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Decision

Matter of: Cognitive Medical Systems, Inc.

File: B-414017; B-414017.2

Date: January 6, 2017

Jonathan T. Cain, Esq., FisherBroyles, LLP, for the protester.
Steven J. Koprince, Esq., Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., Candace M. Shields, Esq., and Ian P. Patterson, Esq., Koprince Law LLC, for Book Zurman, Inc., the intervenor.
Frank V. DiNicola, Esq., and John W. Tangalos, Esq., Department of Veterans Affairs, for the agency.
Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the adjectival rating assigned to protester's proposal is denied where the challenge is based on internal agency guidelines, which do not accord rights to outside parties.
 2. Protest challenging the agency's best-value determination is denied where the agency reasonably determined that the protester's proposal was essentially equal to the awardee's proposal under the non-price evaluation factors, and where the agency therefore made award to the lower-priced offeror.
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DECISION

Cognitive Medical Systems, Inc. (CMS), a service-disabled veteran-owned small business located in San Diego, California, challenges the award of a contract to Book Zurman, Inc., a service-disabled veteran-owned small business located in Seminole, Florida, under request for proposals (RFP) No. VA701-16-R-0142, issued by the Department of Veterans Affairs (VA) for informatics support services. The protester challenges the agency's technical evaluation of CMS's proposal and the VA's best-value determination.

We deny the protest.

BACKGROUND

On August 19, 2016, the VA issued the RFP seeking informatics support services to address future health information technology specific issues. The solicitation contemplated the award of a fixed-price contract with a one-year base period and a one-year option period.

The RFP anticipated award of the contract on a best-value tradeoff basis in accordance with the following three evaluation factors: technical, past performance, and price. RFP at 43.¹ Under the solicitation's evaluation scheme, the technical factor was significantly more important than the past performance factor, which was slightly more important than the price factor. Id. When combined, the non-price factors were more important than the price factor. Id.

The solicitation stated that the evaluation of each offeror's technical approach would consider the offeror's understanding of the problem, the feasibility of its approach, and the proposal's completeness. Id. at 44. The RFP did not include adjectival ratings for the solicitation factors. Instead, adjectival ratings were described in the agency's source selection evaluation plan (SSEP), which was not provided to offerors. In the SSEP, a rating of acceptable under the technical factor was defined as "[a] proposal that at least meets all of the Government's requirements, contains at least minimal detail, demonstrates at least a minimal understanding of the problems, and is at least minimally feasible (moderate to high risk)." Agency Report (AR), Tab 5, SSEP, at 12. In contrast, a rating of good was defined as "[a] proposal that meets or exceeds all of the Government's requirements, contains at least adequate detail, demonstrates at least an understanding of the problems, and is at least feasible (low to moderate risk)." Id.

On September 9, the agency received timely proposals from two offerors: CMS and Book Zurman. Contracting Officer's Statement (COS) at 1. The VA's final ratings of the proposals were as follows:

	CMS	Book Zurman
Technical	Acceptable	Acceptable
Past Performance	Low Risk	Low Risk
Price	\$4,272,109	\$4,034,196

¹ Neither the solicitation nor the technical evaluation report provided to our Office contain page numbers. Our Office assigned consecutively numbered pages to the unnumbered pages in both documents. The citations in these documents are to the page numbers assigned by our Office.

AR, Tab 6, Source Selection Decision Memorandum, at 2. Based on these results, the agency concluded that Book Zurman's proposal offered the best value to the government. Following the award decision, CMS protested to our Office.

DISCUSSION

CMS argues that the agency failed to follow its evaluation plan in assigning CMS's proposal an acceptable rating under the technical evaluation factor. The protester additionally argues that the source selection authority (SSA) failed to meaningfully consider the merits of CMS's proposal in making the agency's best-value determination.²

In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. The Mangi Envtl. Group, Inc., B-401783, Nov. 20, 2009, 2009 CPD ¶ 231 at 3. A protester's disagreement with an agency's judgment, by itself, is insufficient to establish that the agency acted unreasonably. HP Enter. Servs., LLC, B-410212.2, Jan. 26, 2015, 2015 CPD ¶ 54 at 9.

Here, CMS argues that its proposal merited a higher technical factor rating based on the adjectival rating definitions provided in the SSEP. Specifically, the protester asserts that its proposal met the definition provided in the evaluation plan for a good rating.³ Source selection plans, however, provide internal agency guidelines and, as such, do not provide rights to outside parties. Epsilon Sys. Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 7; Global Readiness Enters., B-284714, May 30, 2000, 2000 CPD ¶ 97 at 6. Instead, it is the evaluation scheme in the RFP, not internal agency documents, to which an agency is required

² In its initial protest, CMS also argued that the agency failed to evaluate certain asserted technical "subfactors." Protest at 5. In response to this assertion, the VA explained in its report to our Office that the RFP's evaluation scheme did not call for the evaluation of any technical subfactors, and what the protester referred to as subfactors were, in fact, evaluation criteria that had been evaluated. Memorandum of Law at 1-3. CMS failed to substantively respond to this point in its comments. Under these circumstances, we consider the protester to have abandoned this argument. Nexagen Networks, Inc., B-411209.7, June 20, 2016, 2016 CPD ¶ 164 at 3 n.4

³ CMS received two strengths under the technical factor: a strength for the details provided in its proposal with regard to key aspects of required performance, and a strength for its proposed key personnel resources. AR, Tab 7, Technical Evaluation Report, at 1.

to adhere in evaluating proposals and in making the source selection. All Points Logistics, Inc., B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 10 n.10.

Accordingly, any inconsistency between the technical rating assigned to CMS's proposal and the rating definitions provided in the SSEP does not provide a basis to sustain CMS's protest.

Moreover, our review of the evaluation record reflects that the agency reasonably evaluated CMS' technical proposal in accordance with the solicitation's evaluation scheme. In this regard, the agency assessed the criteria set forth in the RFP, including CMS's understanding of the requirements, the feasibility of its proposed approach, and the completeness of its proposal. See AR, Tab 7, Technical Evaluation Report, at 2; RFP at 44. While the agency found that CMS's proposal merited two strengths and otherwise met all of the government's requirements, ultimately, it did not conclude that CMS's approach warranted a higher adjectival rating. COS at 3; AR, Tab 7, Technical Evaluation Report, at 2. While CMS disagrees with this assessment, it has not shown that the agency's conclusion in this regard was unreasonable. See HP Enter. Servs., LLC, supra.

The protester additionally argues that the agency failed to meaningfully analyze and compare proposals in making its best-value determination. CMS asserts that the SSA concluded, based on adjectival ratings alone, that CMS's proposal was essentially equal to the awardee's proposal under the non-price factors, and therefore made award to Book Zurman on the basis of its lower price.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price results, subject only to the tests of rationality and consistency with the RFP's evaluation factors. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 3. In determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including post-protest explanations that fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See NCI Info. Sys., Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 11.⁴ Additionally, where a selection official reasonably regards proposals as being essentially technically equal, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. Staff Tech, Inc., B-403035.2, B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6-7. The fact

⁴ While we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

that no price/technical tradeoff is required between proposals or quotations found to be technically equal does not negate the fact that the agency made award on a best-value tradeoff basis. Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 13-14; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 14.

Here, the record evidences that the SSA reasonably determined that CMS's and Book Zurman's proposals were essentially equal under the non-price factors. In this regard, the source selection decision memorandum notes that the SSA reviewed and compared the findings set forth in the technical evaluation reports, giving appropriate consideration to the evaluation criteria set forth in the solicitation. AR, Tab 6, Source Selection Decision Memorandum, at 2; COS at 4. This analysis included a review of the specific assessments underlying the overall factor ratings, including the two strengths noted in CMS's proposal. See COS at 2. After reviewing the assessments made in the technical evaluation reports, the SSA concluded that both proposals were essentially equal from a technical standpoint and that therefore Book Zurman's lower-priced proposal presented the best value to the government. COS at 2, 4; AR, Tab 6, Source Selection Decision Memorandum, at 2. In light of the SSA's review of the underlying approaches presented by both offerors, we see no basis to question the SSA's conclusion or to conclude that the agency's best-value determination was unreasonable.

The protest is denied.

Susan A. Poling
General Counsel