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Decision

Matter of: Systems Plus, Inc.

File: B-413323.3; B-413323.5

Date: May 11, 2017

Richard B. Oliver, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.

Mark A. Ries, Esq., David B. Robbins, Esq., Elizabeth Buehler, Esq., and Stephanie L. Crawford, Esq., Crowell & Moring LLP, for the intervenor.

Maj. Christopher C. Cross, and David P. Harney, Esq., Department of the Army, for the agency.

Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the awardee's proposal is denied where the evaluation findings were reasonable and consistent with the evaluation criteria.

2. Protest challenging the agency's evaluation of the realism of the awardee's compensation plan is denied where the record shows that the evaluation was reasonable and consistent with the solicitation and the requirements of the Federal Acquisition Regulation.

DECISION

Systems Plus, Inc. (SPI), of Rockville, Maryland, protests the issuance of a task order to MOSAIC Technologies Group, Inc. (MOSAIC), of Augusta, Georgia, under solicitation No. W91249-15-R-WINT, issued by the Department of the Army for the operation of a comprehensive institutional training facility for Warfighter Information Network–Tactical instruction at Fort Gordon, Georgia. SPI contends that the agency improperly evaluated MOSAIC's technical proposal and price proposal.

We deny the protest.

BACKGROUND

On April 27, 2016, the Army issued the request for task order proposals (RTOP) as a small business set-aside under the General Services Administration's (GSA) One Acquisition Solution for Integrated Services (OASIS) small business pool 1 indefinite-delivery/indefinite-quantity (ID/IQ) contract. RTOP at 1, 2. The RTOP informed offerors that the Army intended to use the procedures of Federal Acquisition Regulation section 16.505 to issue a single, fixed-price task order (TO) to the lowest-priced, technically-acceptable (LPTA) offeror, based on an evaluation of three factors: technical management capability (technical), past performance, and price. Id. at 9-10. The technical factor was comprised of three subfactors: management approach, staffing approach, and technical approach. Id. at 4.

As relevant here, the staffing approach subfactor required an offeror to identify its proposed staffing by number of personnel and labor categories (LCAT), and any plans to cross utilize or to rely on reach-back, part-time, or temporary personnel to perform this requirement. Id. at 6. Offerors were also required to describe a plan for recruiting and retaining personnel with the qualifications necessary to perform the requirement, and to provide the names, resumes, and commitment letters of key personnel. Id. at 6-7. The performance work statement (PWS) identified five key personnel positions, *i.e.*, positions that would be essential for the successful performance of the contract, as the: (1) program manager; (2) training section managers; (3) training operations manager; (4) support operations manager, and (5) training network supervisor. RTOP, PWS at 13-16.¹

Technical proposals were to be evaluated to determine whether offerors demonstrated a clear understanding of the nature and scope of the work specified in the PWS. RTOP at 10. Specifically, the evaluation of the staffing approach required that proposals clearly demonstrate that an offeror: (1) had identified properly qualified personnel in the appropriate labor categories, (2) offered a sound approach to ensuring the availability of qualified personnel, and (3) ensured that an appropriate number of personnel were available to perform the requirement. Id.

Regarding price, the RTOP required offerors to submit a total compensation plan setting forth salaries and fringe benefits for its professional employees, *i.e.*, the proposed key personnel positions. Id. at 9. Offerors were advised that the agency would conduct a price realism evaluation limited to an offeror's compensation plan for the key personnel. Id. at 12.

¹ Additionally, the PWS stated that the government anticipated 13 additional labor categories, or non-key personnel, would be required to perform the PWS requirements, and specified the qualifications for staff performing these designated functions. RTOP, PWS at 9-13.

On June 24, the agency notified SPI that it was not selected for award. After requesting and receiving a debriefing, the protester timely protested to our Office. On July 22, the agency proposed to take corrective action by setting aside the award decision, entering discussions with the offerors, and issuing a new task order decision.² Based on the agency's proposed corrective action, our Office dismissed that protest as academic. Systems Plus, Inc., B-413323, B-413323.2, July 27, 2016 (unpublished decision).

As part of the proposed corrective action, the Army received timely responses from seven offerors, including SPI and MOSAIC, on September 9. Legal Memorandum at 4. The source selection evaluation board (SSEB) evaluated technical proposals and recorded their evaluation in a consensus report and minority report.³ For the staffing plan evaluation, the SSEB concluded that MOSAIC's plan "demonstrate[d] a methodical and well-conceived approach," and "identified appropriate staff and qualifications" to perform the required duties and functions. AR, Tab 7a, SSEB Consensus Report, at 2. In this regard, the agency found reasonable MOSAIC's plan to use [DELETED] contractor manpower equivalents (CME) ([DELETED] instructors/shift supervisors, [DELETED] key personnel, and [DELETED] other CMEs) in the base period, and [DELETED] CMEs ([DELETED] instructors/shift supervisors, [DELETED] key personnel, and [DELETED] other CMEs) in the option years. Id. Additionally, the agency determined that MOSAIC provided a detailed recruiting and retention strategy aimed at the [DELETED], and identified a [DELETED] approach that included an analysis of MOSAIC's determination of salaries, competitive benefits, and compensation packages. Id.

The contracting officer (CO), after reviewing the proposals and the SSEB's minority and consensus reports, provided a memorandum to the source selection authority (SSA) in which the CO concurred with the consensus report.⁴ AR, Tab 8, CO Memorandum to SSA and Price Realism Analysis, at 2, 3. In this memorandum, the CO also analyzed the realism of all offerors' compensation plans for key personnel. Id. at 5-17.

² The agency also stated that it would terminate the previous award decision if a different awardee was selected for award.

³ As relevant here, in the minority report, one evaluator found inadequate MOSAIC's proposed staffing of [DELETED] personnel for the PWS sections dealing with equipment maintenance and accountability, and facilities management. Agency Report (AR), Tab 7b, SSEB Minority Report, at 1.

⁴ The CO found reasonable the SSEB's conclusion that MOSAIC's proposed staffing plan was acceptable by comparing MOSAIC's proposed staffing to the number of full-time equivalents (FTEs) other offerors had proposed for the PWS sections identified in the minority report. AR, Tab 8, CO Memorandum to SSA and Price Realism Evaluation, at 3. The CO concluded the difference between the proposed levels of effort to be insignificant, and attributable to the skill of staffing resources and to differing technical and management approaches. Id.

In analyzing the realism of MOSAIC's compensation plan for its key personnel, the CO compared MOSAIC's unburdened salaries against three sources: (1) compensation data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS) within the metropolitan statistical area of Augusta – Richmond County, GA-SC, (2) similar data from the commercial website, Salary.com,⁵ for Augusta, Georgia, and (3) compensation levels of the other acceptable offerors. Id. at 5-6, 12-14. The CO explained that he did not compare proposed compensation levels for this solicitation to the levels for prior contracts because of the absence of relevant compensation data.⁶ Id. at 6

After comparing MOSAIC's data to these three sources, the CO specifically identified, for each key position, the percentage by which MOSAIC's proposed salaries were either higher or lower than the source information. Id. at 9-14. For example, for the [DELETED] position, MOSAIC's rates exceeded the BLS median wage and salary.com data by [DELETED]%, and [DELETED]%, respectively, but were [DELETED] lower than the salaries offered by two other offerors.⁷ Id. at 9, 11, 13. In this regard, the record shows that three of MOSAIC's proposed salaries were lower than BLS median data (between [DELETED]% and [DELETED]%), four were lower than salary.com data (between [DELETED]% and [DELETED]%), and four were lower than other offerors' salaries (between [DELETED]%). Id. at 9, 11.

Where MOSAIC's proposed salaries were lower than the information from those sources, the CO generally concluded that the salary difference reflected: that other offerors' salaries significantly exceeded the BLS or salary.com salary information (between 15%-48%); the difference in experience of proposed employees; or the other

⁵ Salary.com is a commercial service that tracks salary data for various labor positions throughout U.S. labor markets. See www.salary.com (last visited May, 2, 2017).

⁶ In this regard, the CO's report explained that two previously issued task orders were not viewed as comparable because the first used subjective criteria to evaluate a different number of key personnel--rather than the objective criteria found in this solicitation; and the second was issued as a sole-source contract in which the contractor was not required to submit a compensation plan or identify the salaries and rates it would pay to key personnel. AR, Tab 8, CO Memorandum to SSA and Price Realism Analysis, at 6. The protester has not challenged the agency's conclusion in this regard.

⁷ The record shows that for their proposed staffing, the offerors selected LCATs, as required by the RTOP, from a list of LCATs specific to the OASIS contract, and that the BLS median salary data corresponding to a particular LCAT varied depending on the LCAT selected from the list. Id. at 7, 8, 9. For example, for the LCAT MOSAIC selected for its [DELETED], the BLS median salary was nearly \$[DELETED] less than the LCAT that SPI selected. Id. at 9. In this regard, the record shows that the CO concluded that "either LCAT [was] acceptable given the broad responsibilities for the relevant occupations." Id.

offerors' intention to use employees performing the sole-source task order mentioned above.⁸ Id. at 13. Additionally, for each key position where MOSAIC's rates were lower than the source information, the CO converted the percentage difference between salaries into a dollar value difference between hourly wage rates. Id. at 12-14. For example, for the [DELETED], MOSAIC's proposed salary was found to be [DELETED]% below BLS median data, which equated to a \$[DELETED] difference in hourly wage between MOSAIC's proposed compensation and the BLS median salary. Id. at 12. For salary.com data, which took into account education and experience data, MOSAIC's proposed salary was [DELETED]% below median salary data (or a \$[DELETED] difference in hourly wage) and, as compared to other offerors' compensation, MOSAIC's proposed salary was [DELETED]% lower (or a \$[DELETED] difference in hourly wage). Id. at 12, 14.

The CO concluded that the percentage differences were not significant when converted to an hourly wage difference for each source. Id. at 12, 14. Moreover, the CO stated, "although MOSAIC's proposed compensation level for [the [DELETED]] appears low in relation to other vendors, it is comparable to the salary.com benchmark and is considered realistic." Id. at 14. The CO then stated that the SSEB found MOSAIC's technical proposal to demonstrate an understanding of, and capability to perform, all PWS requirements successfully and on time. Id. Based on the analysis above, the CO concluded that MOSAIC's proposed compensation for its professional employees/key personnel was comprehensive, realistic, and acceptable. Id. at 15.

Four proposals, including the protester's and awardee's, were found acceptable with realistic compensation plans. Id. at 1. The final ratings were as follows:

	Technical Capability	Past Performance	Evaluated Price
MOSAIC	Acceptable	Acceptable	\$48,989,341
SPI	Acceptable	Acceptable	\$59,726,754

AR, Tab 9, Task Order Decision Document (TODD), at 6.

The SSA reviewed and concurred with the evaluation provided by the SSEB and the CO, and concluded that MOSAIC's proposal was the lowest-priced, technically-acceptable offer. AR, Tab 9, TODD, at 10.

On January 26, 2017, SPI was notified of award. On January 30, SPI protested to our Office.⁹

⁸ The record shows that [DELETED]% of MOSAIC key personnel would be filled by sources other than hires from the sole-source contract. Id. at 13.

⁹ This protest is within our jurisdiction to hear protests of task orders placed under civilian agency ID/IQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B); See Wyle Labs., Inc., B-413989, Dec. 5, 2016, 2016 CPD ¶ 345 at 4

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DISCUSSION

The protester challenges the agency's evaluation of MOSAIC's price and staffing approach.¹⁰ Although our decision does not address all of SPI's arguments, we have fully considered each of them and find that none provides a basis to sustain the protest.

Evaluation of Staffing Approach

SPI raises various challenges to the agency's evaluation of MOSAIC's staffing approach. Comments and Supp. Protest at 3-10. For example, SPI contends that the agency failed to consider whether MOSAIC's proposed staffing was sufficient because it was lower than SPI's, and that MOSAIC's staffing should have been reduced based on the inclusion of "non-productive" hours for vacation and paid time off. Id. For the reasons state below, we find no merit to these arguments.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 ¶ 61 at 9. A protester's disagreement with the agency's evaluation judgments, by itself, does not render those judgments unreasonable. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Metson Marine Servs., Inc., B-413392, Oct. 19, 2016, 2016 CPD ¶ 313 at 3.

The RTOP required an offeror to identify its proposed staffing by number of personnel and LCATs, and to include qualified key and non-key personnel to perform this requirement. RTOP at 6, 9-16. The RTOP also stated that proposals would be evaluated to determine whether offerors demonstrated a clear understanding of the nature and scope of the work specified in the PWS. Id. at 10.

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(The authority under which we exercise our task order jurisdiction is determined by the agency that awarded the task order contract, here GSA, rather than the agency that issues or funds the task order.).

¹⁰ In the initial protest, SPI: (1) alleged that MOSAIC engaged in an impermissible bait and switch, (2) challenged the agency's evaluation of MOSAIC's past performance, and (3) asserted that the agency failed to consider the cost savings associated with award to SPI. Protest at 7, 14, 16. These challenges were subsequently withdrawn. See Protester's Response to Dismissal Request, at 2; Protester's Comments and Supp. Protest, at 2 n.2. Additionally, we do not address SPI's challenge to the agency's best-value determination, see Protest at 18-19, which was dependent on challenges that we conclude herein lack merit.

Here, the SSEB found that MOSAIC's proposed staffing approach--identifying [DELETED] and [DELETED] full-time personnel, for the base period and option years, respectively, across the non-key and key personnel categories--demonstrated a "methodical and well-conceived approach," that identified appropriate staff with the qualifications necessary to perform the duties and functions of the requirement.¹¹ AR, Tab 7a, SSEB Consensus Report, at 2; AR, Tab 5a, MOSAIC Proposal, Volume I, at 12-13. Other than the key and non-key personnel positions that MOSAIC identified and the agency found reasonable, the RTOP did not require a specific number or mixture of personnel. Accordingly, we have no basis to conclude that MOSAIC's proposed staffing level was inadequate or to challenge the agency's evaluation.¹²

Evaluation of Compensation for Key Personnel

The protester contends that the Army did not perform an adequate price realism analysis of MOSAIC's proposed key personnel. Protest at 13; Comments and Supp. Protest at 10. The gravamen of the protester's challenges is that the realism evaluation was flawed because the agency failed to evaluate or recognize the significance of the salary difference between MOSAIC's proposed salaries, and the BLS median salaries and salary.com data. We find no basis to sustain the protest.

As our Office has explained, the purpose of a review of compensation for professional employees under the provision at FAR § 52.222-46 is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. ELS Inc., B-283236, B-283236.2, Oct. 25, 1999, 99-2 CPD ¶ 92 at 10-11. In the context of fixed-price contracts, our Office has noted that this FAR provision anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding an offeror's proposed compensation. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 6-7. The depth of an agency's price realism analysis is a matter within

¹¹ We find unavailing SPI's contention that the evaluation was flawed on the basis that an evaluator filed a minority report that did not agree with the consensus evaluation. See Comments and Supp. Protest at 7. Disparate scoring among evaluators, by itself, does not establish an improper evaluation, as it is not unusual for individual evaluators to have different judgments that may lead to reasonable differences of opinion. Gracon Corp., B-293009 et al., Jan 14, 2004, 2004 CPD ¶ 58 at 4-5. This argument does not provide a basis for questioning the award decision.

¹² We also find no merit to the protester's unsupported assertions that the agency was required to reduce MOSAIC's proposed staffing based on the alleged inclusion of "non-productive" hours for vacation and paid time off. The protester has not cited any provision in the RTOP, nor can we identify any, that identifies non-productive hours or requires offerors to reduce their proposed staffing based on such hours.

the sound exercise of the agency's discretion. Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. See, e.g., MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 11.

Here, the agency states that it selected the data sources because comparable incumbent information was unavailable. The record shows that after comparing MOSAIC's proposed salaries to the source data, the agency was aware that MOSAIC's compensation was lower than the source data. Id. at 12-14. In this regard, the record also shows that the agency considered the difference in compensation not to be significant and concluded that the difference was attributable to reasons such as other offerors proposing salaries that significantly exceeded the BLS and salary.com median salary data. To the extent the protester argues that the Army could not reasonably find the awardee's compensation realistic in light of the difference in percent between the awardee's proposed compensation and the source data, the difference itself does not demonstrate that the agency's judgment was per se unreasonable. In our view, the agency was aware of the potential risk of poor performance associated with the professional labor to be provided under the anticipated fixed-price contract, and concluded that it was acceptable. Indeed, nothing about an obligation to review prices for realism bars an offeror from proposing--and an agency from reasonably deciding to accept--a below-cost, fixed-price offer. Optex Sys., Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6. Based on our review of the record, we find the agency's analysis unobjectionable. The protester's disagreement with the agency's conclusions, without more, does not provide a basis to sustain the protest.¹³

The protest is denied.

Susan A. Poling
General Counsel

¹³ The protester's contention that the agency did not consider that MOSAIC's allegedly low compensation would impair MOSAIC's ability to attract and retain competent professional employees, as required by the provision at FAR § 52.222-46, is belied by the record, which shows that MOSAIC obtained signed letters of commitment from every individual designated to fill its key personnel positions. See AR, Tab 5a, MOSAIC Proposal, Volume I, at 48-69. Additionally, we find speculative the protester's contention that certain individuals, who are both performing on the current sole-source task order and proposed as key personnel here, would be unaware of their proposed compensation.