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Decision

Matter of: Immersion Consulting, LLC

File: B-415155; B-415155.2

Date: December 4, 2017

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DIGEST

In a procurement which provided for award on a best-value tradeoff basis, a source selection authority's (SSA) selection of a lower-priced quotation on the basis that the two quotations were technically equal is unreasonable where the SSA's rationale for removing strengths and weaknesses assessed by the source selection evaluation board is not meaningfully explained in the record and otherwise appears inconsistent with the contemporaneous evaluation record and the solicitation.

DECISION

Immersion Consulting, LLC, of Annapolis, Maryland, protests the issuance of a task order under Federal Acquisition Regulation (FAR) subpart 8.4 to NetImpact Strategies, Inc., of Chantilly, Virginia, under solicitation No. 1186423, issued by the Department of Defense (DoD), Defense Human Resources Activity (DHRA), for program management support services. The protester challenges the evaluation of quotations and the selection decision.

We sustain the protest.

BACKGROUND

The solicitation was issued on April 17, 2017, to holders of the General Services Administration (GSA) Federal Supply Schedule (FSS) No. 874-4 for integrated business

program support services. Solicitation¹ at 270.² The solicitation, issued as a total small business set-aside, sought program management support services for the Defense Travel Management Office (DTMO).³ The solicitation contemplated the award of a single fixed-price task order for a 12-month base period and four 12-month option periods. Id. Award was to be made on a best-value tradeoff basis considering the following factors, in descending order of importance: technical, past performance, and price.⁴ Id. at 295. The technical factor included three subfactors: technical approach and methodology; project management plan; and staffing plan. Id. at 293-294. The solicitation advised that the technical factor and past performance factor, when combined, were significantly more important than price. Id. at 295.

Under the technical factor's first subfactor, technical approach and methodology, vendors were required to address each portion of the performance work statement (PWS) and describe and demonstrate their understanding of the requirement. Solicitation at 293. This was to be done by explaining the vendor's assessment of the objectives to be accomplished and presenting the vendor's methodology for accomplishing the required contract performance. Id. This subfactor included two elements that each presented a scenario to be addressed. See id. at 293-294.

Under the second subfactor, staffing plan, vendors were required to demonstrate how their staffing plan supported the technical approach by providing labor categories, experience and skill level of proposed personnel, labor hours, and a cross walk to the PWS requirements. Id. at 294.

¹ Although the solicitation was issued under FAR subpart 8.4, throughout the record the parties use the term "proposal" to refer to the vendors' responses to the solicitation (which was referred to as a request for proposals). The distinction between a quotation and proposal is not relevant to our analysis. For purposes of this decision, we use the term quotation throughout.

² The solicitation was amended once. All citations to the solicitation are to the final version as amended. The agency used a Bates numbering system in preparing the agency report. This decision uses the Bates numbers assigned by the agency for its citations.

³ Prior to the establishment of DTMO in 2006 as the single focal point for commercial travel within DoD, several disparate programs governed travel policy, regulations, and directives for commercial travel for DoD. See Solicitation at 287. DTMO was established as a result of recognizing the need to streamline and consolidate the various pieces of the multi-billion dollar travel enterprise. See id.

⁴ The solicitation advised that the agency anticipated that adequate price competition would establish a fair and reasonable price, but that if the agency did not receive adequate price competition, it would evaluate price quotations to ensure price reasonableness. Solicitation at 295.

The agency received timely responses from Immersion and NetImpact. These were evaluated by a source selection evaluation board (SSEB) that assessed strengths and weaknesses and provided rating summary comments under the technical factor. See generally, Agency Report (AR) Tab 14, Technical Evaluation Report (TER); AR, Tab 9, Source Selection Decision Document (SSDD) at 325-330. The SSEB also assigned relevancy and performance confidence ratings under the past performance factor. See generally, AR, Tab 15, Past Performance Relevancy Report; AR, Tab 9, SSDD at 330-341. As relevant here, the SSEB assessed three strengths for Immersion and provided summary rating comments that corresponded to an outstanding rating; the SSEB assessed two strengths and one weakness for NetImpact and provided summary rating comments that corresponded to an acceptable rating under the technical factor. AR, Tab 14, TER; AR, Tab 9, SSDD at 326-329.

The source selection authority (SSA) performed an “[i]ndependent [a]nalysis” of the SSEB’s findings. AR, Tab 9, SSDD at 326-329. As relevant here, the SSA disagreed with the SSEB’s assessment of strengths under the staffing plan subfactor for both Immersion’s and NetImpact’s quotations, stating that the SSEB’s comments on the approach were too general and did not specify how the approach exceeded the PWS requirement, what the impact of the approach was, or how the approach benefitted the government. Id. As a result, the SSA removed the strengths. Id. at 327, 329.

The SSA also removed a weakness assessed under the staffing plan subfactor to NetImpact. Id. at 329-330. In this regard, the SSEB assessed a weakness because it found that roles and responsibilities for some personnel as shown on one chart were inconsistent with the tasks listed for those positions on another chart. Id. at 329. The SSEB found that “[t]he resulting risk is that the [vendor] will not provide sufficient staffing to adequately fulfill the requirements associated with these PWS tasks/responsibilities.” AR, Tab 14, TER at 507. The SSA disagreed with the SSEB and removed the weakness because “[t]here is no underlying or convincing detail on how this negatively impacts the [g]overnment” and concluded that NetImpact met the requirement. AR, Tab 9, SSDD at 330.

With regard to Immersion’s two remaining strengths, the SSA agreed with the analysis of one and revised the other after reviewing the SSEB chair’s comments and the vendor’s quotation. Id. at 327.

The SSA also revised the rating summaries for the vendors under the technical factor, after reviewing the SSEB chair’s rating summary comments. Id. at 326, 328. As a result, the vendors were evaluated by the SSA as follows:

	Immersion	NetImpact
Technical	Acceptable	Acceptable
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Price	\$14,038,052.53	\$10,712,246.05

Id. at 342.

The SSA performed a comparative assessment of the two quotations and found that there were no great distinctions between Immersion's and NetImpact's quotations, which were technically equal in both non-price evaluation factors. Id. at 344. In this regard, the SSA explained that he removed the strength assessed for Immersion by the SSEB under the staffing plan subfactor because in his view, Immersion simply satisfied the solicitation's requirements without exceeding them. Id. The SSA also acknowledged that Immersion was assessed two strengths under the technical factor. Id. While the SSA noted that the SSEB identified two strengths and one weakness in NetImpact's quotation, the SSA found that NetImpact simply met the requirements of the PWS and therefore, found no strengths or weaknesses. Id.

In selecting NetImpact for award, the SSA found that both vendors were "equal on technical and past performance merits . . . [and that] no trade-offs exist that justify paying a higher price to Immersion." Id. at 345. As a result, the SSA found that NetImpact represented the best value to the government and recommended award.

Immersion was notified of NetImpact's selection on August 17, 2017. This protest followed.

DISCUSSION

Immersion challenges the SSA's independent analysis under the technical factor and the SSA's resulting conclusion that the two quotations were technically equal.⁵ See Protester's Comments at 9-18. Specifically, the protester first challenges the SSA's removal of a weakness from NetImpact's quotation under the staffing plan subfactor after concluding that "[t]here is no underlying or convincing detail on how this negatively impacts the [g]overnment. The [vendor] met this requirement." Id. at 12 (citing AR, Tab 9, SSDD at 330). In the protester's view, the SSA's changes failed to address the SSEB's view that the discrepancies between NetImpact's staffing plan and its project management approach may have "[t]he resulting risk [] that the [vendor] will not provide sufficient staffing to adequately fulfill the requirements associated with these PWS tasks/responsibilities." Id.; see also AR, Tab 14, TER at 507.

In response, the agency states that the SSA documented his decision and rationale for removing the assessed weakness by stating that the SSEB did not note any negative impact to the government from the alleged weakness. Supplemental (Supp.) AR at 3. The agency further explains that there are no discrepancies between the "Roles and Responsibilities" and the "Labor Category Mapping" tables in NetImpact's quotation

⁵ In filing and pursuing this protest, the protester has raised arguments in addition to, or variations of, those discussed herein. While we do not address every issue raised, we have considered all of the protester's arguments and allegations and find that, except as discussed below, they provide no basis to sustain the protest.

because the tables represent different aspects of NetImpact's staffing--one shows what PWS element each position led or supported, while the other provides an overview of labor categories, PWS support, hours, experience, skills, roles, and responsibilities. Id.; see also AR, Tab 10, NetImpact Quotation Vol. I, at 410-411, 422. In this regard, the agency argues that "between the two [tables], NetImpact proposed personnel that would be responsible for each element of the PWS requirements. The [quotation], therefore, covered all elements of the PWS." Supp. AR at 3. The agency also argues, in support of its evaluation, that "[t]he price evaluation completed by the SSEB and relied on by the SSA demonstrate[d] that [the agency] considered the labor proposed by each of the [vendors]." Id.

In reviewing protests of an agency's evaluation and source selection decision in procurements conducted under FSS procedures, we do not conduct a new evaluation or substitute our judgment for that of the agency. Harmonia Holdings Grp., LLC, B-413464, B-413464.2, Nov. 4, 2016, 2017 CPD ¶ 62 at 7; Research Analysis & Maint., Inc., B-409024, Jan. 23, 2014, 2014 CPD ¶ 39 at 5. Rather, we examine the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Harmonia Holdings Grp., LLC, supra; U.S. Info. Techs. Corp., B-404357, B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 at 8-9. For procurements conducted pursuant to FAR subpart 8.4 that require a statement of work, such as this one, FAR § 8.405-2(f) designates minimum documentation requirements. Additionally, in a FAR subpart 8.4 procurement, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. Harmonia Holdings Grp., LLC, supra.

Although source selection officials may reasonably disagree with the ratings and recommendations of lower-level evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments must be reasonable, consistent with the provisions of the solicitation, and adequately documented. The Arcanum Grp., Inc., B-413682.2, B-413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 8; IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 14.

On this record, we cannot conclude that it was reasonable for the SSA to remove this weakness. Here, the SSEB identified specific concerns that NetImpact may not provide sufficient staffing to adequately fulfill the solicitation's requirements based on discrepancies in its staffing plan. See AR, Tab 14, TER at 507. There is nothing in the contemporaneous record or the agency's filings documenting what, if anything, the SSA reviewed to support the SSA's conclusion that there was no detail on the impact to the government--such as NetImpact's quotation--or that the SSA discussed the SSEB's concern with the SSEB. As a result, we find no support for the agency's argument that the SSA documented his decision and rationale to remove the weakness by relying on the SSA's statement that the SSEB did not note any negative impact to the government from the alleged weakness.

We also find no support for the agency's argument that "the [p]rotester's alleged discrepancy is non-existent" because the protester "has not shown that [the] different

numbers in different charts equate to a weakness-generating discrepancy.” Supp. AR at 3. In this regard, the protester points out (and the record supports the conclusion) that it was the SSEB, not the protester that identified discrepancies in the two labor categories as a weakness. Protester’s Supp. Comments at 11-12.

Finally, the agency’s reliance on its price evaluation to support its argument that the SSA considered the weakness the SSEB assessed to NetImpact’s quotation under the staffing plan subfactor is not supported by the record. Here, the record shows that the agency’s price evaluation included an analysis of the discounts offered from the existing GSA contract pricing, a comparison of the vendors’ prices and differences in full-time equivalents and those of the independent government cost estimate, and a conclusion that the labor categories were sufficient for the proposed effort. See AR, Tab 29, NetImpact Price Quotation Review; AR, Tab 30, Immersion Price Quotation Review. While the agency concluded that the labor hours proposed by Immersion were sufficient for the proposed effort, the agency’s evaluation is silent as to whether NetImpact’s proposed labor hours were sufficient for the proposed effort.⁶ Compare AR, Tab 29, NetImpact Price Quotation Review with AR, Tab 30, Immersion Price Quotation Review. As a result, contrary to the agency’s argument, the record does not document how the SSA considered the SSEB’s assessment of a weakness against NetImpact’s staffing plan or his rationale for removing that weakness.

The protester also challenges the SSA’s removal of a strength for its quotation under the staffing plan subfactor. See Supp. Protest at 17-19. In this regard, the SSEB assessed a strength explaining that Immersion’s staffing approach would significantly decrease the risk of lost productivity while new personnel are trained, while also easing and simplifying the process of transition. See AR, Tab 14, TER at 505; AR, Tab 9, SSDD at 326. In disagreeing with the SSEB, the SSA concluded that the SSEB’s comments on the approach were too general, and did not specify how the quotation exceeded the PWS requirement, the impact of the approach on the quotation, or how the approach benefitted the government. See AR, Tab 9, SSDD at 326-327. The SSA noted that the PWS did not specify the type of personnel, education, and level of experience that was required to support the PWS requirements. Id. at 327. The SSA also noted that having institutional knowledge of the mission and organization process of DTMO was not a requirement in the PWS. Id.

In its response, the agency states that the staffing plan subfactor would be evaluated as to how it supported the vendor’s technical approach. AR, Memorandum of Law (MOL) at 10. In this regard, the agency states that the SSA reasonably exercised his

⁶ In fact, in reaching its conclusion that Immersion’s price quotation supported its technical quotation, the agency found that the labor categories and labor hours were sufficient for the effort and that the labor rates were below the government’s estimates. AR, Tab 30, Immersion Price Quotation Review. By contrast, for NetImpact, the agency stated that “[t]he labor categories are sufficient for this effort, and the price [quotation] supports the technical [quotation].” AR, Tab 29, NetImpact Price Quotation Review.

discretion and found that Immersion's proposed retention of predecessor staff merely met the requirements of the solicitation. Id. at 9.

On this record, we cannot conclude that it was reasonable for the SSA to remove this strength. Here, the SSEB's comments were specific and identified the impact of the approach on the quotation, as well as how the approach benefitted the government. Further, under PWS 4.1.1.3, the contractor was required to provide subject matter expertise. See Solicitation at 274.

As discussed above, the SSA selected NetImpact's lower-priced quotation on the basis that the two quotations were technically equal after removing strengths and weaknesses assessed by the SSEB from both quotations; however, the SSA's rationale is not meaningfully explained in the record and otherwise appears inconsistent with the contemporaneous evaluation record and the solicitation. Prejudice is an element of every viable protest. See Piquette & Howard Elec. Serv., Inc., B-408435.3, Dec. 16, 2013, 2014 CPD ¶ 8 at 10. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. XPO Logistics Worldwide Gov't Servs., LLC, B-412628.6, B-412628.7, Mar. 14, 2017, 2017 CPD ¶ 88 at 15; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. There is no basis for our Office to know what the ultimate source selection might have been, had these flaws not occurred. In such circumstances, we resolve doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14. Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that Immersion has established the requisite competitive prejudice to prevail in a bid protest.

RECOMMENDATION

We recommend that the SSA reevaluate the quotations under the technical factor and document his evaluation consistent with the solicitation and this decision. We further recommend that, upon the completion of this evaluation, the agency prepare a new source selection decision. We also recommend that the agency reimburse the protester its costs associated with filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Thomas H. Armstrong
General Counsel