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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: KSJ & Associates, Inc.

File: B-409728

Date: July 28, 2014

David Chance for the protester.

Brian P. Waagner, Esq., Hal J. Perloff, Esq., Steven A. Neeley, Esq., and Thomas F. Rath, Esq., Husch Blackwell LLP, for TASC, Inc., an intervenor.

Kara M. Sacilotto, Esq., Rand L. Allen, Esq., Tracye Winfrey Howard, Esq., and Christine Reynolds, Esq., Wiley Rein LLP, for Booz Allen Hamilton Inc., an intervenor.

Clea B. Efthimiadis, Esq., and D. Randall Kemplin, Esq., Department of the Navy, Space and Naval Warfare Systems Command, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and award decisions is denied where the evaluation and award decisions were reasonable and consistent with the terms of the solicitation.

DECISION

KSJ & Associates, Inc. of Falls Church, Virginia, protests the award of multiple contracts¹ under request for proposals (RFP) No. N65236-12-R-0028, issued by the Department of the Navy (Navy), for support services. The protester challenges the agency's evaluation and award decisions.

¹ The awardees are: (1) BCF Solutions (BCF); (2) Booz Allen Hamilton Inc.; (3) Bowhead Science and Technology LLC (Bowhead); (4) CommIT Enterprises, Inc. (CommIT); (5) Deloitte Consulting LLP; (6) TASC, Inc. (TASC); and (7) Whitney, Bradley and Brown, Inc. (WBB).

We deny the protest.²

BACKGROUND

Issued on May 3, 2013, the RFP sought proposals for a broad range of analytical services to support the mission of the Space and Naval Warfare Systems Center Atlantic (SPAWARSYSCEN Atlantic).³ According to the solicitation's performance work statement (PWS) the activities include: performing analyses and research for management acquisition of technology and services; monitoring program execution by reviewing or developing integrated cost and schedule performance data; ensuring that all program support deliverables are tracked and submitted on time throughout the life of the contract; and developing and monitoring a program/project for identifying and documenting project roles, responsibilities, and required skills, reporting relationships, and creating a staffing management plan. RFP at 9-11.

The RFP anticipated the award of multiple indefinite-delivery/indefinite-quantity contracts, with a 3-year ordering period, under which the Navy would place fixed-price, or cost-plus-fixed-fee with level-of-effort orders.⁴ Id. at 83, 145. The RFP informed offerors that awards would be made on a best-value basis, considering the following factors: (1) technical capability; (2) past performance; (3) small business participation; and (4) cost/price.⁵ Id. at 157.

² KSJ did not retain outside counsel to represent it in the instant protest. Our discussion regarding certain aspects of the agency's evaluation of proposals is therefore general in nature.

³ The agency explains that SPAWARSYSCEN Atlantic requires analytical contractor support to fulfill its mission to rapidly meet the demands for uninterrupted vigilance, fail-safe cyber security, adaptive response and engineering excellence by delivering secure, integrated and innovative solutions to many Naval, joint, and national agencies. RFP at 3; Agency Report (AR) exh. 4, Source Selection Plan (SSP) at 4-5.

⁴ Each delivery or task order would include the order type deemed appropriate by the government. RFP at 52.

⁵ Under technical capability, the RFP provided for the evaluation of four subfactors: (1) scope management support; (2) risk management support; (3) systems engineering management support; and (4) independent technical studies. Under past performance, the RFP advised offerors that the agency would consider the relevance of offerors' past performance, along with the quality of such performance, and assign confidence ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). AR exh. 4, SSP at Forms-3. Under small business participation, proposals were to be evaluated on an acceptable/unacceptable basis. RFP at 160.

For purposes of award, the technical capability factor was significantly more important than past performance and, when combined, the non-cost/price factors were more important than cost/price. The solicitation informed offerors that the best-value determination would entail an assessment by the agency of whether differences in technical merit between proposals outweighed differences in the evaluated cost/price. However, offerors were cautioned that the agency would not make an award at a significantly higher cost to gain slightly superior technical benefits. Id.

Detailed instructions were provided for the preparation of technical and costs proposals. Id. at 139-155. Technical proposals were to be sufficiently comprehensive to demonstrate the offeror's understanding of, and ability to comply with, all the requirements set forth in the solicitation.

With regard to cost/price proposals, offerors were required to complete prime and subcontractor pricing models which were included in the RFP. These pricing models provided the required labor categories and estimated hours for the base and each option year. A total of 3,633,780 hours was estimated by the agency for contract performance. RFP attach. 4A, Prime Contractor Pricing Model. The RFP established that the agency would perform a price reasonableness analysis and a cost realism analysis, and offerors were advised that their proposed costs could be adjusted to realistic levels for evaluation purposes. RFP at 160-161.

Twelve offerors responded to the RFP by the June 27, 2013 closing date, including the protester and the seven awardees. The agency's source selection evaluation board (SSEB) evaluated proposals and prepared a consensus evaluation report that provided adjectival ratings,⁶ that were supported by narrative discussion identifying strengths, weaknesses, and deficiencies in the firms' respective proposals. AR exh. 6, SSEB Report.

⁶ As relevant here, a blue/outstanding rating reflected the evaluators' judgment that the proposal indicates an exceptional approach and understanding; strengths far outweigh any weaknesses. A purple/good rating reflected the evaluators' judgment that the proposal indicates a thorough approach and understanding; strengths outweigh any weaknesses. A green/acceptable rating reflected the evaluators' judgment that the proposal indicates an adequate approach and understanding; strengths and weaknesses are offsetting or will have little or no impact on contract performance. AR exh. 4, SSP at Forms-2.

The evaluation of technical and cost proposals of the seven awardees and the protester was as follows:

	Technical Capability	Past Performance	SB Participation	Proposed Cost	Evaluated Cost
Bowhead	Acceptable	Substantial	Acceptable	\$199,140,217.28	\$201,915,820.72
Booz Allen	Outstanding	Substantial	Acceptable	\$219,483,140.50	\$243,822,498.40
WBB	Acceptable	Substantial	Acceptable	\$219,632,343.27	\$223,299,493.40
TASC	Acceptable	Substantial	Acceptable	\$234,948,831.12	\$238,333,194.00
BCF	Acceptable	Substantial	Acceptable	\$245,455,824.14	\$248,258,644.72
CommIT	Acceptable	Substantial	Acceptable	\$246,218,666.59	\$248,585,479.23
Deloitte	Acceptable	Substantial	Acceptable	\$249,907,866.05	\$257,238,334.40
KSJ	Acceptable	Substantial	Acceptable	\$255,452,245.67	\$256,870,509.73

AR exh. 10, Source Selection Advisory Council (SSAC) Report at 43.

The source selection authority (SSA) reviewed the technical ratings and risk assessments documented in the evaluation reports from the SSEB and the cost evaluation board. The SSA also reviewed the tradeoff analysis and the justification and rationale for the award recommendations in the SSAC report. The SSA performed an independent assessment of the proposals and concluded that “BCF Solutions, Booz Allen Hamilton, Bowhead Science and Technology, LLC, CommIT Enterprises, Inc., Deloitte Consulting LLP, TASC, Inc., and Whitney, Bradley and Brown, Inc. provide the best overall value to satisfy the contract requirements, and that awards to these seven offerors will provide the [g]overnment with the best value through the duration of the contract.” AR exh. 11, Source Selection Decision at 4. After learning of the agency’s award decisions and receiving a debriefing, KSJ filed this protest.

DISCUSSION

In its protest, KSJ challenges two weaknesses identified in its proposal under the technical capability factor and maintains that the agency failed to reasonably consider whether upward adjustments made to each of the seven awardees’ proposed costs were indicative of a lack of understanding of the performance requirements. In addition, the protester asserts that the source selection decision was flawed.

Regarding the weaknesses, the protester disputes the agency’s findings that it did not provide sufficient information or explanation in its proposal. Protest at 2. The Navy filed a report in which it provided detailed responses to all of KSJ’s protest grounds, including the evaluation of KSJ’s proposal under the technical capability factor.

In its comments responding to the agency's report, KSJ provided no substantive response in connection with its challenge to the weaknesses identified in its proposal. We therefore dismiss these protest grounds as abandoned. Where an agency provides a detailed response to a protester's allegations and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338 at 3; see also Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7 (where protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the originally-raised allegation abandoned).

Next, we reject KSJ's allegation that the agency impermissibly failed to consider whether the upward adjustments made to each of the seven awardees' proposed costs were indicative of a lack of understanding of the performance requirements.⁷ Protest at 2-3; Protester's Comments at 7-8.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not dispositive because, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.404-1(d); Am. Tech. Servs., Inc., B-407168, B-407168.2, Nov. 21, 2012, 2012 CPD ¶ 344 at 5; DPK Consulting, B-404042, B-404042.2, Dec. 29, 2010, 2011 CPD ¶ 12 at 11. 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. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonable and consistent with the terms of the solicitation. Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 17; Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Here, in relevant part, the RFP provided that the purpose of the realism analysis was to "assess the degree to which the cost/price reflects the approaches and/or

⁷ In its May 29 comments, KSJ raises for the first time that the agency impermissibly compared the offerors' proposed costs to an independent government cost estimate (IGCE). Protester's Comments at 8-9. This allegation is untimely as it is based on facts in the April 15, 2014 debriefing letter provided to KSJ. If the protester believes that the RFP prohibited the agency's use of an IGCE, the firm was required to raise this challenge within 10 days of its receipt of the April 15 debriefing letter. Therefore, this basis of protest is untimely and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2014).

risk assessments made in the technical proposal” and that proposals which are “unrealistically high or low in terms of cost, may be deemed reflective of an inherent lack of technical competence, or indicative of a failure to comprehend the complexity of risks of the proposed work and may be grounds for rejection of the proposal.” RFP at 160.

The record shows that the Navy did not consider the upward adjustment of the seven awardees’ proposed costs--as well as the protester’s proposed costs--to be indicative of a lack of understanding of the agency’s requirements. In this regard, the cost adjustments with respect to the awardees were relatively modest--the highest being an approximately 11 percent adjustment to Booz Allen’s proposed subcontractor labor rates because, in some instances, they were lower than rates established by the Service Contract Act. Accordingly, the agency was not required to downgrade or otherwise adjust the ratings assigned to the offerors’ technical proposals. Contrary to the protester’s allegations, the solicitation afforded the agency the discretion to determine whether unrealistically low proposed costs “may” be indicative “of an inherent lack of technical competence” or may indicate a failure to comprehend the complexity of the solicited services. While KSJ disagrees with the agency’s assessments of the awardees’ proposals, the protester has not shown that the agency’s judgment in this regard was unreasonable.

Finally, KSJ challenges the source selection decision. According to the protester, since the Deloitte proposal received identical evaluation ratings as the KSJ proposal, KSJ should have received the award because of its lower evaluated cost. Protest at 2-3; Protester’s Comments at 3-4.

We disagree. The protester’s focus on the ratings is misplaced, as points scores and adjectival ratings are but guides to, and not substitutes for, intelligent decision-making. See, e.g., Kellogg Brown & Root Servs., Inc., B-298694.7, June 22, 2007, 2007 CPD ¶ 124 at 5; TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 17. In other words, the essence of an agency’s evaluation is reflected in the evaluation record itself, not in the adjectival ratings or adjectival characterizations of proposal features as strengths or weaknesses. IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 4.

Here, the SSA looked beyond the adjectival ratings and performed a qualitative assessment of the merits of the competing proposals. In this regard, the SSA noted that the cost difference between KSJ and Deloitte was minimal and that Deloitte maintained a relative advantage under the technical factors notwithstanding the equal adjectival ratings. The record also shows that the SSEB identified one strength and no weaknesses in its evaluation of Deloitte’s technical proposal,

whereas the KSJ proposal was assigned no strengths and two weaknesses. While KSJ is dissatisfied with the agency's judgments and comparative assessments, it has failed to demonstrate that they were unreasonable. Id.

The protest is denied.

Susan A. Poling
General Counsel