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Decision

Matter of: Viatech, Inc.

File: B-411388

Date: July 21, 2015

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Paul F. Khoury, Esq., Brian G. Walsh, Esq., and J. Ryan Frazee, Esq., Wiley Rein LLP, for ManTech Sensor Technologies, Inc., the intervenor.
Michael J. Kraycinovich, Esq., and Paul L. Harris, Esq., Department of the Army, for the agency.
Kenneth Kilgour, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly concluded the protester's probable cost of performing a cost-reimbursement contract could not be determined is denied where the agency reasonably concluded that the protester's cost proposal was ambiguous as to how the contract work would be allocated among team members with materially different cost structures.

DECISION

Viatech, Inc., of Eatontown, New Jersey, protests the Department of the Army's issuance of a task order to ManTech Sensor Technologies, Inc., of Fairfax, Virginia, under request for task execution plan (RTEP) No. W56KGYS3R1044, for worldwide sustainment support services for the Logistics Readiness Center (LRC) - Field Support Directorate (FSD) for the Program Manager (PM) Joint Personnel Identification (JPI) Quick Reaction Capability (QRC). The protester asserts that the Army improperly evaluated its cost as undeterminable.

We deny the protest.

BACKGROUND

The RTEP, issued to contract holders under the Strategic Services Sourcing (S3) multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contract, provided for

the issuance of what the agency has designated as a single, “cost-plus fixed-fee, term form (CPFF-TF) task order,” for a base year with one option year, to furnish services, hardware and software for biometrics collection, storage, matching and analysis in a forward operating environment. RFP at 1. The task order was to be issued to the offeror whose proposal represented the best value to the government, considering the following three evaluation factors: technical, cost, and past performance. Amended RTEP at 25. The technical factor was significantly more important than cost, while cost was slightly more important than the past performance factor; technical and past performance, when combined, were significantly more important than cost. Id.

The RTEP provided that the government would evaluate the realism of the offeror’s proposed costs in relation to the offeror’s specific technical approach by determining what the government predicts will be the most probable cost of the offeror’s approach. The RTEP further provided that, to the degree that the government’s most probable cost estimate differed from the offeror’s proposed cost, the proposed cost may be adjusted for the purposes of evaluation. Amended RTEP at 26. The RTEP, however, cautioned that:

Proposals with unclear, inconsistent or missing information may be judged to mean the offeror does not fully understand the requirements or understand what it takes to meet or exceed the requirements. Those proposals may receive ratings of unacceptable and therefore be ineligible for award.

RTEP at 21.

The RTEP advised offerors that the government intended to evaluate proposals and issue a task order on the basis of initial proposals and that the offeror’s initial proposal should therefore contain the offeror’s best terms from a technical and price/cost standpoint. In this regard, the RTEP specifically informed offerors that the “[g]overnment may or may not ask questions about proposals which contain inconsistent or unclear information.” Amended RTEP at 20-21.

Viatch and ManTech, both holders of an S3 contract, submitted proposals in response to the RTEP. Viatch’s proposal explained that it is a wholly owned affiliate of D&S Consultants, Inc. (DSCI), which is “[DELETED]” including, in addition to Viatch: [DELETED]. Agency Report (AR), Tab 7AD, Viatch Cost Proposal, at 3. Viatch’s proposal provided that all of the work would be performed by Viatch and [DELETED], [DELETED] and [DELETED] respectively. AR, Tab 7ae, Viatch Proposal Spreadsheet. Viatch’s cost proposal, however, stated that,

[t]o provide the best value support solution in response to this Request for Task Execution Plan (RTEP), use of affiliates across the DSCI

enterprise may be contemplated in execution. Employees are, from time to time, re-assigned from one affiliate to another.

AR, Tab 7AD, Viatech Cost Proposal at 4. In addition, Viatech's cost proposal also provided with respect to labor mix that:

Labor categories, hours, and rates are proposed in accordance with the submission requirements. The Government has designated this effort as CPFF Term, therefore, our proposed labor mix to include categories and rates are submitted for evaluation purposes only. Viatech/[DELETED] reserves the right to vary the labor mix during task execution. Should additional labor categories not originally proposed be necessary during performance, we reserve the right to utilize these labor categories to meet Government Customer requirements.

Id. at 6.

The agency in its evaluation of Viatech's cost proposal found that the protester's probable cost was "undeterminable." AR, Tab 8B, Viatech Cost Evaluation, at 2. In this regard, the agency noted that Viatech's proposed solution permitted the offeror to change labor categories and affiliates during task order performance, with the result that, according to the cost evaluator for Viatech's proposal, the proposal included an "ambiguity" as to the labor mix that would be used. Declaration of Cost/Price Evaluator at 2. As a result, the cost evaluation report found with respect to overhead costs that:

[b]ased on the proposed assumptions the Viatech solution allows the offeror to change labor categories and affiliates during performance of the award. Though Viatech anticipates that [DELETED] will perform a significant portion of the work, no other affiliate hours or categories were proposed. The overhead rates proposed for Viatech and [DELETED] ([DELETED] and [DELETED] respectively) are materially different from the overhead rates proposed for [DELETED]. ([DELETED], [DELETED], and [DELETED] respectively). Based on the variance in overhead rates and G&A [general and administrative] rates (seen in a later paragraph) and the assumption that any affiliate may be used the probable cost is undeterminable for overhead.

AR, Tab 8B, Viatech Cost Evaluation, at 4. Likewise, with respect to G&A costs, the cost evaluation report found that:

[DELETED] proposed G&A by applying the proposed G&A rate to the proposed direct labor and overhead costs for [DELETED]. The [DELETED] G&A rate is [DELETED], in contrast the G&A rates for

[DELETED] are materially higher ([DELETED], [DELETED], and [DELETED] respectively)[.] [B]ased on the assumption that affiliates may be used during performance the G&A cost is undeterminable.

Id. at 5. (Viotech's proposed G&A rate was [DELETED]. Id. at 6.)

As a result of the wide variance in indirect rates between Viotech and [DELETED] on the one hand, and the other affiliates on the other hand, and Viotech's reservation of the right to change labor categories and affiliates during performance of the contract, the agency cost evaluation did not assign Viotech's proposal a most probable cost, but instead found the probable cost of the proposal to be "undeterminable." AR, Tab 8B, Viotech Cost Evaluation, at 4-6, 9. In addition, the cost evaluation questioned the approach of Viotech and [DELETED] in basing their proposed direct labor rates on Salary Survey Data from the Economic Research Institute, using [DELETED] percentile salaries. The agency found that Viotech's proposal did not include any analysis justifying use of the [DELETED] percentile salaries, and that the technical complexities of the work to be performed required a higher skill level than could be obtained at the [DELETED] percentile salary level. AR, Tab 8B, Viotech Cost Evaluation, at 5; Declaration of Cost/Price Evaluator at 2-3.

The results of the Army's evaluation of proposals are summarized in the table below:

Factor	Offeror	
	ManTech	Viotech
Technical Rating	Outstanding	Good
Technical Risk	Low Risk	Low to Moderate Risk
Proposed Cost	\$44,211,000	\$24,370,000
Probable Cost	\$43,672,849	Undeterminable
Past Performance Rating	Low Risk	Low Risk

Id. at 6.

In his source selection decision, the source selection authority (SSA) found ManTech's technical proposal (rated outstanding) to be superior to Viotech's (rated good), with ManTech's proposal including a "higher level of detail and understanding [that] translates into increased feasibility (less technical risk in performance)." AR, Tab 11a, Source Selection Decision Document (SSDD) at 5-6. According to the SSA, "ManTech's proposal offered solutions that in many areas exceeded the Government's expectations [DELETED]." Id. Regarding cost, the SSA noted that while ManTech's most probable cost was \$43,672,849, "Viotech's most probable cost was undeterminable." Id. According to the SSA:

Viatech's cost volume included a term and condition that would allow the offeror to change labor categories and affiliates during task order performance, yet did not provide other affiliate hours or categories. As such, this renders Viatech's most probable cost as undeterminable because indirect rates are materially different between Viatech and its affiliates.

Id. Noting that the technical factor was significantly more important than the cost factor, the SSA concluded that "ManTech's superior technical proposal is worth the cost premium over Viatech's technical proposal." Id. The task order was issued to ManTech, and this protest followed.¹

DISCUSSION

Viatech argues that the agency improperly failed to evaluate the most probable cost of its proposal as required by the terms of the RTEP, and instead unreasonably found its costs to be undeterminable. Protest at 16-25. In response, the agency maintains that it reasonably found that Viatech's proposal was unclear about which of its affiliates would perform the work under the task order, and thus which indirect rates would apply, such that the information contained in Viatech's proposal was insufficient to determine the most probable cost to the government. Contracting Officer's Statement/Legal Memorandum (COS/LM) at 5.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Alion Sci. & Tech. Corp., B-410666, Jan. 22, 2015, 2015 CPD ¶ 91 at 7. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency. Id.; see Federal Acquisition Regulation (FAR) §§ 15.305(a)(1), 15.404-1(d)(1). An offeror's proposed costs should be adjusted, when appropriate, based on the results of the cost realism analysis. See FAR §15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary, and adequately documented. See Alion Sci. & Tech. Corp., supra.

¹ The value of this task order is in excess of \$10 million; accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award, indefinite-delivery/indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

We find the cost evaluation here to be reasonable. In this regard, Viatech reserved the right in its proposal to vary the labor mix and affiliates employed to perform the task order. Specifically, Viatech stated in its cost proposal that the “use of affiliates across the DSCI enterprise may be contemplated in execution. Employees are, from time to time, re-assigned from one affiliate to another.” AR, Tab 7AD, Viatech Cost Proposal at 4. As noted in the cost evaluation, and emphasized in the declaration by the cost evaluator, given the difference in overhead rates between Viatech (proposed to perform [DELETED] of the effort with an overhead rate of [DELETED]) and [DELETED] (proposed to perform [DELETED] of the effort with an overhead rate of [DELETED]) on the one hand, and the other affiliates, including Mesh Solutions, Sentech and Xprt Solutions (with overhead rates of [DELETED], [DELETED] and [DELETED], respectively), on the other hand, the potential impact on cost to the government of shifting labor hours between affiliates “could be material.” AR, Tab 8B, Viatech Cost Evaluation, at 4; Declaration of Cost/Price Evaluator at 3.

In addition, there was also a significant difference between the G&A rates of Viatech ([DELETED]) and [DELETED] ([DELETED]), and the G&A rates of the other affiliates ([DELETED], [DELETED] and [DELETED]). AR, Tab 8B, Viatech Cost Evaluation, at 5-6. In this regard, the cost/price evaluator notes that, since the G&A rate is applied to the direct labor cost plus overhead cost and travel to develop the G&A cost, “[t]he undeterminable overhead costs compound in review of the G&A cost as overhead cost is part of the basis to which the G&A rate is applied.” Declaration of Cost/Price Evaluator at 3. Thus, Viatech’s approach of reserving the right to shift hours from the two companies it identified (which had the lowest indirect rates) to other related companies (with very much higher indirect rates) raised the possibility that the costs incurred would be much higher than Viatech proposed.

Viatech argues that the agency’s concerns about the potential for increased labor costs failed to take into account the low likelihood that Viatech routinely would reassign employees between affiliated companies. According to the protester, the reference in its cost proposal to employees “from time to time” being reassigned from one affiliate to another, AR, Tab 7AD, Viatech Cost Proposal at 4, was intended “[t]o account for contingencies, such as those times where Viatech must use other affiliates due to illness, pregnancy, death, family emergencies, when the government has an urgent need for a certain position, etc.” Protest at 20. We note for the record, however, that the explanation for when these contingencies might occur appears, for the first time, in Viatech’s protest filing; these explanations are not found in the company’s proposal.

It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Agencies

are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17; see Affolter Contracting Co., Inc., B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 7. Thus, while Viatech may have intended to reassign employees (or work) between affiliates only occasionally to account for unusual contingencies, it did not include this limitation on transfers in its proposal, and we see nothing unreasonable in the agency's failure to infer such a limitation. In this regard, we agree with the agency that a reference to reassigning employees "from time to time" did not meaningfully limit the extent of such reassignments. COS/LM at 8. In sum, we conclude that the agency reasonably found Viatech's proposal to be unclear as to which affiliated company would perform the contract work.

Viatech also asserts that the agency acted improperly in not conducting clarifications regarding Viatech's intended approach to reassignments. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. Dellew Corp. B-410251.3, May 13, 2015, 2015 CPD ¶ 169 at 7; see FAR § 15.306(a).² Further, the solicitation here specifically cautioned that the "[g]overnment may or may not ask questions about proposals which contain inconsistent or unclear information." Amended RTEP at 20-21. In these circumstances, we find no merit to Viatech's argument that the agency was required to clarify the extent to which Viatech intended to transfer employees or work from the companies with the lower indirect rates to affiliated companies with much higher indirect rates.

Finally, Viatech argues that the tradeoff decision was insufficiently documented. In this regard, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. Southern Research,

² As noted above, this procurement was conducted as a competition between ID/IQ contract holders and, as such, was subject to the provisions of FAR § 16.505. In that regard, FAR § 16.505 does not establish specific requirements for conducting clarifications or discussions. See Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 12. Where, as here, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. See, e.g., TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 6 n.3; Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 3-4.

B-266360, Feb. 12, 1996, 96-1 CPD ¶ 65 at 3. Where a cost/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13.

Here, the agency reasonably found that the most probable cost of Viatech's proposal was undeterminable because of an ambiguity as to which affiliated company would perform the contract work. Given these circumstances, the source selection decision included a comparison of the technical merits of the two proposals, leading the SSA to conclude that ManTech's technical superiority warranted its evaluated cost. AR, Tab 11a, SSDD at 5-6. In our view, the agency reasonably documented the rationale for the tradeoff it made. See The MIL Corp., supra.

The protest is denied.

Susan A. Poling
General Counsel