



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Navarre Corporation

File: B-414505.6

Date: July 13, 2018

William Weisberg, Esq., Law Offices of William Weisberg, PLLC, for the protester.
Thomas L. Walker, Esq., Wimberly, Lawson, Steckel, Schneider, & Stine, P.C., for the intervenor.
Melody A. Goldberg, Esq., and Donald C. Mobly, Esq., Department of Veterans Affairs, for the agency.
Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of proposals and source selection decision is denied where the record shows that the evaluation was consistent with the solicitation and applicable statutes and regulations, and source selection decision was reasonable.

DECISION

Navarre Corporation, of Navarre, Florida, protests the award of a contract to Owl, Inc., of St. Johns, Florida, under request for proposals (RFP) No. VA256-16-R-0642, issued by the Department of Veterans Affairs (VA) for special needs transportation for the G.V. Sonny Montgomery VA Medical Center in Jackson, Mississippi. Navarre, the incumbent contractor, contends that the agency unreasonably evaluated proposals and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on August 12, 2016, as a service-disabled veteran-owned small business set-aside, contemplated award of a fixed-price, indefinite-quantity contract for the provision of all ground transportation services for the Sonny Montgomery VA Medical Center. Agency Report (AR), Tab 4, RFP at 1, 54. The RFP included Federal Acquisition Regulation (FAR) provision 52.212-2, "Evaluation--Commercial Items," which indicated that award was to be made to the firm whose proposal was most

advantageous to the government, considering price and non-price factors. RFP at 49. The non-price factors, technical and past performance, when combined, were deemed significantly more important than price. Id.

Under the technical factor, the agency would assign proposals adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable. RFP at 51. For the past performance factor, the RFP stated that the agency would first evaluate the relevancy of the offeror’s past performance by comparing the scope, size, and complexity of referenced contracts. Id. at 50. The agency would also assign a confidence rating based on the offeror’s performance record. Id. Finally, the agency would assign an overall rating for past performance. Id.

The agency received four proposals in response to the RFP. On March 15, 2017, the agency made award to Owl. AR, Tab 2, Contracting Officer’s Statement of Facts (COSF) at 1. Navarre subsequently protested to our Office the award to Owl, prompting the agency to take corrective action. On April 19, our Office dismissed Navarre’s protest as academic.

The agency reevaluated proposals and again made award to Owl on July 17. COSF at 2. Navarre again challenged the award to Owl, again prompting the agency to take corrective action. The agency stated that it would amend the solicitation to clarify its licensing or training requirements, permit offerors to submit new or revised proposals, and make a new award decision. COSF at 2. On September 14, our Office dismissed Navarre’s protest as academic.

On September 28, the agency amended the RFP to clarify its licensing and training requirements. Navarre subsequently protested the amended terms of the solicitation. Our office denied Navarre’s protest in part and dismissed it in part. Navarre Corporation, B-414505.4, Jan. 4, 2018, 2018 CPD ¶ 15 at 1. Following the conclusion of the protest, the agency reevaluated proposals as follows:

		Navarre	Owl	Offeror A	Offeror B
Technical		Good	Good	Marginal	Marginal
Past Performance	Relevancy	Very Relevant	Very Relevant	Somewhat Relevant	Not Relevant
	Confidence	Substantial Confidence	Substantial Confidence	Satisfactory Confidence	Unknown Confidence
	Overall	Very Good	Very Good	Satisfactory	N/A
Price		\$8,550,000	\$5,602,500	\$5,312,250	\$8,280,000

AR, Tab 6, Source Selection Decision Document (SSDD) at 7,12.

The contracting officer, acting as the source selection authority (SSA), reviewed the Source Selection Evaluation Board (SSEB) report and performed an integrated assessment of proposals against the RFP’s evaluation criteria. AR, Tab 6, SSDD, at 1. The SSA concluded that Owl’s proposal represented the best value to the government.

Id. at 13. In particular, the SSA found that Owl’s proposal satisfied all of the RFP’s requirements and featured several strengths, including a quality fleet of vehicles and an in-depth customer service plan. Id. In making award, the SSA noted that, as Navarre and Owl’s proposals were rated technically equal, Navarre’s proposal was not worth its \$2,947,500 price premium.¹ On April 25, 2018, the agency notified the unsuccessful offerors that award had been made. COSF at 3. On April 27, the agency provided a written debriefing to Navarre. Id. This protest followed.

DISCUSSION

Navarre’s protest first contends that the VA unreasonably evaluated its proposal. Navarre also challenges the evaluation of Owl’s proposal, arguing that its unrealistically low price indicates a lack of understanding of the RFP’s requirements. Finally, Navarre argues that these evaluation errors resulted in a flawed source selection decision. We have considered all of Navarre’s arguments and, while we do not address all of them below, we find that none provide a basis on which to sustain the protest.²

¹ Offeror A, who submitted the lowest-priced proposal, withdrew from the competition.

² In its protest, Navarre alleged that the VA failed to adhere to the RFP’s stated source selection methodology by improperly elevating the importance of price in making its source selection decision. Protest at 5-6. The agency provided a detailed response to this allegation in its agency report. Memorandum of Law (MOL), at 12-14. In its comments, Navarre stated “Navarre’s [c]omments explicitly incorporate and restate the legal arguments and case citations on proposal evaluation and best value determinations made in Navarre’s April 30, 2018 protest,” Comments at 2, but did not respond to the agency’s arguments in response to this allegation. In responding to an agency report, protesters are required to provide a substantive response to the arguments advanced by the agency. enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 4. Where a protester merely references earlier arguments advanced in an initial protest without providing a substantive response to the agency’s position, our Office will dismiss the referenced allegations as abandoned. Id. Similarly, a protester’s statement, without elaboration, that its initial arguments “are maintained” also will result in the dismissal of the arguments as abandoned. Citrus College; KEI Pearson, Inc., B-293543, et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. Accordingly, we find this protest ground abandoned and we will not address it. See Yang Enterprises, Inc., B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2. Navarre also attempts to seize on a variety of minor documentation errors. For example, Navarre notes that the individual evaluator worksheets contained a section for evaluating a pass/fail requirement that was removed via amendment during the course of the procurement. Comments at 2. Navarre also highlights the fact that the agency identified--and corrected--mistakes made when evaluating its proposal. Id. at 3. The protester then states “[w]hile these individual corrections or retractions may have helped Navarre, they, and other mistakes, show a deeper pattern by the evaluators lack of a thorough and detailed proposal evaluation.” Id. As Navarre has not even attempted to demonstrate how these

(continued...)

Evaluation of Navarre's Proposal

Navarre argues that the agency incorrectly identified weaknesses in its technical proposal.³ Protest at 4. The firm contends that the weaknesses are inconsistent with the VA's assessment of Navarre's performance on the incumbent contract. Id.

We note at the outset that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Under the technical factor, the RFP required offerors to submit documentation demonstrating their ability to satisfy the requirements delineated in the performance work statement (PWS). RFP at 50. In evaluating Navarre's proposal, the agency identified three weaknesses. The agency found that Navarre's proposal failed to adequately describe its approach to quality control, only marginally addressed reporting customer service, and did not adequately describe its dispatch process. AR, Tab 6, SSDD, at 9.

In its response to the agency report, Navarre did not challenge the agency's conclusion that its proposal failed to adequately describe its quality control measures, or that it did not sufficiently detail its customer service approach. Rather, Navarre only challenges the agency's assignment of a weakness for its lack of an adequate dispatch process, asserting that the agency failed to consider that "[t]his is the same dispatching process that Navarre is using in performing the contract currently" and that "[there have] been no complaints from the [agency] about Navarre's dispatching process." Comments at 3.

We find no merit to this argument. Here, Navarre elected to furnish a proposal that failed to sufficiently address its approach to quality control, customer service, and dispatch. We have recognized that in certain limited circumstances involving past performance information, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on an offeror's proposal. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. No part of this concept, however, is intended to remedy an offeror's failure to include information in its own

(...continued)

documentation mistakes prejudiced the firm, we find that these allegations do not provide our Office a basis on which to sustain the protest.

³ The RFP defined a weakness as a "flaw in a proposal that increases the risk of unsuccessful contract performance." RFP at 51.

proposal. See Affordable Eng'g Servs., Inc., B-407180.4, et al., Aug. 21, 2015, 2015 CPD ¶ 334 at 13. Where an offeror is in control of the information contained in its proposal--and not reliant on third parties to submit that information--it exercises its own judgment as to the information that the agency should consider. See L-3 Servs., Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 12 n.10. Accordingly, we conclude the agency had no obligation to seek out and favorably consider information that Navarre failed to address in its proposal.

Evaluation of Owl's Proposal

Navarre also challenges the agency's evaluation of Owl's proposal. Specifically, Navarre asserts that Owl's "unrealistically" low price indicated a lack of understanding of the agency's requirements. Protest at 5. To support its allegation, Navarre notes that the present requirement represents a combination of two previously separate requirements for stretcher and wheelchair transportation services. Id. Navarre argues that Owl's low price reflects its lack of understanding of the need to perform both of these services, and asserts that "had the [agency] correctly evaluated Owl's proposal for price reasonableness, it would have concluded that Owl's proposal presented an operational risk" Id. For the reasons that follow, we find no merit to this aspect of Navarre's protest.

Although an agency is required to determine that offered prices are fair and reasonable before awarding a fixed-price contract, Federal Acquisition Regulation (FAR) § 15.402(a), the purpose of a price reasonableness evaluation in a fixed-price environment is to determine whether prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Arguments that an agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism. SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. Generally, for fixed-price contracts, an agency may conduct a price realism analysis for the limited purpose of assessing whether an offeror's low price reflects a lack of technical understanding or risk, but it may do so only when offerors have been advised that the agency will conduct such an analysis. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Absent a solicitation provision advising offerors that the agency intends to conduct a price realism analysis, agencies are neither required nor permitted to conduct such an analysis in awarding a fixed-price contract. Id.

Here, it is undisputed that the solicitation, as amended, did not provide for a price realism analysis and, as such, the agency was not required to conduct one. We further do not find persuasive Navarre's contention that "Owl's low price is evidence of a flaw in its technical proposal, not a price issue per se." Comments at 5 (emphasis omitted). Despite Navarre's attempt to characterize this protest allegation as a technical challenge, Navarre expressly argued that the agency's evaluation failed to conclude that Owl's low price reflected a lack of technical understanding, i.e., that the agency failed to

perform a price realism analysis. See, e.g., SDV Solutions, Inc., supra. As such an analysis was neither required, nor permitted, Emergint Techs., Inc., supra, we find no merit to this aspect of Navarre's protest.

Source Selection Decision

Finally, Navarre challenges the agency's source selection decision, generally asserting that the agency's best-value tradeoff decision was inadequately documented and tainted by the allegedly unreasonable evaluation. Protest at 6. Navarre also contends that the agency's source selection decision evidences a failure by the SSA to utilize his independent judgment in making an award decision, as required by FAR § 15.308. Comments at 3-4.

Source selection decisions must be documented, and must include the rationale for any business judgments and price/technical tradeoffs made or relied upon by the SSA. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6; see FAR § 15.308. However, there is no need for extensive documentation of every factor considered in a tradeoff decision. See Terex Gov't Programs, B-404946.3, Sept. 7, 2011, 2011 CPD ¶ 176 at 3. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing quotations and that the source selection was reasonably based. Id.

We find that Navarre's challenges to the adequacy of the agency's source selection decision are largely a rehash of its assertions that the agency unreasonably evaluated proposals, which, as we noted above, have no merit. Moreover, our Office has explained that as long as the ultimate selection decision reflects the selection official's independent judgment, agency selection official may rely on reports and analyses prepared by others. See, e.g., MSN Services, LLC, B-414900 et al., Oct. 4, 2017, 2017 CPD ¶ 310 at 8; Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 8. Here, the record demonstrates that the SSA reviewed the SSEB's report to assess the relative merits of the respective proposals. AR, Tab 6, SSDD, at 6-12. He then utilized his own independent judgment in determining, consistent with the solicitation's evaluation criteria, that Owl's proposal represented the best value to the government. Id. at 13; see Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 7 (noting that where selection officials reasonably regard 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). Accordingly, on this record, we have no basis to conclude that the source selection decision was unreasonable, inadequately documented, or otherwise inconsistent with the requirements of FAR § 15.308.

The protest is denied.

Thomas H. Armstrong
General Counsel