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Decision

Matter of: Arctic Slope Technical Services, Inc.

File: B-411776; B-411776.2

Date: October 20, 2015

Kevin P. Mullen, Esq., Mark J. Nackman, Esq., and James A. Tucker, Esq., Jenner & Block LLP, for the protester.
James E. Hicks, Esq., Drug Enforcement Administration, for the agency.
Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where the record does not demonstrate that the source selection official considered the underlying differences between the awardee's and the protester's technical proposals, and unreasonably concluded that all offerors' proposals were technically equivalent based on their adjectival evaluation ratings.

DECISION

Arctic Slope Technical Services, Inc., of Beltsville, Maryland, protests the award of a task order to Ikun, LLC, of Herndon, Virginia, under request for proposals (RFP) No. DJD-15-R-0006, issued by the Drug Enforce Administration (DEA), for administrative and data research analysis services. Arctic Slope challenges the DEA's evaluation of proposals and best-value determination.

We sustain the protest.

BACKGROUND

The DEA issued the RFP on March 10, 2015, to vendors holding multiple-award ID/IQ contracts under the General Service Administration's One Acquisition Solution for Integrated Services (OASIS) contracts.[1] The competition was set-aside for

[1] OASIS is a multiple award ID/IQ contract which provides flexible and innovative solutions for professional services. See www.gsa.gov/portal/category/104731.

OASIS vendors who were participants in the Small Business Administration's 8(a) program for small, disadvantaged firms. The competition was conducted under the provisions of Federal Acquisition Regulation subpart 16.5. Contracting Officers (CO) Statement at 1.

The solicitation contemplated the issuance of a fixed-price task order for a base year and four 1-year options. See RFP at 4-7, 22.[2] The solicitation sought administrative and data research analysis services to support the agency's El Paso Intelligence Center's (EPIC) core operations, such as researching, analyzing and compiling subject matter material; maintaining financial records and reconciling accounts; preparing graphic displays; operating and troubleshooting audio/visual and other computer equipment; data entry; and other clerical work. Id. at 8. Arctic Slope is the incumbent contractor for these services.

The RFP provided for award on a best-value basis, considering the following factors, which were listed in descending order of importance: (1) work plan; (2) staffing plan; (3) quality control plan; and (4) past performance. For purposes of award, the work plan evaluation factor was significantly more important than the other factors, and the combined value of the non-price factors was significantly more important than price. Id. at 35, 37. As relevant here, the RFP explained that as technical differences narrow, cost/price will become important and that "[i]f there are no significant technical differences, cost/price may be the determining factor for award." Id. at 37.

With respect to the work plan evaluation factor, the RFP required an offeror to, among other things: (1) provide a written work plan demonstrating its understanding, approach, and methods for accomplishing tasks, and (2) describe its organizational structure/resources and management approach. Id. at 35. For the staffing plan evaluation factor, the RFP required an offeror to demonstrate the ability to recruit, retain, and train sufficient numbers of qualified personnel to perform the services; to demonstrate the ability to provide meaningful training of new and existing personnel and how training would enhance performance; and to provide a detailed description of continuing programs and procedures for retaining personnel through incentive programs. Id. For the quality control plan evaluation factor, the RFP required an offeror to demonstrate how it would ensure the accuracy of its work products, including how the plan would be implemented and monitored, as well as the quantitative standards and measures utilized to determine successful/unsuccessful performance. Id. at 36. For the past performance evaluation factor, the RFP required an offeror to demonstrate relevant past performance. A minimum of three past performance references were required for

[2] The agency issued four amendments to the RFP. All references herein are to the RFP, as amended.

evaluation and relevance was evaluated from the standpoint of depth, breadth, currency, similarity, and quality of the past performance within the past 3 years. Id.

Five offerors, including Arctic Slope and Ikun, responded to the RFP by the closing date of April 8, 2015. A technical proposal evaluation panel (TPEP) evaluated proposals utilizing an adjectival/risk rating scale for the technical factors and a confidence rating scale for past performance.[3] For purposes of evaluation, the TPEP identified strengths and weaknesses under each factor which led to the adjectival and confidence ratings.[4] A business evaluation committee evaluated prices for reasonableness. Four offerors were included in the competitive range, including Arctic Slope and Ikun. Following discussions and the receipt of final proposals, the results pertinent here were as follows:[5]

	Arctic Slope	Ikun
Work Plan		
Significant Strengths	1	0
Major Strengths	4	2
Minor Strengths	0	6
Rating	Outstanding/Low Risk	Good/Low Risk
Staffing Plan		
Significant Strengths	1	1
Major Strengths	6	3
Minor Strengths	0	1
Rating	Outstanding/Low Risk	Outstanding/Low Risk
Quality Control Plan		
Significant Strengths	1	0
Major Strengths	4	3
Minor Strengths	1	0
Rating	Outstanding/Low Risk	Outstanding/Low Risk

[3] The adjectival ratings were outstanding, good, acceptable, marginal and unacceptable. See Agency Report (AR), Tab 11, Summary of Award, at 6-7. The confidence ratings were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id.

[4] The strength categories relevant here are significant, major and minor. A significant strength was defined as significantly above expectations; a major strength was defined as above expectations; and a minor strength was defined as slightly above expectations. See AR, Tab 1, Technical Evaluation Plan, at 11.

[5] Neither offeror's proposal was assigned any weaknesses or deficiencies.

Past Performance[6]		
Rating	Substantial Confidence/ Very Relevant	Substantial Confidence/ Very Relevant
Overall Rating	**Outstanding/Low Risk-Substantial Confidence/ Very Relevant**	**Outstanding/Low Risk-Substantial Confidence/ Very Relevant**
Price	$24,441,478	$22,072,995

AR, Tab 11, Summary of Award, at 15-17, 19-22. The other two offerors in the competitive range also received the same overall non-price ratings of outstanding/low risk-substantial confidence/very relevant and proposed prices of $26,745,620, and $27,889,580, respectively. Id. at 22.

The CO, who was also the source selection official, noted that the proposals for all four offerors in the competitive range "received the highest possible technical rating of 'Outstanding/Low Risk' at the completion of the consensus evaluation." Id. at 23. The CO stated that Ikun's proposal "exceeded the government's expectations in regards to the key personnel qualifications" because the offeror's proposed program manager has 23 years of experience as an FBI agent and watch officer, 9 years of experience as a project manager, and has "prior working experience at EPIC." Id. The CO also stated that Ikun's proposal identified two lead data analysts (LDA) who have college degrees, and who both work on the incumbent contract. Id. The CO selected Ikun's proposal for award "based on technical considerations," and the offerors' overall lowest price. Id. DEA awarded the contract to Ikun on July 1. This protest followed. [7]

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[6] The record reflects that the TPEP differentiated the past performance records of offerors by assigning strengths to the quality of each offeror's record under this factor. See, e.g., AR, Tab 6, Evaluator Consensus Ratings, Offeror E (Arctic Slope), at 7 (two significant strengths, one major strength); Offeror C (Ikun), at 7 (one significant strength, one major strength). Neither the final TPEP report nor the CO selection decision includes the evaluators' consensus strength ratings for this factor. As discussed below, the contemporaneous record does not explain why the CO concluded that the protester's and awardee's past performance records were equal, despite evaluated differences between their records.

[7] The value of the task order at issue exceeds $10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts. 41 U.S.C. § 4106(f)(1)(B).

DISCUSSION

Arctic Slope contends that DEA's award is improper because the agency selected Ikun's proposal for award without performing a price/technical tradeoff between Ikun's and Arctic Slope's proposals. In this regard, the protester argues that the agency's award decision unreasonably concluded that all offerors' proposals were technically equal overall, based solely on the adjectival ratings assigned to the proposals; the protester contends that the agency's conclusion ignored its own evaluations, which showed that Arctic Slope's proposal merited more assigned strengths and higher ratings under the individual evaluation factors than Ikun's proposal. Consequently, the protester argues that DEA failed to consider the underlying merits of its higher-rated, slightly higher-priced, proposal, and that it made award to Ikun based on its lower price, contrary to the solicitation's evaluation scheme which stated that the technical factors were significantly more important than price. For the reasons discussed below, we agree with Arctic Slope and sustain the protest.[8]

As noted above, the competition here was conducted among ID/IQ contract holders pursuant to FAR subpart 16.5. In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7; Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 6-7; Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. In this regard, FAR part 16 requires that agencies document the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. FAR § 16.505(b)(7). An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

Interested Party Status

As a preliminary matter, the DEA filed a request for dismissal on the basis that Arctic Slope is not an interested party to protest the award to Ikun because it would not be next in line for award if the protest is sustained. DEA argues that since all offerors received the highest level technical rating possible there was no discernible next in line offeror. Motion for Summary Dismissal at 3. For this reason, DEA

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[8] Arctic Slope raised various other arguments in support of its protest. We have considered all of the protester's arguments, and find that, apart from the issues discussed below, none provides a basis to sustain the protest.

argued that Arctic Slope is not an interested party because it would not be next in line for the award, if the protest is sustained. We disagree.

Under our Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1), a protester must be an interested party, which means that it must have a direct economic interest in the resolution of a protest issue. A protester is an interested party to challenge the evaluation of its own proposal where there is a reasonable possibility that the proposal would be in line for award if the protest were sustained. Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68 at 5.

Here, we think DEA misstates Arctic Slope's protest argument. The agency contends that the protester is arguing that price should not be considered at all. See Motion For Summary Dismissal at 3. The protester, instead, has argued that the agency improperly ignored the differences between the offerors' technical proposals and made award solely on the basis of price. See Protest at 3-4. We conclude that the protester has challenged whether the agency was required to consider both technical factors and price under the solicitation's best-value award scheme. As discussed above, the RFP provided that, for purposes of award, the combined value of the non-price factors are significantly more important than price. RFP at 35, 37. Because Arctic Slope argues that the agency failed to perform a price/technical tradeoff between proposals, and because the agency improperly concluded that offerors' technical proposals were equal, we find that the protester has demonstrated it is an interested party to challenge the award to Ikun, since its proposal has a reasonable possibility of award under the best-value award scheme if the protest is sustained.

Award Decision

We next address Arctic Slope's challenge to DEA's award decision. As discussed above, the CO documented three reasons for concluding that Ikun's proposal offered the best value: (1) Ikun's technical proposal and past performance received the same ratings as the proposals of the other three offerors in the competitive range, (2) Ikun's proposal exceeded the government's expectations with regard to two areas of its key personnel qualifications, and (3) Ikun's proposal was the lowest priced. See AR, Tab 11, Summary of Award, at 23. Arctic Slope argues that the agency unreasonably failed to consider the differences between the offerors' technical proposals and past performance, and simply concluded that the proposals were technically equal based on the assigned adjectival ratings.

In response to the protest, the CO explains that price became the primary consideration in selecting Ikun for award because there were "no significant technical differences" between offerors' proposals, as evidenced by all four offerors receiving the highest possible adjectival ratings for the non-price factors. See CO Statement at 8-9. For this reason, the DEA argues that price reasonably became the determining factor for award, in accordance with the solicitation. See AR at 6-12.

Our Office has consistently held that evaluation ratings are merely guides for intelligent decision-making in the procurement process; the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 19. Additionally, and as relevant here, agencies may find that offerors' proposals are technically equivalent, even where there are differences between the proposals. See, e.g., Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 13-14.. However, the selection official must explain the basis for why proposals are considered technically equivalent. See Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 19-20. We also recognize that while agency selection officials may rely on reports and analyses prepared by others, the ultimate selection decision reflects the selection official's independent judgment. See, e.g., Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33.

Based on our review of the record, we agree with Arctic Slope that the CO does not reasonably explain why the numerous differences between the protester's and awardee's proposals identified in the agency's evaluation were not significant. Overall, as discussed in the table above, the agency assigned Arctic Slope's proposal 18 strengths for the work plan, staffing plan, and quality control plan evaluation factors: 3 significant strengths, 14 major strengths, and 1 minor strength. In contrast, the agency assigned Ikun's proposal 16 strengths: 1 significant strength, 8 major strengths, and 7 minor strengths.[9] AR, Tab 11, Summary of Award, at 15-17, 19-22. In fact, for these three evaluation factors Ikun received the fewest total strengths among all of the four competitive range offerors, the fewest significant strengths, and the fewest major strengths. Id. at 12-22. Additionally, the TPEP evaluators assigned two significant strengths and one major strength for Arctic Slope's past performance, and one significant strength and two major strengths for Ikun's past performance. See, e.g., AR, Tab 6, Evaluator Consensus

[9] Arctic Slope's proposal also received a higher rating than Ikun's proposal under the work plan evaluation factor, which was significantly more important than the other factors. See AR, Tab 11, Summary of Award, at 15, 19-20. Although both offerors received the same rating for the staffing plan evaluation factor, Arctic Slope's proposal was assigned one significant strength and six major strengths, while Ikun's was assigned one significant strength, three major strengths, and one minor strength. Id. at 15-16, 20. For quality control plan, the offerors received the same rating, but Arctic Slope's proposal was assigned one significant strength, four major strengths, and one minor strength; in contrast, Ikun's proposal was assigned three major strengths. Id. at 16, 21.

Ratings, Offeror E (Arctic Slope), at 7; Offeror C (Ikun), at 7.[10] Although the selection decision did not characterize these strengths as significant or major, each of the three strengths for the awardee and protester was listed in the decision. AR, Tab 11, Summary of Award, at 16-17, 21-22.

Despite DEA's evaluation of Arctic Slope's proposal as having more strengths, more higher level strengths, and a higher evaluation for the most heavily-weighted technical factor, as compared to Ikun's proposal, the CO states, without elaboration or analysis, that there were "no significant technical differences" between the offerors' proposals. See CO Statement at 8. Neither the contemporaneous record, nor the agency's response to the protest, provides a reasonable explanation for this conclusion. Moreover, even though the TPEP identified substantive technical differences between the protester's and awardee's proposal, the CO neither expressed disagreement with the TPEP's analysis, nor provided any explanation as to why she concluded that the offerors' technical proposals and past performance were equal, except to reference that all offerors had received the same overall evaluation ratings. See AR, Tab 11, Summary of Award, at 23.

Although the CO did not explain in the selection document the basis for concluding that the proposals of the four offerors in the competitive range were equal under the non-price factors, the agency notes that the CO identified areas in Ikun's proposal that "exceeded the government's expectations." AR, Tab 11, Summary of Award, at 23. The agency's source selection document does not expressly state that these areas demonstrated that Ikun's proposal was technically superior to the other offerors' proposals, nor does the document state that these areas provided a basis to conclude that Ikun's proposal was equivalent to the other offerors' proposals, notwithstanding the awardee's lower evaluation ratings and fewer documented strengths. In its response to the protest, however, the CO explained that these areas "distinguish[ed] [Ikun] from the pack." CO Statement at 7.

To the extent DEA now contends that Ikun's proposal had distinguishing features which justify the determination that Ikun's proposal was the best value, this argument is inconsistent with the CO explanation that there were no significant technical differences between proposals. Furthermore, Arctic Slope argues that none of these features provide a basis to distinguish the awardee's proposal from Arctic Slope's. As discussed above, the CO found that Ikun's proposal exceeded the government's expectations with regard to key personnel qualifications because Ikun's program manager has 23 years of experience as an FBI agent and watch

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[10] Here, the record also reflects that to demonstrate past performance Ikun only provided the minimum number of three references while Arctic Slope provided six contract references. See AR, Tab 4, Ikun Proposal, at PP-1-PP-4; Arctic Slope Proposal, at 40-48.

officer, 9 years of experience as a program manager, and has "prior working experience at EPIC." AR, Tab 11, Summary of Award, at 23.

In answer, Arctic Slope responds that its program manager has over 40 years of experience in the industry, including 9 years of experience at EPIC (including serving as the current program manager) and over 30 years of law enforcement experience, which also includes the FBI and the police department. Protester's Comments at 15, citing AR, Tab 3, Arctic Slope's Proposal, at A1-1-A1-3. As to the other distinguishing feature that Ikun's proposal includes two incumbent LDAs who have college degrees, the protester notes that it proposed the same two current Arctic Slope incumbent employees for the same positions. Protester's Comments at 15 citing AR, Tab 3, Arctic Slope's Proposal, at A1-4-A1-9; see also Tab 4, Ikun Proposal, at A7-A18 (proposing same LDAs as Arctic Slope).

On this record, we conclude that the CO did not explain her basis for concluding that there were "no significant technical differences" between Arctic Slope's and Ikun's technical proposals. CO Statement at 8. Where an RFP, as here, is based on a best-value evaluation plan--as opposed to selection of the lowest-priced, technically acceptable offeror--evaluation of proposals is not limited to determining whether a proposal is merely technically acceptable; rather proposals should be further differentiated to distinguish their relative quality under each stated evaluation factor by considering the degree to which technically acceptable proposals exceed the stated minimum requirements or will better satisfy the agency's needs. Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept 6, 2007, 2008 CPD ¶ 28 at 24.

A source selection official is obligated to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of proposals, in a manner that is fair and equitable and consistent with the terms of the RFP. Id. Because the record does not show that the CO's best-value decision considered the underlying differences between Ikun's proposal, and Arctic Slope's proposal (which was rated higher under the most significant evaluation factor and was assigned more strengths), we cannot conclude that the decision was reasonable. We sustain the protest on this basis.

Prejudice

Finally, for the same reason that DEA argued that Arctic Slope should not be considered an interested party at the outset of this protest, the agency also argues that the protester could not have been prejudiced by the award to Ikun, as another offeror is in line for award before Arctic Slope. We disagree.

As the protester notes, DEA's contention that a third offeror's proposal was technically superior to the protester's proposal is starkly at odds with the agency's contemporaneous evaluation, as well as its response to the protest. As discussed above, the agency contends that there were “no significant technical differences” between offerors’ proposals, and that Ikun’s low price was the appropriate basis for award. CO Statement at 8-9; AR at 6-12.

To the extent the agency now contends that it would have found the third offeror’s proposal more highly-rated than Arctic Slope’s proposal, we do not find this apparent post-protest reevaluation of the offerors’ proposals to be a basis to conclude that the protester was not prejudiced by the errors in the agency’s award decision. Our Office gives little weight to new evaluation judgments made in response to a protest. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. We accord lesser weight to such post-hoc arguments or analyses because we are concerned that judgments made in the heat of an adversarial process may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. Id. Because there is no evidence that the agency made any effort to perform a tradeoff analysis between Ikun’s, Arctic Slope’s, and the other proposals, we find no merit to the agency’s argument, and conclude that the protester was prejudiced by the agency’s unreasonable evaluation.

In any event, even if the third offeror’s proposal is viewed as more highly-rated than Arctic Slope’s proposal, we still find that the protester was prejudiced by the agency’s flawed award decision. Specifically, Arctic Slope proposed the second-lowest price of $24,441,478, while the third offeror proposed the highest price of $27,889,580. AR, Tab 11, Summary of Award, at 22. Thus, even if the agency reasonably assessed the third offeror’s technical proposal as superior to the protester’s, the agency would be required under the terms of the solicitation to make a tradeoff between the higher-priced, higher-rated proposal, and the lower-priced, lower-rated proposals. See RFP at 37. On this record, we conclude that Arctic Slope was prejudiced by the DEA’s improper award decision.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the selection decision did not reasonably or adequately explain the basis for selecting Ikun's proposal for award. We recommend that DEA make a new source selection decision that adequately documents the comparative merits of the offerors' proposals and the agency's rationale for award. If the new source selection decision determines that a proposal other than Ikun's represents the best value to the government, we recommend that the agency terminate the award to Ikun and make award to the offeror selected. We also recommend that the agency reimburse Arctic Slope's costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with section 21.8(f) of our Regulations, Arctic Slope's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained

Susan A. Poling
General Counsel