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Decision

Matter of: Sevatec, Inc.

File: B-413116.52; B-413116.59

Date: May 9, 2017

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Jonathan A. Baker, Esq., and Douglas Kornreich, Esq., Department of Health and Human Services, Centers for Medicare and Medicaid Services, for the agency.
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DIGEST

Protest of agency's best-value tradeoff decision is denied where the award decision was adequately documented, reasonable, and consistent with the solicitation's best-value award criteria.

DECISION

Sevatec, Inc., of Fairfax, Virginia, protests the decision of the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), not to award it a contract under request for proposals (RFP) No. CMS-2016-SPARC, for multiple indefinite-delivery, indefinite-quantity contracts in support of the agency's Strategic Partners Acquisition Readiness Contract (SPARC) program. Sevatec alleges that the agency's best-value tradeoff determinations in favor of higher-priced proposals were irrational and inconsistent with the RFP's award criteria.

We deny the protest.

CMS issued the RFP on August 3, 2015, for the purpose of establishing multiple indefinite-delivery, indefinite-quantity contracts to provide support services to develop and maintain CMS information technology (IT) systems. The RFP advised that the competition, and the resulting contracts, would be divided into two pools--a small business pool and an unrestricted pool. The contract awards in each pool were to be made on a best-value basis considering four non-price technical evaluation factors and price. The technical evaluation factors, in descending order of importance, were: (1) corporate experience; (2) past performance; (3) process maturity; and (4) small business participation. As relevant, the corporate experience evaluation criteria

provided in part that “CMS will consider the relevance of the offeror’s experience performing information technology services to the federal government,” and that “CMS considers experience working in a technical environment similar to CMS, i.e., one that matches or is closely aligned to the technologies identified in the CMS Technical Reference Architecture to be highly relevant.” Agency Report (AR), Tab 8, Amended RFP, at 108-109.

Between the non-price factors and price, the RFP provided that the “non-price factors are significantly more important than price.” Id. at 107. The RFP also provided that “[o]fferors are advised that primary consideration will be given to the technical quality of the proposals in the evaluation process,” but that “total cost of labor rates could be a determining factor if two or more proposals are determined to be otherwise substantially equal.” Id.

CMS awarded 27 large business contracts under the RFP in June, 2016. Sevatec was not among the firms selected for award. On June 15, Sevatec received a telephone debriefing concerning the award decision. As relevant, Sevatec was advised that its proposal was rated as very good overall, and that five of the 27 awardees were also rated very good overall. Sevatec also learned that its proposal was priced lower than the proposals of the five awardees also rated “very good” overall.

In protests filed with our Office in June and July of 2016, multiple unsuccessful offerors challenged the awards, contesting the agency’s evaluation of proposals under the experience, past performance, process maturity, and price factors, and the resulting best-value determination. Sevatec, however, did not file a protest concerning the June 2016 award decision.¹

On September 6, after development of the protest record, the cognizant Government Accountability Office (GAO) attorney conducted an “outcome prediction” alternative dispute resolution (ADR) conference. In the course of that ADR, the GAO attorney advised the agency that GAO would likely sustain the protests with respect to challenges to the agency’s best-value determinations on the basis that the agency had failed to reasonably consider the relative merits of the proposals across all of the applicable evaluation criteria. The GAO attorney also advised that GAO would likely sustain challenges to the agency’s evaluation under the small business participation evaluation factor.

In response to the ADR, the agency informed our Office that it intended to take corrective action consisting of, at a minimum, reviewing the evaluation record and making and documenting a new source selection decision. Based on the agency’s

¹ The protests of the June 2016 contract awards were primarily divided into two separate groups: the protests concerning the large business (unrestricted) award pool, and the protests concerning the small business set-aside pools. Sevatec, a large business, competed in the large business (unrestricted) award pool.

proposed corrective action, GAO dismissed the protests as academic. Technatomy Corp., et. al., B 413116.4 et al., Sept. 7, 2016 (unpublished decision).²

Following the completion of the agency’s corrective action, on January 19, 2017, the agency informed Sevatec that it was again an unsuccessful offeror in the procurement. The agency also advised that the original 27 awardees in the procurement had again been selected for award, and that three previously-unsuccessful large business firms had been added to the list of awardees: Leidos, Inc.; SGT, Inc.; and Technatomy Corporation.

Sevatec received a debriefing concerning the January 19 award decision on January 25. Pursuant to the award notice and debriefing, Sevatec learned that its own “very good” rated proposal was ranked 32nd technically, and that the three new awardees--also rated “very good” overall--were ranked 28th, 29th, and 30th technically. In comparison to those firms’ proposals, Sevatec’s proposal was lower-priced, as follows:

	28. Leidos	29. SGT	30. Technatomy	32. Sevatec
Overall Technical	Very Good	Very Good	Very Good	Very Good
Corporate Experience	Very Good	Very Good	Very Good	Very Good
Past Performance	Good	Good	Good	Good
Process Maturity	Satisfactory	Satisfactory	Satisfactory	Satisfactory
Small Business	Very Good	Excellent	Very Good	Satisfactory
Evaluated Price	\$31,031.14	\$29,751.08	\$27,604.38	\$25,800.96

AR, Tab 19, Source Selection Decision Document (SSDD), at 10. Sevatec filed this protest of the awards with our Office on January 30.

DISCUSSION

Sevatec alleges that the selection of higher-priced proposals with the same “very good” rating overall and under the most important subfactor in comparison to Sevatec’s lower-priced proposal was irrational, and that the agency failed to explain why technical

² The decision in Technatomy Corp., et al., concerned the protests challenging the awards in the large business pool. Another bid protest decision, Next Phase Solutions and Servs., Inc., et al., B-413116.3 et al., Sept. 13, 2016 (unpublished decision), dismissed as academic the protests concerning the small business award pools, on the basis of agency corrective action following a separate ADR conference concerning the small business contract awards.

advantages associated with the selected proposals warranted the payment of a price premium.³ Sevatec asserts that despite the voluminous SSDD, the agency's tradeoff analyses between the offerors were essentially identical, and represented little more than a mechanical counting of strengths. According to Sevatec, each tradeoff analysis merely listed the competing proposals' strengths, and concluded in every case that the technical merit of the higher-priced offeror warranted the payment of a price premium over Sevatec's lower-priced proposal, without explanation of actual advantages benefitting the agency.⁴

On our review of the record, we see nothing unreasonable in the challenged best-value tradeoff analysis. Rather, the record reveals that Sevatec's arguments are narrowly focused on specific subsections of the SSDD containing the source selection authority's (SSA) summarized tradeoff rationale, and do not reflect the full content of the SSDD tradeoff analyses.

Where solicitations provide for award on a "best-value" basis, it is the function of the SSA to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price; the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 15; Chenega Technical Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 8. Where a price/technical tradeoff is to be made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs, including the benefits associated with additional costs. Federal Acquisition Regulation (FAR) § 15.308; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision, nor is there a requirement to quantify the specific cost or price value difference when selecting a

³ Sevatec's challenges are not limited to the three awardees discussed in this decision. However, we conclude that the agency's tradeoffs between Sevatec and these closely-ranked awardees are illustrative of the depth of analysis common to each tradeoff between a higher-ranked, higher-priced proposal, and Sevatec's lower-priced proposal.

⁴ Sevatec raised a variety of other challenges to the agency's evaluation and award decision, which were dismissed or withdrawn in the course of this protest. For example, our Office dismissed multiple allegations concerning the agency's evaluation of Sevatec's own proposal. We concluded that these protest arguments were untimely--where Sevatec's proposal was not reevaluated during the agency's corrective action--because Sevatec knew the results of the evaluation of its proposal at the time of its June 2016 debriefing, but chose not to protest within 10 days of that date. Dismissal Email, Feb 13, 2017; 4 C.F.R. § 21.2(a)(2). Sevatec also withdrew an allegation that the agency improperly allowed other offerors to revise their proposals, when it became apparent that the information supporting the allegation was in fact a typographical error limited to Sevatec's January 2017 debriefing. Sevatec Final Comments at 3.

higher-priced, higher-rated proposal for award. FAR § 15.308; Advanced Fed. Servs. Corp., B-298662, Nov. 15, 2006, 2006 CPD ¶ 174 at 5.

Contrary to Sevatec's allegations, the tradeoff analysis shows that the agency's consideration went well beyond mere counting of strengths, and involved specific head-to-head comparisons of the underlying technical merits of Sevatec's proposal against each higher-rated, higher-priced proposal--20 head-to-head comparisons in total. These comparisons included both identification of the technical benefits of the awardee's proposals warranting payment of price premiums over Sevatec's lower-rated and lower-priced proposal, and recognition of the specific price premiums involved in each tradeoff.

For example, although the record shows that Sevatec and the three new awardees were equally rated as "very good" overall, and "very good" under the corporate experience evaluation factor, the tradeoff analyses show that the SSA, in fact, perceived notable distinguishing advantages of the selected proposals under the most-important factor--corporate experience. Specifically, the SSDD records that Leidos, SGT, and Technatomy each had corporate experience with CMS and with the "CMS Technical Reference Architecture"--specifically identified in the RFP as highly relevant--while, in contrast, Sevatec did not have CMS experience, or experience with the Technical Reference Architecture. AR, Tab 19, SSDD, at 229 (Leidos), 231-232 (SGT), 234 (Technatomy). The SSDD also indicates that, overall, Sevatec's relevant experience warranted similar strengths versus the awardees, but that Sevatec's "technical merit in federal IT experience, agile experience, and working in a technical environment similar to CMS were lower than that of [Leidos, SGT, or Technatomy]." Id. Finally, the SSA considered unique technical merits of the selected firms in comparison to Sevatec, such as SGT's "Contractor Team Arrangement" with highly experienced firms that the SSA concluded would "provide complementary and proven experience" that "will reduce the learning curve" versus Sevatec; Leidos's understanding of Medicaid and Medicare data, and data collection experience that gives insight into the CMS environment; and Technatomy's work in supporting Health IT business environments inside and outside CMS, which should "decrease risk and increase the likelihood of successful IT projects." Id. at 230, 232, 235.

The SSA also reviewed the proposed prices, as well as the difference between the prices in both total dollars and percentage terms, in each head-to-head tradeoff comparison. Id. at 231, 233, 235. While Sevatec is correct that in the case of each tradeoff the agency concluded that the advantages of the higher ranked proposal warranted the payment of the associated price premium, there is nothing per se irrational about an agency's selection of each of the higher-rated, higher-priced proposals where the advantages of those proposals are explained. Nor is that result particularly surprising in this case, where the RFP advised offerors both that "non-price

factors are significantly more important than price,” and that “primary consideration will be given to the technical quality of the proposals in the evaluation process.”⁵

Sevatec also alleges that the agency failed to follow the RFP award criteria providing that “total cost of labor rates could be a determining factor if two or more proposals are determined to be otherwise substantially equal.” AR, Tab 8, Amended RFP, at 107. Sevatec asserts that its proposal was “substantially equal” to the other “very good” rated proposals, and that the RFP required the agency to consider its proposal’s lower price the determining factor in tradeoffs against equally-rated, higher-priced proposals. We disagree.

First, we note that the cited award criteria provide only that price “could” be a determining factor--the RFP did not mandate that price be determinative under any circumstances. Id. Second, and more importantly here, as described above, the SSA did not consider the selected firms with overall ratings equal to Sevatec to be “substantially equal,” but concluded that those firm’s proposals contained notable advantages under corporate experience--the most important evaluation factor.⁶ Nor do equal adjectival ratings require such a result. In this regard, our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Where the agency perceived and recorded distinguishing advantages associated with the overall equally adjectivally-rated proposals, the record supports a conclusion that the proposals were not “substantially equal,” and that the SSA’s decision to accept a price premium to select the more advantageous proposals was reasonable, and in no way inconsistent with the award terms of the RFP.

The protest is denied.

Susan A. Poling
General Counsel

⁵ Sevatec also argues that the record shows the agency unreasonably presumed that higher-priced proposals were superior technically. We see no evidence of such a presumption. In fact, of the 30 awardees here, 10 awardees’ proposals were both higher-rated and lower-priced than Sevatec. AR, Tab 19, SSDD, at 9-10. Further, while the agency concluded that multiple proposals with the same overall ratings as Sevatec were in fact technically superior, the bases for those conclusions are explained in the SSDD, and were not merely presumed due to the selected firms’ higher prices.

⁶ Additionally, as shown on the above chart, the SSA recognized that Leidos, SGT, and Technatomy were each higher rated than Sevatec under the small business participation factor. Although the higher ratings in this area were noted in each tradeoff, the SSDD establishes that the awardees’ advantages under the corporate experience factor, discussed above, were determinative in the SSA’s selection decisions.