



Decision

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Matter of: BTAS, Inc.--Costs

File: B-414265.7

Date: June 30, 2017

Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., and Sean K. Griffin, Esq., Smith Pachter McWhorter PLC, for the protester.
Lieutenant Colonel Kevin P. Stiens and Alexis J. Bernstein, Esq., Department of the Air Force, 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

Request for recommendation that protest costs be reimbursed is denied where the protest grounds were not clearly meritorious.

DECISION

BTAS, Inc., of Beavercreek, Ohio, requests that we recommend that the firm be reimbursed the costs of filing and pursuing its protest of the issuance of a task order to THE CENTECH GROUP, Inc., of Falls Church, Virginia, by the Department of the Air Force under request for proposals (RFP) No. FA4610-15-R-0007 for information technology (IT) services for the Joint Space Operations Center.

We deny the request.

BACKGROUND

The RFP was issued on January 4, 2016, seeking proposals for the issuance of a task order under the Air Force's Network-Centric Solutions (NETCENTS) II small business multiple-award contract program to provide services supporting continuing IT infrastructure maintenance and sustainment of the Joint Space Operations Center, as well as IT systems required by the Fourteenth Air Force and Joint Functional Component Command for Space at Vandenberg Air Force Base. The RFP anticipated the issuance of a task order with fixed-price and cost-plus-fixed-fee contract line item numbers (CLINs).

Award was to be made on a best-value basis, considering two factors, technical and price; the technical factor was significantly more important than price. Agency Report (AR), Tab 9, RFP Amend. 2, at 22. The solicitation also provided for the evaluation of four technical subfactors: staffing plan, corporate experience, mission-essential contractor services plan, and activation of Building 7000. Id. at 23. Of the technical subfactors, the RFP stated that only the first technical subfactor, staffing plan, would be considered in the agency’s best-value tradeoff. Id. at 22. The remaining three subfactors would be evaluated on an acceptable/unacceptable basis. Id.

With regard to the staffing plan subfactor, the solicitation stated that the Air Force would “assess the offeror’s approach to meeting the requirements of the [performance work statement (PWS)] by reviewing the Staffing Plan to ensure there is acceptable risk and successful performance of the requirements in accordance with the PWS and [its] subparagraphs.” Id. at 24. Section M of the solicitation explained that the standard for acceptance would be met “when the offeror’s proposal includes a Staffing Plan and demonstrates a clear and complete understanding of the requirements of the PWS and a sound approach to providing sufficient hours and [full time equivalent employees (FTEs)] with the certifications/experience to meet or exceed the requirements of the PWS.” Id.

Following final proposal revisions, CENTECH and BTAS were rated as follows:

	BTAS	CENTECH
Staffing Plan	Outstanding	Outstanding
Corporate Experience	Acceptable	Acceptable
Mission Essential	Acceptable	Acceptable
Activation of Building 7000	Acceptable	Acceptable
Total Proposed Price	\$30,929,127	\$35,156,173
Total Evaluated Price¹	\$15,554,127	\$19,781,173

AR, Tab 20, Source Selection Decision Document (SSDD), at 2, 8.

While both BTAS and CENTECH received outstanding ratings under the staffing plan subfactor, the agency assigned CENTECH seven strengths under this subfactor, while BTAS received five strengths. Id. at 8-9. The source selection authority (SSA)

¹ The sum of the fixed-price and cost-plus-fixed-fee CLINs constituted the total evaluated price. AR, Tab 9, RFP Amend. 2, at 27. The total proposed price was calculated as the sum of the total evaluated price plus various cost reimbursable CLINs that were set at government-provided amounts. Id.; Contracting Officer’s Statement (COS) at 9.

compared these strengths and concluded that three of CENTECH's strengths, in particular, "will provide the Government with more than [DELETED] a year total. . . technical improvement benefit compared with BTAS' approach," which will represent [DELETED] over the course of the 5-year contract. Id. at 13. The agency concluded that this "[DELETED] perceived value offsets the \$4.2M cost difference/price premium between CENTECH and BTAS' proposed solution." Id. at 13. Ultimately, the SSA concluded that CENTECH provided the best value to the agency. Id. at 14.

On December 29, the agency issued the task order to CENTECH. Following a debriefing, BTAS filed a protest with our Office of the award to CENTECH.² The protester challenged the Air Force's technical evaluations of BTAS's and CENTECH's proposals, the price evaluation of CENTECH's proposal, and the agency's best-value tradeoff determination.

On March 8, 2017, our Office conducted an alternative dispute resolution, outcome-prediction teleconference in another protest of the same task order award, filed by STG, Inc. (B-414265.1, .3, and .5). During the teleconference, our Office advised the agency that it would likely sustain that protest. We therefore requested the agency advise our Office by March 13 if the Air Force intended to take corrective action in response to STG's protest. Our Office did not discuss the protest arguments raised by BTAS during this call.

On March 9, our Office advised the parties in the BTAS protest that hearing testimony might be needed to resolve some of the issues raised in the protest. On March 13, the agency notified our Office of its intention to take corrective action in both the STG and BTAS protests by amending the solicitation, getting revised proposals, and conducting a new best-value determination. These protests were subsequently dismissed by our Office as academic.

Following the dismissals, BTAS filed the instant request for a recommendation that it be reimbursed the costs associated with filing and pursuing its protest.

DISCUSSION

BTAS argues that its protest was clearly meritorious and that the agency unduly delayed taking corrective action. The agency disputes that the protest was clearly meritorious and asserts that it took corrective action only in response to a protest argument raised by STG that was not raised in the BTAS protest.

² The awarded value of the task order at issue here exceeded \$25 million. Accordingly, this procurement was within our jurisdiction to hear protests related to the issuance of orders under Department of Defense multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e).

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs, if, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Bid Protest Regulations, 4 C.F.R. § 21.8(e); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. As a prerequisite to our recommending the reimbursement of costs where a protest has been resolved by corrective action, not only must the protest have been meritorious, but it also must have been clearly meritorious, i.e., not a close question. Apptis Inc.--Costs, B-402146.3, Mar. 31, 2010, 2010 CPD ¶ 123 at 4. A protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. East Coast Nuclear Pharmacy--Costs, B-412053.5, Aug. 31, 2016, 2016 CPD ¶ 249 at 3. Based on our review of the record here, we conclude that the protester's arguments were not clearly meritorious.

BTAS's principle protest argument was that the agency unreasonably evaluated strengths found in CENTECH's proposal and failed to adequately document its use of these strengths in its best-value tradeoff assessment. In this regard, the agency's source selection team assessed seven strengths in CENTECH's proposal. AR, Tab 18, Proposal Analysis Report (PAR), at 27. Of these seven strengths, the SSA found that three strengths, in particular, distinguished CENTECH's proposal from BTAS's proposal as the best value to the government. AR, Tab 20, SSDD, at 12.

[DELETED]

The SSA agreed with, and adopted, the source selection team's analysis of these strengths, including the evaluators' discussion of the underlying rationales supporting the assessment of each strength. The SSA's best-value tradeoff determination cited these rationales and also relied upon the evaluators' value estimates to conclude that CENTECH's proposed approach would provide the agency with "more than [DELETED] a year total [DELETED] technical improvement benefit compared with BTAS' approach." AR, Tab 20, SSDD, at 13. The SSA concluded that over the course of the five year contract period, CENTECH's approach would provide [DELETED] in perceived value which would offset the \$4.2 million price difference between BTAS's and CENTECH's proposals. Id.

BTAS argued that the Air Force's estimate of the value of these three strengths was not documented in or supported by the evaluation record. In addition, the protester argued that the agency, in assessing these strengths overestimated their benefit and ignored significant risks to the proposed approaches.

Based on our review of the record before us, we do not find these arguments to be clearly meritorious because further analysis and record development of the parties' positions was still needed to fully consider and decide the protest grounds. Ordinarily, we do not regard a protest as clearly meritorious where resolution of the protest

required further record development, such as a hearing, to complete and clarify the record. American Sys. Corp.; BAE Sys. Info. Solutions, Inc.--Costs, B-408386.5, B-408386.7, Dec. 9, 2015, 2015 CPD ¶ 387 at 3; Boston Harbor Dev. Partners, LLC--Costs, B-404614.5, Feb. 17, 2012, 2012 CPD ¶ 74 at 2-3.

Here, the evaluation record contained explanations for the agency's assessment of, and reliance on, the three strengths at issue. These explanations went beyond providing estimates of the benefits resulting from each strength, and included substantive discussion of the benefit of each proposed approach. For example, with regard to the strength assigned for CENTECH's provision of [DELETED], both the source selection team and the SSA noted that CENTECH's approach would enable the agency to [DELETED]. See AR, Tab 18, PAR, at 29; AR, Tab 20, SSDD, at 12. The record also contained explanations for how the agency determined its estimate of the perceived value resulting from each approach. For example, the source selection team and the SSA explained that the [DELETED] savings that the agency estimated would result from CENTECH's proposed approach of [DELETED] was determined by first estimating that the approach would result in [DELETED] FTEs being saved, and then by calculating what the costs of these [DELETED] FTEs would be under CENTECH's proposal.

Despite these explanations, however, the GAO attorney responsible for this protest concluded that additional testimony from the agency's evaluators was needed to fully assess the agency's basis for determining that the three CENTECH strengths at issue outweighed the price premium presented by CENTECH's proposal. Accordingly, the GAO attorney advised the parties that our Office was considering conducting a hearing to solicit further testimony, and set a tentative date, March 23, to conduct such a hearing. By the time the agency took corrective action on March 13, our Office was finalizing arrangements to conduct the hearing. Because of the need for further record development to evaluate the basis for the agency's assessment of the value associated with CENTECH's strengths, we conclude that BTAS's protest arguments on this issue were not clearly meritorious. See American Sys. Corp.; BAE Sys. Info. Solutions, Inc.--Costs, supra.

BTAS also challenged the Air Force's price evaluation of CENTECH's proposal. In this regard, during discussions, CENTECH was advised that its proposed cost for CLIN [DELETED],³ exceeded the agency's stipulated budget of [DELETED] and was unaffordable. See AR, Tab 25, CENTECH Evaluation Notice Response at 1. CENTECH responded to this discussion item by reducing its proposed cost for CLIN [DELETED]. See id. at 2. The protester argued that "the agency failed to reconcile whether CENTECH's dramatic price reduction under CLIN [DELETED] was technically supportable given its technical proposal promises." Supp. Comments at 7.

In response to this argument, the agency explained that the source selection team examined CENTECH's CLIN [DELETED] cost and concluded that the cost reduction

³ [DELETED]

stemmed from [DELETED]. CENTECH explained this reduction by noting that its initial proposed cost was based on a CLIN [DELETED] scope of work that addressed a number of potential variables, whereas the reduced pricing was based on a level of effort that met only the specific requirements defined and requested by the RFP. AR, Tab 25, CENTECH Discussion Response 2. CENTECH further explained that [DELETED]. The source selection team reviewed this explanation and examined the cost reduction for any impact to the previous technical evaluation. AR, Tab 18, PAR, at 115. Ultimately, the evaluators concluded that the change was acceptable and did not warrant a change to the [DELETED] rating assigned under the [DELETED] subfactor.⁴ AR, Tab 18, PAR, at 115. To reach this conclusion, the agency evaluated the specific skill mix and revised hours and found them to be “consistent with the unique methods of performance and materials described in [CENTECH’s] proposal.” *Id.*

We do not find the protester’s challenge here to be clearly meritorious. In this regard, the record demonstrates that the agency reasonably reviewed the cost reduction proposed by CENTECH, determining what changes had been made to CENTECH’s proposal and the impact of those changes on its proposed technical solution. While the protester disagrees with the agency’s conclusions and argues that the agency should have applied more scrutiny, we find that this argument amounts simply to disagreement with the evaluation and is insufficient to establish that the agency’s evaluation was unreasonable. *See Ben-Mar Enters., Inc.*, B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7 (denying protest where the protester’s arguments did not provide a meaningful basis to question the reasonableness of the agency’s evaluation, and instead simply amounted to disagreement with the agency’s assessment).

Last, the protester argued that the Air Force engaged in disparate treatment by disregarding alleged strengths in BTAS’s proposal based on a comparison to other offerors.⁵ Relatedly, the protester argued that the agency unreasonably evaluated its proposal and applied unstated evaluation criteria by failing to credit BTAS’s proposal with strengths for exceeding the RFP’s requirements.

⁴ [DELETED]

⁵ The protester additionally argued that the agency engaged in disparate treatment by failing to consider a strength BTAS received for [DELETED] to be comparable to the strength CENTECH received for [DELETED]. First Supp. Protest at 11. In response to this argument, the agency asserted that BTAS’s approach was of less value because it was limited in scope to [DELETED]. COS at 18. While the protester disputed this characterization, we agree with the agency that the proposal language used in BTAS’s proposal indicates [DELETED] that BTAS’s proposed [DELETED] was limited [DELETED].

We have reviewed each of the protester's arguments relating to these protest grounds and find that none are clearly meritorious.⁶ For example, the protester argued that it should have received a strength for offering reasonable and competitive prices with [DELETED]. In response to this point, the agency pointed out that the Air Force evaluated pricing separately from its technical evaluation and did not assign technical strengths based on offerors' pricing. Aff. of Technical Lead at 5.⁷ The agency additionally noted that offering reasonable and competitive pricing with [DELETED] is not an approach that warrants a technical strength, it simply is an expectation in a price-competitive environment such as the instant procurement. Id. We view the agency's reasoning to be persuasive and do not find that the agency was obligated to credit BTAS's technical proposal with a strength on the basis of BTAS's low indirect/overhead rates.

The request is denied.

Susan A. Poling
General Counsel

⁶ With regard to any assertion that the agency should have credited, as a strength, every area where the protester's proposal exceeded the RFP requirements, our Office has previously noted that "the agency was not required to reach such a conclusion unless it also concluded that these features would be advantageous to the government." Avon Prot. Sys., Inc., B-411569.2, Nov. 13, 2015, 2016 CPD ¶ 33 at 8. Here, the record evidences that the agency did not find the specific proposal features at issue to be of value to the government. See, e.g., Aff. of Technical Team Lead at 4.

⁷ The agency submitted an affidavit from the technical team lead to explain why the source selection team did not credit BTAS with strengths for the proposal features highlighted by the protester. Our Office has stated that post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions where, as here, those explanations are credible and consistent with the contemporaneous record. APlus Techs., Inc., B-408551.3, Dec. 23, 2013, 2014 CPD ¶ 12 at 10 n.11