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Decision

Matter of: Apextech LLC

File: B-415153.2; B-415153.3

Date: March 15, 2018

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Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of proposals and source selection decision is denied where the agency reasonably performed a price realism analysis and evaluated technical proposals in accordance with the solicitation.

DECISION

Apextech LLC, a small business of Arlington, Virginia, protests the issuance of a task order to Golden Key Group, LLC (GKG), a small business of Reston, Virginia, under request for proposals (RFP) No. W15QKN-17-R-0046, issued by the Department of the Army, U.S. Army Cadet Command, for reserve officers' training corps support services. The protester challenges the evaluation of proposals and the selection decision.

We deny the protest.

BACKGROUND

The agency issued the RFP on June 2, 2017, using Federal Acquisition Regulation (FAR) part 16 procedures, to small business holders of the Army's Human Resources Solutions' Recruitment and Retention Mission Area multiple award indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 3, RFP, at 1. The RFP contemplated issuance of a fixed-price task order consisting of a 2-week transition/phase-in period, 11.5-month base period, and two 12-month option periods. Id. Award

was to be made to the proposal determined to provide the best value to the government, considering technical and price factors. Id. The technical factor was more important than price. Id.

Regarding price proposals, offerors were instructed to: submit a fixed-price proposal using the labor categories and associated labor rates in their IDIQ contracts, not exceed the fully loaded ceiling rates established in their IDIQ contracts, and propose labor hours deemed appropriate to meet the government's requirements. RFP at 4. The RFP further required that offerors "include a complete identification of all resources required to accomplish the work required by the task order and [] ensure the resources coincide with the information presented in the technical proposal for the task order." Id. at 5. The RFP explained that price would be evaluated using the price analysis techniques in accordance with FAR § 15.404-1(b). Id. at 8. In addition, the RFP advised:

Offerors are cautioned that a proposal is presumed to represent an offeror's best effort to respond to the RFP. Any inconsistency, whether real or apparent, between promised performance and price, should be explained in the proposal. Any significant inconsistencies, if unexplained, raise a fundamental issue of the offeror's understanding of the nature and scope of work required and his/her financial ability to perform under the contract, and may be grounds for rejection of the proposal.

Id. at 8. The RFP further stated that a proposal could be rejected if it was determined that pricing was unbalanced such that it posed an unacceptable risk to the government. Id. at 9. In addition, the RFP advised that evaluated prices would consist of the proposed labor price, the government-provided other direct cost (ODC) amounts, and the amount of the six-month option to extend period included in the task order pursuant to FAR clause 52.217-8.¹ Id.

The technical factor included the following five subfactors, listed in descending order of importance: (1) staffing approach; (2) technical approach; (3) management process and quality control; (4) transition/phase-in plan; and (5) training plan. RFP at 1, 3-4. The RFP stated that the technical factor and subfactors would be evaluated to determine the extent to which the offeror demonstrated a clear understanding of the requirements, the completeness and adequacy of the offeror's response, and the feasibility of the offeror's approach. Id. at 6. The RFP provided the following subfactor and overall ratings to be assigned under the technical factor: blue/outstanding; purple/good; green/acceptable; yellow/marginal; and red/unacceptable. Id. at 7.

¹ The price for the FAR clause 52.217-8 option period was determined by computing 50 percent of the offerors' fixed prices for the last 12-month period of performance. RFP at 5.

Apextech and GKG submitted proposals by the solicitation closing date, and following evaluation, the agency made an initial award to GKG on August 18, which Apextech protested with our Office on August 25. AR, Tab 8, Award Decision, at 1. Our Office subsequently dismissed the protest as academic after the agency stated that it would take corrective action by reevaluating proposals and making a new award decision. Apextech LLC, B-415153, Sept. 5, 2017 (unpublished decision).

In its corrective action, the Army appointed a new contracting officer, contract specialist, technical evaluators, and source selection authority. AR, Tab 8, Award Decision, at 1. With respect to the price evaluation, the contract specialist confirmed that the proposed labor rates did not exceed the offerors' IDIQ contract ceiling rates, and compared the proposed rates and pricing to historical data and pricing, the independent government cost estimate (IGCE), and each other. AR, Tab 9, Determination of Price Reasonableness, at 4-6. Evaluated prices were computed by determining the sum of each year of performance (computed by multiplying proposed labor rates by the proposed labor hours for each labor category and adding ODCs) and the amount for the FAR clause 52.217-8 option period. Id. at 5.

For the technical evaluation, evaluators identified four significant strengths, two strengths and three weaknesses in Apextech's proposal. AR, Tab 5, Apextech Technical Evaluation, at 7. For GKG, the evaluators identified seven significant strengths, two strengths, and one weakness. AR, Tab 6, GKG Technical Evaluation, at 8. The final evaluation results were as follows:

	Apextech	GKG
TECHNICAL	GOOD	OUTSTANDING
Staffing Approach	Outstanding	Outstanding
Technical Approach	Good	Outstanding
Management Process and Quality Control	Acceptable	Outstanding
Transition/Phase-In Plan	Acceptable	Acceptable
Training Plan	Good	Outstanding
EVALUATED PRICE	\$46,097,965	\$44,018,454

AR, Tab 8, Award Decision, at 4-5.

Award was again made to GKG on December 8. Apextech was provided with a debriefing and this protest followed.

DISCUSSION

The protester argues that the Army failed to perform a price realism analysis, as required by the RFP, and that a proper evaluation would have found that GKG's proposed price is unrealistically low. Protest at 11-13. Apextech also challenges all three of the weaknesses identified by the technical evaluators, and argues that the evaluators unreasonably failed to identify multiple strengths and significant strengths in

its proposal. Id. at 16-19. Apextech further argues that a proper evaluation would have resulted in its proposal being rated at least equal to if not higher than the awardee's, and a rational selection decision would find its slightly higher price worth the premium. Id. at 20. Although our decision does not specifically discuss all of Apextech's arguments, we have considered them all and find no basis to sustain the protest.²

Price Realism Analysis

The protester argues that the Army failed to perform a price realism analysis as required by the RFP. Protest at 11-13. The protester further alleges that GKG's proposed price is unrealistically low, and makes unreasonable the Army's rating of outstanding for GKG's technical proposal. Id. at 11; Comments at 8-9.

The Army contends that the RFP did not require a price realism analysis, and that the agency otherwise performed a reasonable evaluation in accordance with the terms of the RFP. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 7-8. The Army argues that its price analysis demonstrates that it recognized that both offerors' pricing was "reasonably in line" with historical pricing, noted that the pricing was below the IGCE and their respective IDIQ contract rates, and concluded that the prices were fair and reasonable.³ Id. at 17-19 (quoting AR, Tab 9, Determination of Price Reasonableness, at 4). The Army further argues that it performed a thorough evaluation of GKG's technical proposal that considered GKG's understanding of the requirement and feasibility of approach, including specific consideration of the hours and labor mix proposed in its staffing approach that explained how it could provide savings to the government, and concluded that it provided an outstanding approach. Id. at 19-22. Ultimately, the Army concludes that it did consider price realism in its evaluation of GKG's proposal. Id. at 22; see also Supp. MOL at 3.

An agency's concern in making a price reasonableness determination in a fixed-price environment is primarily whether the offered prices are too high, as opposed to too low, because it is the vendor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. See FAR § 15.404-1(b); Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. In contrast, a price realism review is to determine whether prices are too low, such that there may be a risk of poor performance. See FAR § 15.404-1(d); STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 13. While an agency may elect to perform a realism analysis in connection with the issuance of a fixed-priced or fixed-rate

² After receiving the agency report, the protester withdrew allegations that the agency had improperly converted the procurement from a best-value tradeoff to a lowest-priced, technically-acceptable basis for award, and that the Army had a bias in favor of GKG. Comments at 3.

³ Apextech's evaluated price was found to be 7.7 percent lower than the IGCE, while GKG's was 11.9 percent lower. AR, Tab 10, Price Negotiation Memorandum, at 8.

task order--in order to assess a vendor's risk or to measure a vendor's understanding of the solicitation's requirements--the agency may not evaluate quotations for realism unless it includes such a requirement in the solicitation. STG, Inc., *supra*. In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and where the RFP states that a proposal can be rejected for offering low prices. *Id.* at 14; HP Enterprise Services, LLC, B-413888.2 *et al.*, June 21, 2017, 2017 CPD ¶ 239 at 5; *see also* Optex Sys., Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 4.

Here, the RFP stated that price would be evaluated using the price analysis techniques in accordance with FAR § 15.404-1(b), which concerns fair and reasonable pricing. RFP at 8. As noted, however, the RFP also stated that any significant inconsistency between promised performance and price, if unexplained in the proposal, would "raise a fundamental issue of the offeror's understanding of the nature and scope of work required and his/her financial ability to perform under the contract, and may be grounds for rejection of the proposal." *Id.* As in Optex, we find that the RFP language here triggered a requirement for the Army to perform a price realism analysis. In any event, the record shows that while the Army did not use the term "price realism" to describe its price analysis, it did perform an analysis of the proposed labor rates and pricing to determine if they were too low.

The nature of a price realism analysis required to assess whether an offeror's price is so unrealistically low as to reflect a lack of technical competence or understanding is within the agency's discretion. AMEC Earth & Envtl., Inc., B-404959.2, July 12, 2011, 2011 CPD ¶ 168 at 8. Agencies may use a variety of price evaluation methods to assess realism, including a comparison of prices received to one another, to previously proposed or historically paid prices, or to an independent government estimate. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 3.

The Army compared the offerors' proposed burdened labor rates and pricing to historical data and pricing, the IGCE, offerors' IDIQ contract rates, and each other. AR, Tab 9, Determination of Price Reasonableness, at 4-6. Both Apextech's and GKG's evaluated prices were above the historical data/pricing, but the Army concluded that was because there was an increase in the number of instructors required for this solicitation. *Id.* at 4. Further, both offerors' evaluated prices were below the IGCE and GKG's evaluated price was 4.3% lower than Apextech's. *Id.* The agency further noted that while both offerors proposed labor category rates below their respective IDIQ rates, for certain labor categories, GKG proposed lower rates than Apextech, and for other labor categories, Apextech proposed lower rates than GKG. *Id.* at 5. The record also shows that the Army considered GKG's proposed technical approach when determining its price to be "fair and reasonable." AR, Tab 10, Price Negotiation Memorandum, at 8. Specifically, the agency concluded that GKG provided an exceptional approach and understanding of the requirements and had a low risk of unsuccessful performance. *Id.*

Under these circumstances, we find the agency's price evaluation to be reasonable. See Technology Concepts & Design, Inc., B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 11 (comparison of offerors' loaded labor rates to each other, the government estimate, and Federal Supply Schedule rates satisfied RFP's realism analysis requirement).

Technical Evaluation and Selection

The protester also challenges the three weaknesses identified by the technical evaluators, as well as the evaluators' failure to identify multiple additional strengths and significant strengths in the evaluation of Apextech's proposal. Protest at 16-19. The Army responds that it fairly evaluated offerors' proposals, and that the weaknesses identified in Apextech's proposal were reasonable. COS/MOL at 10-13, 25-31. The Army further responds that it did not identify additional strengths or significant strengths in Apextech's proposal because, in many instances, the Apextech proposal provided information regarding its historical achievements, but otherwise failed to present a specific approach to many of the performance work statement (PWS) requirements, as required by the RFP. Id. at 31-34. Although we do not address each of these challenges, we have reviewed them all and find no basis to sustain the protest.

In reviewing protests of an agency's evaluation and source selection decision, even in a task or delivery order competition as here, we do not reevaluate proposals; rather, we review 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. See Ball Aerospace & Techs. Corp., B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id.

On this record, the protester's arguments do not provide any basis to sustain the protest. For example, under subfactor 3, management process and quality control, the RFP required that an offeror "provide its approach to ensure uninterrupted services through employee turnover and personnel absence given the complexities of staffing personnel." RFP at 4. The RFP stated that with respect to the technical subfactors, the agency would evaluate the extent to which the proposal demonstrates an understanding of the requirements, issues to be resolved, required tasks, and whether the offeror's understanding of the requirement is adequately reflected in their approach to ensuring integration throughout the program. Id. at 6. Here, the technical evaluators identified the following weakness in the Apextech proposal under this subfactor with respect to the offeror's understanding of the requirement:

The offeror provides historical data on turnover and back-fills, but there are few details on its approach to providing continuous services during times of short-notice personnel absences and vacancies. The offeror indicates that the [regional managers] will be responsible for coordinating

back-fills, but it does not detail the process to providing temporary or permanent coverage to prevent lengthy performance gaps.

AR, Tab 5, Apextech Evaluation, at 4-5.

Apextech argues that assessing a weakness was unreasonable because its proposal “offered a proven approach to ensuring uninterrupted services, citing its average 97.4% position fill rate, and its vacancy fill rate of 17 days, both metrics that well exceed the PWS’s requirements.” Protest at 18. However, as explained by one technical evaluator:

Apextech’s proposal did not sufficiently address this solicitation requirement. Apextech provided metrics to demonstrate the outcome of an approach it used in the past, but it did not describe the approach that was to be used to achieve these results nor did it affirm that the same approach would be used in the follow-on effort. Given the geographic dispersion and complexities of this requirement, the lack of detail in Apextech’s proposal increases performance risk.

AR, Tab 13, Decl. of Technical Evaluator, at 3; see also Tab 12, Decl. of Technical Factor Chair, at 2 (“[T]he evaluation of Apextech’s proposal revealed no deliberate process was provided for achieving this objective. Instead, Apextech provided numerous statistics that demonstrated previous success.”). By its own admission, Apextech asserts that its proposal provided evidence of historical success achieving the requirements of the RFP, but does not otherwise cite to where in its proposal it provided an approach that would be used to ensure uninterrupted services. Accordingly, we find the Army’s identification of this weakness unobjectionable.

In addition, Apextech argues that a proper evaluation of proposals would have resulted in its proposal being rated superior, or at least equal to GKG, and worth the slight price premium. Protest at 20; see also Comments at 14-16. The protester asserts that in its selection decision, the Army should have looked past glitches in its proposal writing and “could have reasonably expected Apextech, building upon its successful experience performing the same requirement over the last three years . . . to deliver superior technical merit more than worth the minimal price premium.” Comments at 16.

An offeror’s technical evaluation is dependent upon the information furnished; there is no legal basis for favoring a firm with presumptions on the basis of its incumbent status. HealthStar VA, PLLC, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2. It is the offeror’s burden to submit an adequately written proposal; an offeror, including an incumbent contractor, must furnish, within its proposal, all information that was requested or necessary to demonstrate its capabilities in response to a solicitation. Id.

Here, the Army identified four significant strengths, two strengths and three weaknesses in Apextech’s proposal, and identified seven significant strengths, two strengths, and one weakness in GKG’s proposal. AR, Tab 5, Apextech Technical Evaluation, at 7;

Tab 6, GKG Technical Evaluation, at 8. Although the source selection authority considered all of the weaknesses to be “minor with little to no impact on performance if resolved,” and that both proposals met the requirements of the solicitation, she concluded that the GKG proposal had offered a superior technical approach. AR, Tab 8, Award Decision, at 8. The technical factor chair explains that the Apex tech proposal warranted an overall rating of good, but not outstanding, because of its lack of detail:

- “The proposal by Apex tech did in fact cite many of the successes they have achieved during previous years of execution. However, the proposal failed to provide the detailed process they planned to use to achieve similar success for this particular requirement.” AR, Tab 12, Decl. of Technical Factor Chair, at 2.
- “While the offeror failed to provide details of multiple processes, their repeated citation of key variables and statistics previously achieved demonstrated their understanding of critical operational variables for this contract.” Id.
- “[I]t was clear that Apex tech understands the requirements of the contract. However, key portions of Apex tech’s proposal provided only a marginal level of details and simply relied on the company’s previous performance statistics.” Id. at 3.

We find the agency’s technical evaluation here was reasonable. Moreover, we are not persuaded by the protester’s argument that its “minimal price premium” would justify award to its lower technically-rated proposal. In sum, although the protester clearly disagrees with the agency’s determinations here, it has not shown them to be unreasonable. Ball Aerospace & Techs. Corp., supra at 7.

The protest is denied.

Thomas H. Armstrong
General Counsel