal. Sayres Technical Proposal at 19-20. This table allocated all proposed labor across the three SPAWAR programs (5.0, 6.0, and FRD), and identified whether the labor categories would be provided by Sayres or a Sayres subcontractor. Thus, table 5 of the proposal represented the overall allocation of labor proposed to staff the SPAWAR requirement.

Next, in response to the second TORP requirement--to identify specific personnel which Sayres intended to use on the task order and who had previously worked on the contracts identified in the past performance section of Sayres’ proposal--Sayres’ provided a list of specifically named personnel, which it set forth in table 6 of its proposal. In immediate preface to table 6, Sayres’ proposal reads as follows:

Personnel with current direct support roles to SPAWAR 6.0, SPAWAR 5.0, and FRD who are expected to perform on the awarded task order, including those that worked on the Past Performance Relevant Experience contracts presented (Column 6) include:

Sayres Technical Proposal at 20. Consistent with that preface, and as required by the TORP, column 6 of table 6 identified the named personnel who were expected to perform on the task order and who had also worked on the past performance reference contracts identified in Sayres’ past performance proposal. Additionally, other columns of the table identified named personnel who are providing incumbent support to the SPAWAR 6.0, 5.0 and FRD programs. While table 6 of the proposal, like table 5, identified the allocation of the named personnel between the SPAWAR programs and stated whether they were Sayres or subcontractor employees, table 6 did not purport to provide an allocation of all labor proposed to staff the SPAWAR requirement. Rather, table 6 was clearly presented to identify a subset of total staffing which was to be performed by named individuals with incumbent experience in SPAWAR program requirements or who worked on Sayres’ past performance reference contracts.

Based on this record, we conclude that a reasonable review of Sayres’ proposal demonstrates that table 6 of Sayres’ proposal was not presented to provide an allocation of all staffing for the requirement, but rather clearly responded to the TORP’s second requirement to identify personnel with experience on past performance reference contracts.⁴ Accordingly, we find the Navy’s conclusion that

⁴ The Navy argues that the title of table 6--“Personnel expected to perform on awarded task order”--led it to conclude that the table reflected Sayres’ total proposed staffing for all requirements. Sayres Technical Proposal at 21. We reject this argument, since the title does not state that table 6 includes all task order
(continued...)

table 6 contradicted table 5's allocation of total staffing levels between SPAWAR FRD, 5.0, and 6.0, to be unreasonable. We therefore sustain the protest on this basis.

Program Manager [DELETED]

Next, concerning Sayres' proposal of [DELETED], the agency evaluators explained in the TEB report that the proposal of these positions constituted a weakness because:

Neither of these positions are required by the PWS nor reflected in the Labor estimates in the [TORP]. Assignment of additional senior positions with higher associated labor rates than those estimated by the requiring offices in the original Task Order cost estimate and [sic] indicates a lack of understanding of the requirements and potential cost risk.

TEB Report at 40.

Sayres argues that the TEB's conclusion was unreasonable and incorrect in this regard, and asserts that the TORP in fact mandated the proposal of personnel in a program manager labor category. In its legal memo, the Navy argues that Sayres misunderstands the TEB's conclusion which, according to the Navy, does not object to the proposal of program manager personnel. Instead, the Navy asserts that the TEB's actual concern regarded the placement of the [DELETED] in Sayres' organization, which duplicated or overlapped the roles of key personnel identified in the TORP.

As an initial matter, we reject the Navy's assertion that the weakness at issue turned on Sayres' placement of its [DELETED] within its organization, rather than Sayres' per se proposal of [DELETED] positions, where the assertion is not consistent with the contemporaneous evaluation record. On its face, the TEB's conclusion criticized Sayres' proposal of "program manager" personnel, which, according to the TEB, were not "reflected in the labor estimates in the [TORP]" and were "additional"--indicating a lack of understanding of the agency's requirements. Therefore, the record simply does not support the Navy's contention that the weakness assigned by the TEB was actually concerned with Sayres' placement of its [DELETED] within its organizational structure.

(...continued)

staffing, and because the content of and preface to the table clearly indicate the table's intended purpose in Sayres' proposal.

Next, we conclude that the weakness assigned to Sayres' proposal, as contemporaneously recorded by the TEB, is not consistent with the terms of the TORP. As was asserted by the protester, the record reflects that the TORP clearly specified the proposal of program manager personnel.

More specifically, our review of the record confirms that the TORP specified a "Program Manager" labor category in three separate sections. First, "program manager" was included in the "Labor Category Identification" section, which set forth "each category of labor specified by the government." TORP at 8. Second, "program manager" was included in a "personnel matrix" set forth in TORP attachment 12. Third, in its instructions to offerors concerning cost proposals, the TORP specified an estimated labor mix that included a program manager labor category with 3,000 labor hours in the base year and 4,000 hours in each option and award term year. The TORP's cost proposal instructions required that "offerors shall propose" a "level of effort by labor category" that was in accordance with the estimated labor mix, and also reiterated that "[o]fferors SHALL propose hours based on the [estimated labor mix]." TORP at 41. Review of the record also demonstrates that, consistent with these specifications, Sayres' proposal included [DELETED].

On the basis of this record, we cannot find that the TEB's conclusion--that program manager positions "were not reflected in the [TORP]" or were somehow "additional"--was consistent with the TORP's specification of a program manager labor category with 3,000 labor hours in the base year and 4,000 labor hours in subsequent years. We also question the TEB's disagreement with Sayres' proposal of "senior positions with higher associated labor rates," where the RFP specified a specific number of hours for a program management labor category--a labor category which is not typically fulfilled by lower labor rate personnel.

Best Value Tradeoff

As shown above, Sayres proposed the lowest evaluated cost among the offerors eligible for award under the TORP, but was also the lowest-rated technically. Accordingly, the agency was required to conduct a cost/technical tradeoff analysis considering whether CSA's higher-rated technical proposal was more advantageous to the government than Sayres' lower cost. Although the protester challenges the adequacy of the agency's documentation of its tradeoff decision, that challenge is without a basis since the underlying record reflects that the agency considered the underlying strengths and weaknesses of the proposals at issue, and made the selection decision based on a consideration of the relative merits of the proposals.

Rather, the flaw in the tradeoff decision is a direct result of the errors in the technical evaluation, as noted above, which had a prejudicial impact on the selection. Specifically, in the analysis of this tradeoff, the SAA directly cited the significant weakness related to Sayres' personnel allocation tables, and also

mentioned the weakness related to Sayres' inclusion of "full-time positions that are not required by the PWS." The SSDD also states that:

Under Factor 4 Management Approach, CSA received a "Good," with one weakness and no significant weaknesses identified, while Sayres received a "Marginal," with three weaknesses and one significant weakness identified. The difference in ratings for Factors 3 [technical approach] and 4 [management approach], the third and fourth most important factors, between a "Good" for CSA and "Marginal" for Sayres, presents a high risk of unsuccessful performance with the Sayres proposal.

SSDD at 41.

This record reflects that the agency's ultimate cost/technical tradeoff decision was premised in part on an unreasonable assignment of a significant weakness, and on the assignment of another weakness which was inconsistent with the terms of the TORP. Correction of these errors could reasonably improve Sayres' evaluation rating under the management approach technical factor, mitigating the perceived "high risk of unsuccessful performance" that concerned the Navy in its tradeoff analysis. Accordingly, we cannot conclude that SSA would have reached the same source selection decision had the errors in the evaluation not occurred, or that Sayres was not prejudiced. A reasonable possibility of prejudice is a sufficient basis for sustaining a protest. J.R. Conkey & Assocs., Inc. dba Solar Power Integrators, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 11; accord Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996). We therefore sustain Sayres' challenge to the agency's best value tradeoff decision.

RECOMMENDATION

We recommend that the Navy reevaluate the protester's proposal in a manner that is reasonable and consistent with the TORP's evaluation criteria. Upon completion of the reevaluation, the agency should perform and document a new cost/technical tradeoff analysis with the rationale for any tradeoff made. If CSA's proposal is not found to represent the best value to the government, the agency should terminate the task order and issue a new task order to the offeror representing the best value to the government.

We also recommend that Sayres be reimbursed its costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2012). The protester's

certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.
4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel