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Decision

Matter of: Laulima Government Solutions, LLC

File: B-415079.2; B-415079.3

Date: February 2, 2018

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Major Adam Kama, Captain Harry M. Parent, and Scott N. Flesch, Esq., Department of the Army, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency miscalculated protester's task order proposal and made an unreasonable source selection decision is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria, and where the contracting officer's decision to select the awardee's lower-rated and lower-priced task order proposal was reasonable and adequately documented.

DECISION

Laulima Government Solutions, LLC, of Orlando, Florida, protests the issuance of a task order to Cherokee Nation Assurance, LLC, of Catoosa, Oklahoma, under task order proposal request (TOPR) No. 16-0010, issued by the Department of the Army for scientific research support services for offices of the United States Army Medical Research Institute of Infectious Diseases (USAMRIID) at Fort Detrick, Maryland. Laulima argues that the Army miscalculated both proposals and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The Army issued the TOPR on March 30, 2016, to firms holding Research and Development Support Services indefinite-delivery, indefinite-quantity (IDIQ) contracts,¹ seeking task order proposals to provide services for a base year and two option years. The TOPR specified that a task order would be issued to the contractor whose task order proposal was evaluated as the best value based on a tradeoff among price and non-price factors. TOPR at 18; TOPR amend. 2 at 17-18. The non-price factors, in descending order of importance, were technical approach, experience, quality control approach, and past performance. Id. The TOPR also specified that the “non-cost/price factors” were more important than cost/price. Id.

The TOPR provided that, under the technical approach, experience, and quality control approach factors, proposals would be assigned adjectival ratings, and that the Army would also assess an overall adjectival rating (reflecting the evaluation of all four non-price factors). TOPR amend. 2 at 18. With the exception of the past performance factor, the adjectival ratings were outstanding, good, acceptable, marginal, and unacceptable. Id. at 19-20. Under the past performance factor, proposals would be evaluated regarding how relevant the vendor’s past performance was, as well as the level of confidence, using quality ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or a neutral rating of unknown confidence for firms lacking a record of recent relevant past performance. Id. at 21.

With respect to the evaluation of cost/price, the RFP also stated that vendors were required to submit a detailed breakdown of their proposed pricing, including a cross-mapping of the offeror’s proposed approach and its pricing. TOPR amend. 2 at 2, 4. Each vendor’s pricing would be evaluated to assess reasonableness, including an assessment of whether the task order proposal was consistent with the labor categories in the vendor’s IDIQ contract, whether the proposed labor mix and hours were based on reasonable assumptions, and whether the prices were consistent with the proposed staffing. Id. at 19.

The Army received task order proposals from Laulima and Cherokee and at least one other vendor.

As relevant to the protest, Laulima’s task order proposal emphasized that the firm would retain most of the personnel from the incumbent contract, and would utilize the incumbent contractor (Ke’aki Technologies) and the incumbent subcontractor

¹ The United States Army Medical Research Acquisition Activity awarded the IDIQ contracts under request for proposals No. W81XWH-14-R-0016 in November 2015 as a set-aside under the Small Business Administration’s 8(a) business development program to seven firms, of which the Army reports that six awardees remain eligible to compete for orders. Contracting Officer’s Statement at 1.

([DELETED]), as subcontractors to Lulima. Lulima emphasized that its use of these firms ensured that it could apply their extensive knowledge of the Army's requirements and the best means to achieve them, apply those firms' directly relevant experience, and would also avoid disruption to the delivery of services to the Army.

The Army's evaluation of the task order proposals identified three strengths in Lulima's technical approach, one significant strength in its experience, and one strength in its quality control approach. The evaluators identified no weaknesses or deficiencies in Lulima's task order proposal. Agency Report (AR), Tab 19, Final Price Negotiation Memorandum, at 21-23. The Army's evaluation of Cherokee's task order proposal identified two strengths for its technical approach, two strengths and one weakness for its experience, and one strength for its quality control approach. Overall, the evaluators identified just the one weakness and no deficiencies in Cherokee's task order proposal. Id. at 9-11.

Under the past performance factor, the Army found that Lulima and its two subcontractors had submitted a total of four past performance references for recent work. Two references provided overall ratings of good. Additionally, the Army noted that one of Lulima's subcontractors had experienced "continuous trouble retaining personnel and with timely filling of vacant positions" on the incumbent contract, which the agency viewed as a reason for lowered confidence in Lulima's ability to perform the contract successfully. Id. at 24. Additionally, the Army reviewed past performance information retrieval system and federal awardee performance and integrity information system (PPIRS-FAPIIS) reports for Lulima and its subcontractors. Those records showed 21 assessments, of which three had mostly outstanding ratings, five had mostly very good ratings, and 13 had mostly satisfactory ratings. Id. Altogether, the agency concluded that Lulima's past performance was very relevant and provided a basis for substantial confidence in its ability to perform successfully. Id. at 25.

For Cherokee, the Army's evaluation of past performance considered three past performance references--one each for Cherokee and its two subcontractors. Id. at 11. Two references responded with overall good ratings. Id. at 12. The Army then retrieved four PPIRS-FAPIIS reports for Cherokee and its subcontractors, of which three had mostly good ratings, and one had mostly acceptable ratings. Id. The Army concluded that Cherokee's past performance was very relevant overall, and provided a basis to have substantial confidence in the firm's ability to perform successfully. Id.

The adjectival ratings and total prices for Cherokee and Laulima were as follows:

	Cherokee	Laulima
Technical Approach	Good	Outstanding
Experience	Good	Good
Quality Control Approach	Good	Good
Past Performance—Relev[ance]	Very Relevant	Very Relevant
Past Performance--Confidence	Substantial Confidence	Substantial Confidence
Overall Rating	Good	Good
Overall Evaluated Price	\$40.9 million	\$43.1 million

AR, Tab 19, Final Price Negotiation Memorandum, at 29.

After considering the evaluation results, the contracting officer selected Cherokee’s task order proposal as the best value. On August 4, 2017, Laulima received notice that its task order proposal had not been selected. Following its receipt of a summary of the evaluation (which the Army had labeled as a “post-award debriefing”), Laulima filed a protest with our Office. On September 13, the Army announced that it would take corrective action by reevaluating the proposals and making a new source selection decision, so our Office dismissed Laulima’s protest as academic.

On October 30, the Army informed Laulima that the corrective action had again resulted in selection of Cherokee’s task order proposal for award. The Army also provided a revised “debriefing” to Laulima, after which the firm filed this protest.²

PROTEST

Laulima argues that the Army’s source selection was based on numerous errors. First, the protester argues that its task order proposal was misevaluated because the evaluators unreasonably failed to assess additional strengths, and further, that the contracting officer should have considered Laulima’s technical approach and experience ratings to be significantly superior to Cherokee’s. Protester’s Comments at 4-8. Additionally, Laulima argues that the contracting officer failed to make a reasonable source selection decision by failing to justify the selection of Cherokee’s lower-rated and lower-priced task order proposal over Laulima’s. Protester’s Comments at 9-12.³ Although we do not discuss all of Laulima’s challenges to the evaluation and

² The task order at issue here is valued over \$25 million, and thus is within our Office’s task order protest jurisdiction. 10 U.S.C. § 2304c(e)(1)(B).

³ Laulima also asserted that Cherokee’s price was too low. Specifically, Laulima argued that the Army must have failed to compare Cherokee’s technical and price proposals and thereby failed to recognize alleged inconsistencies between Cherokee’s technical approach, price, and TOPR requirements. Protest at 10-11. In response to a dismissal
(continued...)

the source selection decision, we have considered them all and find that none of the challenges have merit.

Task Order Proposal Evaluation

Laulima argues that under the technical approach, experience, and quality control approach factors, the evaluators unreasonably failed to assess strengths for specific aspects of its proposal that, Laulima argues, exceeded the requirements of the TOPR. Additionally, the firm asserts that because the evaluators identified no weaknesses or deficiencies in its task order proposal, the evaluation failed to indicate the proposal's alleged superiority over Cherokee's. Protest at 6.

Regarding its challenges to the technical approach factor evaluation, Laulima contends that particular features of its proposal exceeded the TOPR requirements, that the Army allegedly did not dispute these claims in its agency report, and therefore the Army's failure to assess a strength (or significant strength) for each was unreasonable. *Id.* at 6-7. First, Laulima argues that its proposal demonstrated a superior understanding of the agency's requirements regarding [DELETED]. Protester's Comments at 4. Second, Laulima argues that its personnel showed superior technical understanding by virtue of their performance under the incumbent contract. *Id.* at 4-5. Third, Laulima argues that it demonstrated extensive insight, and in-depth understanding of the agency's unit-level requirements and how the firm would fulfill them. *Id.* at 5. Fourth, Laulima argues that it presented a detailed transition strategy by having incumbent personnel in place. *Id.*

Regarding the experience factor evaluation, Laulima argues that the evaluation failed to recognize as one or more strengths the decades of highly relevant experience of its subcontractor, [DELETED], including that firm's role as a subcontractor under the incumbent contract, and Laulima's corresponding retention of nearly all of the experienced incumbent personnel. *Id.* at 6-7. Finally, under the quality control approach factor, Laulima argues that its proposal also merited a strength because it proposed that its [DELETED] would have formal training in [DELETED]. *Id.* at 8.

(...continued)

request by the Army, our Office informed the parties that we would not develop this ground of protest because it was factually unsupported beyond the observation that Cherokee's price was allegedly too low. We noted that an offeror may elect to propose a price that is below the cost of performance, and therefore, even assuming as valid the protester's assertion that Cherokee's price was below Laulima's assessment of the cost of performance, the awardee's lower price did not provide a sufficient factual basis to support a valid basis of protest. Email from GAO to All Counsel, Nov. 29, 2017, at 1. As such, we dismiss this ground of protest. 4 C.F.R. § 21.1(c)(4) and (f); Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶124 at 4. Laulima also raised a supplemental protest challenging the discussions as unfair, but subsequently withdrew that ground of protest.

The Army responds that Laulima's claims do not show that the evaluation was unreasonable, only that the firm disagrees with the agency's evaluation judgment. In particular, with respect to its claims of multiple superior aspects in its technical approach, the Army explains that the evaluation did consider Laulima's technical approach and, importantly, assessed a strength regarding its approach to retaining employees under the biological personnel reliability program. AR at 18-19. The Army argues that this strength reflected the evaluators' reasonable consideration of Laulima's approach, and conclusion that the task order proposal did not merit an additional strength for the firm's asserted superior understanding. Id. at 19. The Army also explains that the evaluators considered the advantages of Laulima's proposal to use incumbent personnel, and while they recognized that advantage under the experience factor evaluation, they considered what Laulima describes as its superior understanding and more extensive insights as insufficiently valuable for them to assess any additional strengths under the technical approach factor. Id. at 19-20.

Regarding the experience of Laulima's subcontractor, the Army notes that under the incumbent contract, [DELETED] was a subcontractor to Ke'aki Technologies, and that the significant strength assessed in the evaluation of Laulima's proposal for the involvement of Ke'aki encompassed the proposed role of [DELETED] as a subcontractor to Laulima. Id. at 23. Additionally, the Army notes, the task order contains the typical limitation on subcontracting clause, which will prevent subcontractors from performing more than 49 percent of the task order, and thus the evaluators considered the value of the subcontractors' experience to be somewhat limited. Id. at 24. With respect to the quality control approach factor, the Army explains that the [DELETED] training of Laulima's [DELETED] did not meaningfully exceed the TOPR requirements and did not warrant assigning a strength. Id. at 25. At the same time, the Army notes that the capability of Laulima's [DELETED] (who was one of the personnel that would have the training) was assessed as a strength. Id.

In reviewing a protest of a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. In our view, Laulima's challenges do not show that the Army's evaluation judgments were unreasonable; rather, the Army has provided reasonable explanations that the evaluation recognized the aspects of Laulima's proposal that the firm argues should have been assessed as strengths, and that the evaluation in some cases recognized those aspects as strengths, and in others concluded that no strength was merited. Laulima's protest does not show that any of the Army's evaluation judgments in not assessing additional strengths were unreasonable. See SSI, B-413486, B-413486.2, Nov. 3, 2016, 2016 CPD ¶ 322 at 9 (protest lacked basis to show that agency unreasonably failed to assess additional strengths); accord. Epsilon Sys. Sols., Inc., B-414410, B-414410.2, June 6, 2017, 2017 CPD ¶ 199 at 12, recon. denied, B-414410.3, Sept. 20, 2017, 2017 CPD ¶ 292.

Best-Value Tradeoff

Apart from the evaluation of the task order proposals, Laulima also argues that the contracting officer made an unreasonable source selection decision that minimized Laulima's superiority. In particular, Laulima argues that the tradeoff minimized its evaluated advantage under the technical approach factor, which was reflected in the adjectival ratings, by characterizing Laulima's proposal as only "slightly better," and unreasonably considered the two firms' task order proposals as providing equivalent value under the experience and quality control approach factors. Protester's Comments at 9-10. Laulima argues that its advantage over Cherokee was significant under the technical approach factor, that Cherokee's experience was assessed a weakness, unlike Laulima's, and that the comparison of the quality control approach evaluation between the two firms failed to justify the conclusion that they provided equal value. Id. at 10. As a result, Laulima argues that the contracting officer failed to appreciate its broad advantages when selecting Cherokee's lower-rated and lower-priced task order proposal for award. Id. at 11.

The Army argues that the contemporaneous record demonstrates that the contracting officer reviewed the evaluation of each vendor's task order proposal in significant detail--beyond the adjectival ratings--and then exercised reasonable judgment in comparing the advantages of each. AR at 27-29. The Army also contends that the contracting officer adequately documented the source selection judgments in this task order competition, and reached a reasonable conclusion that, taken as a whole, Laulima offered a slight advantage under the technical approach factor, but it was insufficient to justify incurring the firm's higher price when compared to Cherokee. AR at 30-31.

In the context of a best-value tradeoff competition for a task order, it is the function of the selection official to perform a cost/technical tradeoff; that is, to determine whether one proposal's technical superiority is worth its higher cost. The agency has broad discretion in making that tradeoff, which nevertheless must be rational and consistent with the solicitation's stated evaluation criteria. The agency's rationale for any cost/technical tradeoffs made and the benefits associated with the additional costs must be adequately documented. Federal Acquisition Regulation (FAR) §§ 16.505(b)(1)(iv)(D), (b)(7)(i). The documentation of the tradeoff only needs to be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 24.

Our review of the source selection decision confirms that the contracting officer reasonably considered the evaluation of both Laulima's and Cherokee's task order proposals. The contracting officer discussed areas where a firm's task order proposal identified advantages that the agency did not view as significant, and noted aspects of the task order proposals where both firms had similar strengths. See, e.g., AR, Tab 19, Post-Negotiation Memorandum, at 30 (discussing technical approach and experience evaluations). The contracting officer recognized that Laulima provided a better value

than Cherokee under the technical approach evaluation, but that Cherokee had an advantage in its lower price. Id. at 33. In weighing the tradeoff, the contracting officer judged Cherokee's price advantage to outweigh Laulima's technical advantage, and therefore selected Cherokee's task order proposal for award. Id. at 33, 36. In our view, the contemporaneous record here adequately documents a reasonable source selection judgment that is consistent with the criteria in the TOPR. Accordingly, we see no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel