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Decision

Matter of: AlliantCorps, LLC

File: B-415744.5; B-415744.6

Date: November 23, 2018

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Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied, where the agency's selection of a higher-priced, higher-rated proposal was reasonable and consistent with the solicitation.

DECISION

AlliantCorps, LLC, a small business of San Antonio, Texas, protests the issuance of a task order to DKW Communications, Inc. (DKW), a small business of Washington, District of Columbia, by the Department of the Navy, Naval Air Systems Command, under request for task order proposals (RFTOP) No. N61340-17-R-0003, which was issued for software and hardware maintenance services for pilot simulation training systems. The protester asserts that the agency's selection of DKW, a higher-priced, higher-rated offeror, was unreasonable.

We deny the protest.

BACKGROUND

On June 22, 2017, the Navy issued the solicitation to small business holders of the Alliant Small Business governmentwide acquisition contract through the General Services Administration's e-Buy portal. Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 5-6. The solicitation was set aside for small businesses and conducted pursuant to Federal Acquisition Regulation (FAR) § 16.505.

RFTOP at 219, 247.¹ The RFTOP anticipated the issuance of a cost-plus-fixed-fee task order to the small business whose proposal offered the best value to the agency, considering the factors of past performance, management, and cost/price. Id. at 247-249.

On November 14, 2017, the Navy issued the task order to DKW. COS/MOL at 10. On November 29, after a debriefing, Alliant protested the award to DKW with our Office, challenging, among other things, the Navy's past performance evaluation. B-415744, Protest. On November 30, the Navy advised our Office that it intended to "amend the existing solicitation to clarify the government's requirements, open negotiations, obtain and evaluate revised proposals, and make a new source selection decision." B-415744, Notice of Corrective Action, Nov. 30, 2017, at 1. Our Office dismissed the protest on the basis that the agency's proposed corrective action rendered the protest academic. AlliantCorps, LLC, B-415744, Dec. 7, 2017 (unpublished decision).

On February 1, 2018, AlliantCorps filed a preaward protest with our office challenging the corrective action taken by the Navy in response to AlliantCorps' first protest. In this regard, the protester argued that that DKW improperly received AlliantCorps' bid and proposal information, resulting in a violation of the Procurement Integrity Act. B-415744.2, Protest at 4-5. In addition, the protester asserted that the agency failed to conduct meaningful discussions as part of the corrective action. Id. at 6-7. Our Office dismissed the protest ground in which Alliant alleged a violation of the Procurement Integrity Act on the basis that the protester failed to describe a sufficient factual basis for the alleged violation. AlliantCorps, LLC, B-415744.2, April 4, 2018, 2018 CPD ¶ 136 at 4. We also dismissed AlliantCorps' argument regarding a lack of meaningful discussions on the basis that it was, in substance, an untimely challenge to the terms of the solicitation. Id. at 6.

On April 30, the Navy again selected DKW for award, and on May 3, AlliantCorps filed a protest, this time challenging the agency's past performance and management evaluations as flawed. B-415744.3, Protest at 10-17. In response to the Navy's notice of corrective action stating the agency's intent to reevaluate offerors' past performance and make a new source selection decision, our Office dismissed the protest as academic. AlliantCorps, LLC, B-415744.3, May 18, 2018 (unpublished decision).

On May 24, Alliant, in its fourth protest, again challenged the Navy's corrective action in response to its third protest on the basis that, although the agency had revised its evaluation scheme and engaged in discussions relating to past performance, offerors were improperly prevented from amending their past performance proposals. B-415744.4, Protest at 4-11. After the agency stated its intent to revise the RFTOP's past performance evaluation criteria and allow offerors to replace past performance contract references, our Office dismissed the protest as academic. AlliantCorps, LLC, B-415744.4, June 25, 2018 (unpublished decision).

¹ Citations are to the conformed RFTOP included at tab 5g of the agency report.

On June 26, the Navy issued amendment 0005 to the solicitation and provided offerors with revised evaluation notices. COS/MOL at 15; Agency Report (AR), Tab 5e, Amend. 0005 Ltr. As noted above, the amended solicitation anticipated the issuance of a task order to the responsible offeror whose proposal offered the best value to the agency, considering the factors of past performance, management, and cost/price. RFTOP at 246-248. The management and past performance factors were equally important and, when combined, were significantly more important than cost/price. Id. at 248. The solicitation provided that proposals would receive adjectival ratings under the non-price factors, but that the ratings were “merely guides to intelligent decision[-] making.” Id. The RFTOP anticipated that source selection authority (SSA) would “perform a tradeoff between Offerors’ evaluated cost/prices and their evaluated Management Factor risk and their relevant positive and negative assessments under the Past Performance Factor if required.” Id. The RFTOP permitted the agency to select an offeror proposing a higher cost/price if the SSA determined that the improved management risk or past performance of that offeror warranted the price premium. Id.

As relevant to this protest, under the past performance factor offerors were permitted to submit up to three contract references for the prime offeror. Id. at 228. Submission of contract references for entities other than the prime contractor, including proposed subcontractors and joint venture owners, was not permitted, and the solicitation advised that such references would not be evaluated. Id. at 228, 249. Past performance contract references could receive one of three relevance ratings, relevant, somewhat relevant, and not relevant. Id. at 250. Offerors would also receive an adjectival rating reflecting the agency’s overall past performance confidence assessment, with the highest rating being substantial confidence. Id. at 249.

Under the management factor, offerors’ professional compensation plans, including their unburdened labor and fringe rates, would be evaluated for their “ability to obtain quality . . . professional services needed for adequate task order performance,” including recruiting and retention. Id. at 251. Proposals would be assigned an adjectival rating of low, medium or high risk. Id. at 248.

The Navy evaluated AlliantCorps’ and DKW’s proposals as follows:

Factor	AlliantCorps	DKW
Past Performance	Substantial Confidence	Substantial Confidence
<i>Reference #1</i>	<i>Relevant</i>	<i>Somewhat relevant</i>
<i>Reference #2</i>	<i>Relevant</i>	<i>Relevant</i>
<i>Reference #3</i>	<i>Somewhat relevant</i>	<i>Relevant</i>
Management	Low Risk	Low Risk
Cost/Price	\$51,911,230	\$54,842,156

See generally AR, Tab 32, Source Selection Decision (SSD); Tab 27, AlliantCorps Past Performance Report, at 5-6, 17; Tab 29, DKW Past Performance Report at 5, 18.

In performing the best-value tradeoff analysis, the SSA noted that, under the management factor, the proposals of AlliantCorps and DKW each contained two of the same positive characteristics: a fringe benefits rate comparable to the market average, and a fringe benefits package that included all four benefit types referenced in the solicitation.² AR, Tab 32, SSD, at 7-8. The agency also recognized a third “positive characteristic[]” of DKW’s proposal under the management factor: DKW’s unburdened labor rates were above average market rates as well as the rates currently paid by the incumbent, by an average of [DELETED] percent. Id. at 8. In contrast, AlliantCorps’ direct labor rates were, on average, slightly below the solicitation minimum rates. Id. at 9.

The SSA found that DKW’s higher labor rates “[gave] them an advantage over AlliantCorps as [DKW] will have greater flexibility to recruit (through access to a large pool of candidates, defined as a broader range of salary acceptability) and to retain (through salary increases) throughout the full potential performance of the Task Order. . . .” Id. The SSA thus determined that DKW was “superior to” AlliantCorps and that “[t]his superiority is worth a premium.” Id. The SSA concluded that DKW’s proposal was “the most advantageous” to the agency and “that the benefit of this positive characteristic [higher direct labor rates] warrants the 5.67 [percent] premium . . . over AlliantCorps.” Id. at 11.

The agency selected DKW for award, and this protest followed.

DISCUSSION

AlliantCorps challenges the Navy’s best-value tradeoff decision, arguing that the agency lacked a reasonable basis to select DKW’s higher-priced proposal.³ Protester

² The solicitation listed four types of standard fringe benefits for government employees: paid leave, insurance, retirement and savings, and legally-required benefits. RFTOP at 232-233.

³ The protester raises a multitude of additional protest grounds. We have carefully considered each of these and conclude that none provides a basis to sustain the protest. For example, AlliantCorps argues that the Navy should have evaluated its incumbent subcontractor’s past performance references, even though, as the protester acknowledges, “the [RFTOP] precluded the offerors from submitting the past performance [references] of subcontractors.” Protest at 17; see also Protester Supp. Comments at 8. The protester does not provide adequate legal support for its argument that the agency is required to review the past performance of subcontractor entities whose contract references are explicitly excluded from review by the terms of the solicitation. Therefore, AlliantCorps has failed to state a legally sufficient basis of protest, and this protest ground is dismissed. 4 C.F.R. §§ 21.1(f), 21.5(f); cf. AlliantCorps, LLC, Apr. 4, 2018, 2018 CPD ¶ 136 at 5 n.6. Furthermore, had the protester presented a legally-sufficient argument, it would nevertheless be dismissed as an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1).

Comments & Supp. Protest at 4. In this regard, the protester contends that it should have been selected for award because the agency obtained no benefit for DKW's price premium. Protest at 21; Protester Supp. Comments at 2.

The task order competition here was conducted pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 15; URS Fed. Servs., Inc., B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Engility Corp., supra, at 15-16. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id.

The RFTOP permitted the agency to select an offeror proposing a higher cost/price if the SSA determined that the improved management risk or past performance of that offeror warranted the price premium. RFTOP at 248. Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the SSA to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth its higher price. Engility Corp., supra, at 24; Alliant Enter. JV, LLC, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. An agency has broad discretion in making a tradeoff between price and non-price factors, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. Alliant Enter. JV, LLC, id. at 14. The agency's rationale for any price/technical tradeoffs made and the benefits associated with the additional costs must be adequately documented. FAR §§ 16.505(b)(1)(iv)(D), (b)(7)(i); see Engility Corp., supra. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. FAR § 16.505(b)(7); Engility Corp., supra. Rather, the documentation need only 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., supra.

Here, the record shows that the agency performed an extensive and detailed best-value tradeoff, in which the agency discussed the relevant evaluation factors and benefits of the proposals and found merit in paying a price premium for a particular benefit. See generally AR, Tab 32, SSD. The SSA's best-value decision focused on one aspect of the competing proposals under the management factor as the key discriminator, namely, DKW's higher direct-labor rates. Id. at 10-11. The SSA concluded that the technical merits of the awardee's proposal outweighed the price premium that the agency would pay. Id. at 11.

An agency, in making its tradeoff analysis, may ultimately focus on a particular discriminator, even if it is not one of the most heavily weighted factors, where it has a

reasonable basis to do so. See Keane Fed. Sys., Inc., B-280595, Oct. 23, 1998, 98-2 CPD ¶ 132 at 16. The record demonstrates that the Navy reasonably concluded that the benefit offered by DKW, of “greater flexibility in both the recruitment and retention of qualified labor,” merited the corresponding price premium. AR, Tab 32, SSD, at 9. We find no basis to question the agency’s best-value determination. Horizon Indus., Ltd., B-416222, B-416222.2, July 11, 2018, 2018 CPD ¶ 235 at 9 (finding reasonable the agency’s selection of a higher-priced, higher-rated proposal); see also American Tech. Sols. Int’l Corp., B-412442, B-412442.2, Feb. 12, 2016, at 17-18. While AlliantCorps disagrees with the weighting applied by the agency, we find that the Navy’s best-value determination was reasonable and consistent with the evaluation criteria. See AGVIQ, LLC, B-413586, Nov. 2, 2016, 2016 CPD ¶ 303 at 7. This challenge to the agency’s best-value tradeoff decision is denied.

AlliantCorps also raises a number of variations to its challenge to the Navy’s best-value tradeoff decision. For example, AlliantCorps asserts that the Navy may not recognize DKW’s higher direct labor rates as beneficial “because this is a cost type contract, [and] there is no risk that AlliantCorps will be unable to attract and retain personnel.”⁴ Protester Comments & Supp. Protest at 4. The protester argues that, if its own “compensation is sufficient to eliminate risk, there is no logical advantage in paying more compensation to DKW to achieve the same result.” Protester Supp. Comments at 4 (emphasis removed). The protester’s argument here relies on two incorrect premises. First, although the protester asserts that the Navy found that both offerors’ compensation levels “eliminate[d] risk,” the record shows that the agency did not conclude that risk was eliminated, but merely that AlliantCorps’ and DKW’s proposals offered low technical risk, *i.e.*, “a sound management approach and understanding of the contract requirements, sufficient to provide uninterrupted high-quality work.” *Id.*; AR, Tab 32, SSD, at 7. Second, in contrast to the protester’s necessary presumption that the proposals would “achieve the same result,” the record reflects that the Navy viewed DKW’s proposal as offering a moderate but distinctly improved outcome and lower risk, namely in the form of a larger candidate pool and improved retention. Protester Supp. Comments at 4; AR, Tab 32, SSD at 9. Once these erroneous claims are corrected, the protester’s argument lacks a sufficient factual basis and it is dismissed in accordance with our Bid Protest Regulations. 4 C.F.R. § 21.5(f).

In another reframing of its argument, the protester argues that the proposals must be considered to be equivalent because they received the same adjectival ratings.

⁴ AlliantCorps also argues that it is unreasonable for the Navy to pay a premium for DKW’s proposal because not all of the price premium will be directed to salaries. Protester Comments & Supp. Protest at 3-4. As the intervenor notes, the protester’s argument attempts to conflate the analysis of the cost and management factors. Intervenor Supp. Comments at 2. Furthermore, the protester fails to establish a legal basis for the premise of its argument, namely, that a price premium must correspond, dollar-for-dollar, to the corresponding benefit identified in the underlying proposal. Accordingly, this protest ground is dismissed. 4 C.F.R. § 21.5(f).

Protester Supp. Comments at 6. In this regard, the protester contends that the solicitation “does not permit the Agency to trade off positive or negative management findings beyond the overall risk rating.” Id. at 5-6. AlliantCorps asserts that the solicitation language stating that the Navy “may perform a tradeoff between Offerors’ evaluated cost/prices and their evaluated Management Factor risk” restricts the Navy’s evaluation to consideration of the adjectival ratings alone. Protester Comments & Supp. Protest at 12, citing RFTOP at 248. Our prior decisions provide that is nothing improper about an agency’s decision to look behind ratings given proposals by evaluators in an attempt to ascertain the true relative strengths and weaknesses of proposals. See Midland Supply, Inc., B-298720.3, May 14, 2007, 2007 CPD ¶ 104 at 4; ATA Def. Indus., Inc., B-282511.2, July 21, 1999, 99-2 CPD ¶ 33 at 12. Adjectival ratings and point scores are but guides to, and not substitutes for, intelligent decision making. Id. at 5; see also Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 6. Indeed, the solicitation here provides that the adjectival ratings are “merely guides to intelligent decision[-]making,” thus informing offerors that the agency would consider the underlying merits of the proposals. RFTOP at 248. The agency’s tradeoff decision in this regard is entirely unobjectionable.

The protest is denied.⁵

Thomas H. Armstrong
General Counsel

⁵ The protester also argues that because its rates were not upwardly adjusted under the agency’s cost realism analysis, the agency cannot find any benefit in DKW’s higher rates. Protester Comments & Supp. Protest at 9-12. The protester’s efforts to equate a low risk proposal with the elimination of any benefits associated with another are not logical, and are thus unavailing.