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Decision

Matter of: Tiber Creek Consulting, Inc.

File: B-411550.4; B-411550.5

Date: January 6, 2016

Heather A. James, Esq., Whiteford, Taylor & Preston LLP, for the protester.
Lee Dougherty, Esq., and Katherine A. Straw, Esq., Offit Kurman, P.A., for Arrowpoint Corporation, an intervenor.
Scott N. Flesch, Esq., ChristinaLynn E. McCoy, Esq., and Major David H. Stem, Department of the Army, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's price realism analysis is denied where the analysis was based on a comparison of the offerors' proposed prices, and the protester has furnished no basis for questioning the reasonableness of the agency's finding that the awardee's prices were not unrealistically low given its technical approach.
2. Protest that source selection authority (SSA) improperly changed the awardee's evaluation results is denied where the SSA reasonably explained the basis for disagreeing with the evaluation panel's conclusions and, in any case, the SSA was aware of the substance of awardee's proposal when he made his source selection decision.

DECISION

Tiber Creek Consulting, Inc., of Fairfax, Virginia, protests the Department of the Army, National Guard Bureau's award of a contract to Arrowpoint Corporation, of Alexandria, Virginia, under request for proposals (RFP) No. W9133L-14-R-0059, for systems operational support and maintenance of the agency's Reserve Component Manpower System (RCMS). Tiber Creek challenges the evaluation of Arrowpoint's proposal.

We deny the protest.

The RCMS is used to access, gather, and present manpower readiness data to decision makers. Source Selection Decision Document (SSDD) at 1. The agency issued the RFP via the General Service Administration's e-Buy system to holders of Federal Supply Schedule (FSS) 70 contracts, pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4. The solicitation contemplated the award of a contract on a best-value basis, considering price/cost and the following non-price/cost factors: technical and management (with subfactors for operations and maintenance, data operations, analytical support and engineering, program management, and staffing); transition; and past performance. RFP at 334. The solicitation provided that price would be evaluated for realism. RFP at 338.

With respect to price/cost, the solicitation listed nine fixed-price contract line item numbers (CLINs)--RCMS operations and maintenance support; strength maintenance management system (SMMS) operations and maintenance support; training; transition; distribution and publication of data; and annual manpower report--as well as two de minimis cost reimbursement items: travel and on-call emergency support. RFP at 329-331. The solicitation included a performance work statement (PWS) which listed the tasks the successful offeror would be required to perform under each of the CLINs. Id. Offerors were required to complete tables with proposed labor categories, labor hours, labor mix, and fully-burdened labor rates for the PWS tasks; the information in these tables was then used to compute fixed prices for the fixed-price line items. RFP at 322. Offerors were also required to provide a basis of estimate (BOE), including a work breakdown structure, for each task. RFP at 310. In the technical proposal, offerors were to discuss the tasks identified, and to identify the labor hours by category needed to complete those tasks. Id. The same BOE was to be included in the price/cost proposal, along with a discussion of labor costs and the rationale supporting the labor hour estimates. Id.

Seven offerors responded to the RFP, and three, including Arrowpoint and Tiber Creek, were considered eligible for award. Following the source selection evaluation board's (SSEB) evaluation of proposals, the agency found that Arrowpoint's proposal represented the best value. When Tiber Creek protested the resulting contract award to Arrowpoint, the agency agreed to reevaluate proposals and make a new award determination, thus rendering the protest academic. See Tiber Creek Consulting, Inc., B-411550.2, June 25, 2015 (unpublished decision).

Based on its reevaluation, the SSEB rated Arrowpoint's proposal overall good for the technical/management factor (with subfactor ratings of good for operations and maintenance, marginal for data operations, acceptable for analytical support and engineering, good for program management, and acceptable for staffing); good for transition; and satisfactory confidence for past performance. SSDD at 9. Arrowpoint proposed to perform for \$39,960,347. Id. at 3. Tiber Creek was rated overall outstanding for the technical factor (with subfactor ratings of outstanding for operations and maintenance, good for data operations, outstanding for analytical support and engineering, outstanding for program management, and outstanding for

staffing); good for transition; and satisfactory confidence for past performance. Tiber Creek Evaluation at 1. Tiber Creek proposed to perform for \$49,931,696.96. SSDD at 3.

After reviewing the evaluation results, the Source Selection Authority (SSA) disagreed with a number of the weaknesses assigned to Arrowpoint's proposal by the SSEB. Id. at 11-14. The SSA removed these weaknesses, resulting in final ratings for Arrowpoint's proposal of overall good for the technical factor, with subfactor ratings of good for operations and maintenance, an increase to good for data operations, an increase to good for analytical support and engineering, good for program management, and acceptable for staffing. Id. at 14. The SSA then performed a best-value tradeoff and selected Arrowpoint for award. This protest followed.

DISCUSSION

In its protest, Tiber Creek challenges the evaluation of proposals and the resulting source selection decision. Where, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. SRM Group, Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. See DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Here, we have considered all of Tiber Creek's arguments and find that none furnish a basis for questioning the selection of Arrowpoint's proposal as the best value. We discuss several of Tiber Creek's arguments below.

Price Realism

Tiber Creek, the incumbent contractor, asserts that the agency failed to perform an adequate price realism analysis. Tiber Creek primarily complains that while Arrowpoint indicated in its technical proposal that it would rely on incumbent personnel to perform the contract, it failed to propose sufficient labor rates to hire and retain incumbent personnel. Tiber Creek also complains that the price realism analysis is inadequate because the agency compared Arrowpoint's price against the prices of offerors that were considered technically unacceptable.

Where a solicitation anticipates award of a fixed-price contract, there is no requirement that an agency conduct a price realism analysis, in the absence of a solicitation provision requiring such an analysis. B&B Medical Services, Inc., B-409705.2, Apr. 17, 2015, 2015 CPD ¶ 142 at 3. An agency, however, may, as here, provide for the use of a price realism analysis in the solicitation for the award of a fixed-price contract to assess the risk inherent in an offeror's proposal or its understanding of the requirements. Id. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion; our review

of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Id.

Here, contrary to Tiber Creek's assertion, Arrowpoint did not focus its staffing plan on the use of incumbent personnel, and there is no basis for concluding that the agency credited Arrowpoint in the evaluation for proposing the use of incumbent personnel. In this regard, in its proposal, Arrowpoint explained that: "Our approach to staff for the contract includes engaging [Team Arrowpoint] technology experienced staff . . . for knowledge and support, a full set of key personnel, and the ability to engage technology experienced staff through recruiting if needed." Arrowpoint Technical Proposal at 54. Likewise, in its staffing plan, Arrowpoint proposed that: "Team Arrowpoint . . . will first look to fill the positions with existing staff by having each company search, identify, and present candidates to the Staffing Manager." Id. at 107. Thus, while in its proposal Arrowpoint does state that in order to reduce risk and maintain continuity of operations, it will make "every reasonable effort to hire qualified and high-performing incumbent personnel," Id. at 108, that was not its primary approach to staffing the contract.

With respect to Tiber Creek's argument that the agency used the prices of unacceptable offerors in its price realism analysis, the cost analyst prepared a price analysis in which he compared the prices quoted by the offerors and the number of hours proposed for line items against the prices for all other offerors and the government estimate. Price Proposal Evaluation at 7-28. Contrary to Tiber Creek's argument, however, the basis of the price realism analysis in the source selection decision was not a comparison of the prices proposed by all offerors, including the technically unacceptable offerors. In this regard, in his source selection decision, the SSA discarded the government estimate, which was substantially higher than the prices proposed by any offeror, and focused on the prices of the three offerors that were evaluated as technically acceptable. SSDD at 6.

The SSA compared the proposed prices of the three acceptable offerors for CLINs 1 (RCMS operations and maintenance support), 2 (SMMS operation and maintenance support), and 3 (training), which comprised the great majority of the required staffing. While the SSA recognized that for CLIN 1 Arrowpoint's price (\$~~DELETED~~) was less than Tiber Creek's (\$~~DELETED~~), he noted that the offerors proposed "different technical approaches," resulting in Arrowpoint proposing ~~DELETED~~ fewer hours than Tiber Creek (~~DELETED~~ versus ~~DELETED~~ hours), and that incumbent offerors such as Tiber Creek tend to have higher labor costs. SSDD at 6; Supplemental Contracting Officer's Statement (COS) at 4.¹ The SSA also

¹ Arrowpoint's proposed price for CLIN 3, training, was higher than Tiber Creek's, which the SSA attributed to Arrowpoint's need as the non-incumbent contractor for more training, that is, based on its particular technical approach and circumstances. Supplemental COS at 5.

considered the prices in the work breakdown structure for each performance area, and determined that while the proposed prices varied, they were within **DELETED** percent of each other, which did not indicate any issues with price realism. Supplemental COS at 5. The SSA was of the view that given the different technical approaches, it was not unexpected that there would be a difference in proposed prices between the offerors; he found that the difference was relatively small and that each offeror understood the requirements. SSDD at 6. The SSA thus concluded that Arrowpoint's price was consistent with its technical approach, and not so low as to indicate a lack of understanding or create risk. Id.; Supplemental COS at 4-5. Tiber Creek has not shown this conclusion to be unreasonable.

Change in Evaluation Ratings

Tiber Creek also asserts that the SSA unreasonably removed weaknesses assigned by the SSEB to Arrowpoint's technical proposal and increased Arrowpoint's ratings. In this regard, the SSA reviewed the SSEB's evaluation, eliminated a number of the weaknesses assigned to Arrowpoint's technical proposal, and increased its ratings from marginal for data operations to good, and from acceptable for analytical support and engineering to good. As explained in detail in the source selection decision, the SSA found that some of the SSEB's assigned weaknesses reflected the consideration of matters not provided for under the solicitation, while others were merely uncertainties or minor flaws that did not rise to the level of a weakness as defined by the solicitation, that is, something that increases the risk of unsuccessful performance. RFP at 338. In other instances, the SSA simply disagreed with the SSEB for reasons explained in the source selection decision. SSDD at 11-14; see Supplemental Agency Report at 16-24.

We find no basis to question the SSA's decision to revise Arrowpoint's evaluation. In this regard, an SSA has broad discretion in determining the manner and extent to which technical and cost evaluation results are used, is permitted to make an independent evaluation of offerors' proposals, and may disagree with or expand upon the findings of lower-level evaluators provided the basis for the evaluation is reasonable and documented in the contemporaneous record. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13-14; Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1. Here, despite Tiber's assertion to the contrary, the SSA did explain in the contemporaneous record the reasons why he believed the assigned weaknesses were unwarranted. For example, the SSEB assigned a weakness to Arrowpoint's proposal because it had only three years of experience with SQL Server tools 2008R2. SSDD at 11. The SSA, however, found that as there was no requirement for any specific amount of experience, this should not have been evaluated as a weakness. Id.

More importantly, however, evaluation ratings, whether numerical, color, or adjectival, are merely guides for intelligent decision making, Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11, and an agency's source selection decision must rest upon a qualitative assessment of the underlying technical differences among competing offers. See The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8. Here, the record shows that regardless of how he characterized them, whether minor flaws, uncertainties, or weaknesses, the SSA was aware of the substance of Arrowpoint's proposal and took it into account in his source selection decision. SSDD at 11-14. The SSA also recognized that the proposal submitted by Tiber Creek was technically superior to Arrowpoint's proposal. Id. at 17. In the end, however, the SSA simply did not believe that Tiber Creek's superior technical proposal was worth a premium of approximately \$10 million dollars. Id. Tiber Creek has not demonstrated that in making this source selection decision the SSA acted unreasonably.

The protest is denied.

Susan A. Poling
General Counsel