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Decision

Matter of: Lewis-Price & Associates, Inc.

File: B-409851; B-409851.2

Date: August 26, 2014

Theodore P. Watson, Esq., Nicole L. Carter, Esq., and Leanna Young, Esq., Watson & Associates, LLC, for the protester.
Robert E. Korroch, Esq., Anthony Hotchkiss Anikeeff, Esq., and William Alexander Wozniak, Esq., Williams Mullen, for K-Cruz, LLC, the intervenor.
John E. Pettit, Esq., Department of the Air Force, 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

1. Protest alleging that agency unreasonably evaluated the protester's technical proposal and past performance is denied where the evaluation and source selection decision were reasonable and in accordance with the solicitation's evaluation criteria.
 2. Agency's discussions with the protester were meaningful where they led the protester into the areas of its proposal that required revision.
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DECISION

Lewis-Price & Associates, Inc. (LPA), of Alexandria, Virginia, protests the award of a contract to K-Cruz, LLC, of Newport News, Virginia, under request for proposals (RFP) No. H92241-13-R-0012, for technical, logistics, and acquisition support services. The RFP was 100 percent set aside for competition amongst small businesses certified under the Small Business Administration's 8(a) contracting program. LPA alleges that the agency unreasonably evaluated various aspects of its proposal, and failed to provide meaningful and adequate discussions.

We deny the protest.

BACKGROUND

The United States Special Operations Command, Technology Application Contracting Office, issued the RFP on November 1, 2013, seeking a contractor to provide professional technical, analytical, logistics, and acquisition support services for the agency's Technology Applications Program Office (TAPO), Mission Enhanced Little Bird (MELB) Program Office, and the Special Operations Mission Planning Environment Program Office (SOMPE PMO). TAPO and MELB provide aircraft life cycle modernization and sustainment management for the 160th Special Operations Aviation Regiment, while SOMPE PMO provides common and tailored mission planning software tools to all ground and airborne special operations units within the United States Special Operations Command. The services sought under the RFP are specifically to support modernization and sustainment of aircraft and associated equipment and mission planning systems.

The RFP contemplated the award of a single fixed-price labor hour, indefinite-delivery, indefinite-quantity contract on a best-value basis considering three evaluation factors, listed in descending order of importance: (1) technical (management) capability; (2) price; and (3) past performance.¹ RFP at 265. The technical (management) capability factor was comprised of three subfactors, also listed in descending order of importance: (1) management approach, (2) recruitment, retention, and sustainment of a qualified workforce, and (3) response to task order proposals. Id. at 265-66. For the technical (management) capability factor and subfactors, the RFP set forth an adjectival rating system with an integrated assessment of performance risk, consisting of the ratings outstanding/very low risk, good/low risk, acceptable/moderate risk, marginal/high risk, and unacceptable.

Concerning both price and technical risk, the RFP advised that “[p]roposals that are unrealistic in terms of technical (management) capability or price may be rejected,” and included Federal Acquisition Regulation (FAR) provision 52.222-46, “Evaluation of Compensation for Professional Employees.” As relevant, FAR § 52.222-46 provides that the agency will evaluate an offeror’s proposed compensation plan “to assure that it reflects a sound management approach and understanding of the contract requirements,” and further states that the evaluation “will include an assessment of the offeror’s ability to provide uninterrupted high-quality work.” FAR § 52.222-46(a). The provision also states that the compensation plan “will be

¹ The solicitation also indicated that the non-price evaluation factors, when combined, were approximately equal to price. Id. at 265. This provision, however, is inconsistent with the solicitation provision noted in the text above, which indicated that the technical (management) capability factor was more important than price. This disconnect creates a patent ambiguity in the solicitation. That said, the matter was not raised during the procurement or by the parties in this case.

considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation.” Id.

Finally, the RFP provided that past performance would be evaluated, “based on the offeror’s most recent contracts for similar requirements for the past three years, as well as data from independent sources.” RFP at 267. Offerors were instructed to provide a maximum of 15 contract references. Offerors were also advised that they “should make every effort to submit references that are similar in scope, nature and complexity to this solicitation” and that “[r]elevancy is a key variable,” in the past performance evaluation. Id. at 262, 268. “Relevant” past performance was defined as references involving a “similar scope and magnitude of effort and complexities this solicitation requires,” while “somewhat relevant” past performance was defined as references involving “some of the scope and magnitude of effort and complexities this solicitation requires.” Id. at 268.

The agency received proposals from multiple offerors in response to the RFP, including LPA and K-Cruz. In accordance with its source selection plan, the agency established a source selection evaluation board (SSEB), which first evaluated the proposals under the technical (management) capability factor independent of the offeror’s compensation plans. The SSEB rated LPA’s proposal as follows:

Technical (Management) Overall	Marginal/High Risk
Management Approach	Marginal/High Risk
Recruitment, Retention, Sustainment	Acceptable/Moderate Risk
Task Order Responses	Acceptable/Moderate Risk
Past Performance	Somewhat Relevant/Satisfactory
Price	\$33,132,179

SSEB Report at 18. The SSEB then reviewed the offerors’ proposed compensation plans in accordance with FAR § 52.222-46, and thereafter updated the initial technical (management) capability evaluation results. In the case of LPA’s proposal, the SSEB’s review of the proposed compensation plan revealed a concern that LPA’s proposed professional salaries and benefits were significantly lower than the agency’s estimates of the incumbent compensation rates, without sufficient explanation. This concern, coupled with a previously evaluated lack of planning for “hiring and retaining qualified Acquisition personnel,” led the agency to downgrade LPA’s rating under the recruitment, retention, and sustainment subfactor to marginal/high risk. SSEB Report at 14, 21-22.

The agency established a competitive range consisting of LPA and K-Cruz, and held one round of discussions. Following discussions, the SSEB reviewed the offerors’ responses, and then conducted an additional, integrated assessment of the final proposals.

Concerning LPA, the agency concluded that LPA's discussions responses and final proposal did not resolve the agency's concerns, and that no changes to LPA's evaluation results were warranted. As relevant, the SSEB rated LPA as overall "Marginal/High Risk" for technical capability whereas K-Cruz received an overall technical capability rating of "Good/Low Risk." LPA's total evaluated price was \$33,292,179 as compared to K-Cruz's total evaluated price of \$39,300,684. Source Selection Decision (SSD) at 2.

After the SSEB's evaluation was completed, the Source Selection Authority (SSA) reviewed the SSEB's report and agreed with its findings. In the SSD, the SSA explained that the selection decision presented a "straight-forward" tradeoff between a significantly lower-priced proposal, and a proposal that presented significantly lower risk. Id. Ultimately, the SSA concluded that K-Cruz represented "the best tradeoff between performance, cost, and risk and is the best value." Id. In making that tradeoff, the SSA reasoned that although "the difference in price between the offerors . . . is significant," the savings would come at the expense of "a major increase in programmatic risk with Lewis Price . . . [that] could result in disruption of service," and that the lower-priced proposal did not represent the best value. Id.

The agency provided LPA with an unsuccessful offeror letter on May 8, 2014. LPA timely requested a debriefing, which the agency provided on May 15. This protest followed.

DISCUSSION

LPA asserts that the agency unreasonably evaluated its proposal under the technical (management) capability factor, failed to give meaningful consideration to LPA's teaming partner's references under the past performance factor, and failed to conduct meaningful and adequate discussions.²

Technical (Management) Capability Factor

In reviewing challenges to the agency's evaluation of proposals, we do not reevaluate proposals, but, rather, review the agency's evaluation to ensure that it was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. Philips Med. Sys. N. Am. Co., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. An offeror's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

² The protesters' primary protest arguments are addressed in this decision. Additional arguments not addressed in the decision were reviewed by our Office and found to be without merit.

With regard to the technical (management) capability factor, LPA principally asserts that the agency imposed stricter evaluation standards than set forth in the RFP, or applied unstated evaluation criteria, in assessing weaknesses against LPA's management approach, site lead personnel, and incumbent capture plan. On our review of the record, however, we conclude that LPA's challenges are based on an unreasonably narrow interpretation of the RFP's instructions and evaluation criteria, or on a misunderstanding of the criticisms of LPA's proposal set forth in the agency's evaluation. Moreover, the record demonstrates that LPA's proposal and discussions responses failed to provide sufficient detail or analysis to support its proposed approach.

For example, concerning the management approach subfactor, LPA argues that the agency applied stricter, or unstated, evaluation criteria in determining that its approach "was generic without specific acquisition support functions addressed in detail, e.g., how the contractor will complete the work vs. what the work is." SSEB Report at 33. LPA asserts that this weakness went beyond the scope of the RFP's evaluation criteria where the RFP required only that an offeror "demonstrate an understanding of the work to be performed."³ Protest at 16.

Contrary to LPA's assertion, however, the RFP's evaluation criteria plainly required the offerors to demonstrate not only their understanding of what the RFP tasks were, but to also provide a detailed description of how the various types of work would be completed. Specifically, the RFP stated that the agency would evaluate:

the offeror's description and substantiation of how the various types of work (short term tasks and long term tasks) will be accomplished, which contractor personnel would be involved, and how the contractor would anticipate the Government to participate in order to ensure success of the task.

³ LPA also asserts that its proposal did describe how it would complete acquisition support functions. In its report, the agency provides substantial support for its evaluation findings by identifying over a dozen areas in which LPA provided only generic statements without detail or substantiation. For example, while LPA touted its Defense Acquisition Workforce Improvement Act (DAWIA)-certified workforce in its management approach, it provided no substantiation of DAWIA-certified employees, and the agency's review of provided resumes revealed that only the proposed project manager was shown to have DAWIA certification. On the whole, we find that the agency's evaluation of LPA's approach as generic and without detail was reasonable, and that LPA's criticisms amount to mere disagreement with the agency's judgment.

RFP at 266. Accordingly, the agency's criticism that LPA's management plan lacked details concerning "how the contractor will complete the work," was wholly within the scope of the stated evaluation criteria and the evaluators' discretion.

Next, LPA asserts that the agency applied an unstated evaluation criterion in assessing a weakness related to LPA's proposal of recent or pending retirees as site leads for the two currently-known locations of work, where the RFP contained no prohibition on the proposal of recent or pending retirees. In this case, LPA misunderstands the agency's criticism of its proposed site leads, which actually concerned how quickly the personnel would be available to begin work, and acclimate to an acquisition management environment.

In this regard, the SSEB report's description of the weakness explains the agency's concern that the proposed personnel's "transition to take a new job or assimilate [to] the acquisition environment may take some time which presents a risk to the government." SSEB Report at 34. In the agency report, the agency further explains that this was the case because one of the proposed personnel was still on active duty with the United States Army without an approved retirement date, raising a concern about when the individual would be available to begin work.⁴ Further, the agency explained that it was concerned about both proposed individuals' transition to an acquisition management environment where both proposed site leads had unit-level acquisition experience, but no apparent program office management experience. Again, based on our review of the record, we cannot find the evaluation findings unreasonable, or inconsistent with the RFP, which established that the agency would evaluate "the ability of the offeror to commence support within [the required] timeframes." RFP at 266.

Finally, concerning the recruitment, retention, and sustainment subfactor, LPA protests the agency's assessment of a weakness because, in the agency's view, LPA "provides no plan for hiring and retaining qualified acquisition personnel; they do not plan to recruit incumbent workforce until after the contract award." SSEB Report at 35. LPA contends that this criticism of its approach is unreasonable because the company cannot legitimately plan to recruit incumbent workers until it is clear that LPA is the awardee. However, our review of the evaluation record reveals reasonable agency concerns that are consistent with the evaluation criteria set forth in the RFP.

As explained above, the RFP advised offerors to include sufficient information for the agency to evaluate the offerors' proposed compensation of professional employees per FAR § 52.222-46. As set forth in full text in the RFP, the FAR

⁴ The agency explains that under applicable regulations, applications for voluntary retirement are required "no later than 9 months before the requested requirement date or beginning date of transition leave." Army Regulation 600-8-24.

provision cautions offerors that “lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.”⁵ RFP at 255.

Concerning recruitment for the requirement, LPA’s proposal indicated that “the first course of action is to offer the incumbent workforce the Right of First Refusal.” However, the agency found that LPA’s proposal did not address whether LPA had conducted any analysis of the incumbent workforces’ salary and benefits, or if LPA had considered whether its proposed salary and benefits were likely to capture that workforce. The agency was concerned with this approach, where the SSEB’s estimates showed that LPA’s proposed compensation would result in “double digit” reductions from the professional compensation paid by the incumbent, up to 44.4 percent. SSEB Report at 21.

During discussions, the agency advised LPA of its concern that “the proposal does not address if any analysis has been conducted” concerning the incumbent workforce salaries, and reminded LPA of the need to substantiate its compensation plan in accordance with FAR § 52.222-46. Items For Negotiation (IFN) Notice at 3. In its response, LPA did not provide evidence of analysis of the incumbent salary and benefits. Instead, LPA simply asserted that proposed employee salaries and benefits “will be at or above the salary paid for the same labor category under the current contract.” IFN Responses at 27 (emphasis original).

The SSEB acknowledged LPA’s assertion that it would match the incumbent salaries; however, ultimately, the SSEB concluded that LPA’s proposal presented a high risk recruitment approach where LPA provided no evidence that it knew, or had estimated the incumbent compensation packages, and where the proposed salaries set forth in its proposal were significantly lower than the agency’s estimates. Again, in light of the full evaluation record, and the requirements of FAR § 52.222-46, we see no basis to question the agency’s analysis of LPA’s recruitment approach as high risk.⁶

⁵ In the context of a fixed-price labor hour contract, our Office has held that this FAR clause anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements. See Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9.

⁶ LPA also asserts that it was incorrect for the agency to determine that incumbent personnel would suffer salary reductions where LPA directly asserted that it would match existing salaries and improperly evaluated LPA’s proposed salaries against the incumbent rates. We disagree and conclude that it was reasonable for the agency to assess risk in this area where LPA’s promise to match salaries without demonstrating any knowledge of what those salaries might be, in conjunction with the fact that the salaries set forth in LPA’s proposal were significantly lower than the
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Past Performance

LPA argues that the agency failed to give meaningful consideration to its teaming partner, [DELETED], in the past performance evaluation. LPA asserts that if the agency had given proper consideration to [DELETED]'s reference contracts, LPA would have received at least a "relevant" past performance rating, rather than the "somewhat relevant" rating it received.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. A protester's disagreement with such judgment does not provide a basis to sustain a protest. ManTech SRS Techs., Inc., B-408452, B-408452.2, Sept. 24, 2013, 2013 CPD ¶ 249 at 10.

We conclude that the agency reasonably evaluated LPA's past performance in a manner that was consistent with the solicitation criteria. The record reflects that LPA included a total of eight contract references in its past performance proposal, five of which related to work performed by LPA's teaming partner, [DELETED].⁷ Of the three contracts pertaining to LPA, two involved only budget analysis services, none involved aircraft flight operations or technical support services, and none exceeded \$1 million in total value. Further, while several of the contracts pertaining to [DELETED] appeared to involve technical support services, three of the five contracts identified had total values of \$2 million or less, and only one of the references contained any detail as to the contract's scope of work.

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agency's estimates of the incumbent rates, indicated a potential lack of sound management judgment and lack of understanding under FAR § 52.222-46. We also disagree that the agency unreasonably required LPA to have knowledge of the incumbent salaries. First, the agency's compensation estimate was not based solely on the incumbent contract, but on multiple contracts for similar professional services. Second, under FAR § 52.222-46, reduction of salaries vis-à-vis incumbent rates is a valid area of agency evaluation and LPA offered no support for its assertion that it would match the current salaries.

⁷ LPA's past performance proposals contained three references in a list of "current contracts," and seven references in a list of "awarded contracts during the previous three (3) years." However, the list of seven awarded contracts included two of the three "current" contracts, such that the past performance proposal appears to have identified eight unique contract efforts.

During discussions, the agency advised LPA that its past performance references involved contracts that were “all of small value,” and that “the proposed team member/subcontractor [DELETED] has a number of larger contracts, but no synopsis of relevant experience . . . please address the relevancy of these contract efforts to the requirement in this solicitation.” IFN Notices at 5. In response, LPA did not provide additional detail concerning [DELETED]’s previously provided contract references, but instead provided a list of one additional [DELETED] reference and six additional LPA references.

In addition, these supplemental references failed to address the agency’s concerns. For example, the additional [DELETED] reference provided by LPA was again of small value (under \$2 million). With regard to the six LPA references, the record shows that the references did not include basic information such as contract numbers, contract values, or dates of performance, and were thus insufficiently documented to allow for evaluation.

Based on this record, we think the agency reasonably concluded that the majority of the contract references provided insufficient information to allow for a complete evaluation. Further, based on our review of the information available, the agency reasonably concluded that none of LPA’s references, and few of [DELETED]’s references, were similar in scope to the RFP requirements. Finally, the record shows that of the two [DELETED] references over \$2 million, neither reference’s total value exceeded half the magnitude of the effort required here. Accordingly, we have no objection to the agency’s conclusion that LPA’s past performance involved only “some of the scope and magnitude of effort and complexities this solicitation requires,” and warranted a “somewhat relevant” evaluation rating. RFP at 268.

Discussions

LPA alleges that the agency failed to conduct meaningful discussions where it “failed to disclose serious issues it knew existed with [LPA’s] pricing.” Protest at 23. LPA later filed a supplemental protest expanding its discussions allegations to several technical areas in which LPA asserts that it received inadequate discussions. We disagree with both the initial and supplemental allegations.

The Federal Acquisition Regulation (FAR) requires agencies conducting discussions with offerors to address, “[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. Nonetheless, an agency need not “spoon

feed” an offeror as to each and every item that could be revised to improve an offeror’s proposal. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 15.

We first note that the agency’s evaluation record does not show any significant weaknesses or deficiencies assessed against LPA’s proposal. Rather, the evaluation demonstrates the assessment of weaknesses only. Further, we conclude that the agency’s discussion notices were sufficient to lead the protester into the areas of its proposal requiring revision.

For example, LPA contends that the agency failed to conduct meaningful discussions with regard to price, where it alleges the agency “failed to raise price as a concern thereby denying Lewis Price the opportunity to respond.” Protest at 23. LPA argues that “[n]ow, after the fact, the [agency] admits that it had concern with Lewis Price’s salaries, and therefore assessed Lewis Price with a poor ranking of high risk.” Id. However, as addressed above, the agency did highlight its concerns about the salaries proposed by LPA.⁸ Specifically, the discussions letter stated:

The proposal does not address if any analysis has been conducted of the incumbent workforce’s salary and benefits, and whether the offeror’s proposed salary and benefits are comparable or likely to “capture” this workforce or a similarly qualified workforce. The absence of this detail raises the performance risk of the offeror being able to successfully retain the incumbent workforce or successfully recruit a workforce that can immediately perform. The offeror needs to substantiate that their compensation plan meets the intent of FAR 52.222-46.

IFN Notice at 3. While this discussions notice does not explicitly state that the agency was concerned that LPA’s salaries were too low and direct LPA to increase salaries, the notice advises LPA that the agency was concerned with the lack of salary analysis in LPA’s proposal and reminds LPA of the need to substantiate that its compensation plan does not pose a risk to providing the agency with uninterrupted high-quality service in accordance with FAR § 52.222-46. As this discussion notice closely tracks to the agency’s basis for concern with LPA’s

⁸ Concerning LPA’s price overall, the agency noted that it was “[DELETED] percent below the [independent government estimate],” but did not consider the overall price unrealistic, or assign any weaknesses relating to LPA’s price overall. Rather the agency assessed two weaknesses specific to LPA’s proposed professional compensation rates and its lack of supporting analysis, which in turn drove the agency’s decision to downgrade LPA under the recruitment, retention, and sustainment subfactor.

proposed compensation plan and assessment of a high risk rating, we see no basis for LPA's claim that it was not advised of the agency's concern regarding risk in this area.

Similarly, we conclude the agency's discussions in the technical areas were sufficient to lead the protester into the areas of its proposal requiring revision. For example, concerning the weakness, discussed above, that LPA's management approach "was generic without specific acquisition support functions addressed in detail," LPA's discussions notices stated that:

The proposal states [that LPA] is familiar with TAPO's operations and responsibilities for life cycle management of complex weapons systems, but provides insufficient detail to evaluate this understanding . . . Please address the offeror's understanding of what acquisition management of aircraft and aircraft mission systems entails.

IFN Notice at 3. This discussion notice was sufficient to advise LPA of the need to increase the level of specificity in its management approach. In sum, we conclude that the agency's discussions were sufficient; an agency need not "spoon feed" an offeror as to each and every item that could be revised to improve an offeror's proposal. L-3 Sys. Co., supra.

CONCLUSION

Overall, our review of the evaluation record in this case supports the SSEB's evaluation and the SSA's determination that the selection decision was a "straight-forward" tradeoff between a significantly lower-priced proposal, and a proposal that presented significantly lower risk. As explained above, we have no basis to question the propriety of the agency's evaluation of LPA's proposal or the manner of its discussions with the protester. As a result, our Office finds no basis to question

the agency's payment of approximately \$6 million more to select K-Cruz's proposal, where the agency concluded that the selection of LPA would pose "a major increase in programmatic risk. . . [that] could result in disruption of service." SSD at 2.

The protest is denied.

Susan A. Poling
General Counsel