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Decision

Matter of: Skyline Ultd, Inc.

File: B-416028; B-416028.2

Date: May 22, 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

1. Protest that the agency engaged in unequal discussions and unfairly limited offerors' proposal revisions in a procurement using the procedures at Federal Acquisition Regulation part 16 is denied where the record shows that the exchanges were equal and tailored to the evaluation of each offeror's proposal, and the submission of written proposal revisions was not required by the terms of the solicitation or the underlying multiple award contract.

2. Protest challenging the evaluation of proposals and source selection decision is denied where the agency reasonably evaluated proposals in accordance with the solicitation.

DECISION

Skyline Ultd, Inc. (Skyline), of Alexandria, Virginia, protests the issuance of a task order to Management Support Technology, Inc. (MSTI), of Fairfax, Virginia, under request for task order proposals (RTOP) No. W15QKN-17-R-0190 issued by the Department of the Army, U.S. Army National Guard, for military funeral honors and survivor outreach services. The protester contends that the agency engaged in discussions that were unequal and not meaningful, and challenges the evaluation of proposals and the selection decision.

We deny the protest.

BACKGROUND

The agency issued the RTOP on November 16, 2017, using Federal Acquisition Regulation (FAR) part 16 procedures, to holders of the Army's Human Resources Solutions' Personnel Services and Support Mission Area multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 14, Basis for Award, at 1. The RTOP contemplated issuance of a fixed-price task order consisting of a 2-week transition period, 11-month base period, 12-month option period, and subsequent 9.5-month option period. Id.; AR, Tab 11, RTOP amend. 0007. Award was to be made to the proposal determined to provide the best value to the government, considering technical and price factors, where the technical factor was more important than price. Id. In addition, the RTOP stated that the government intended to evaluate proposals and make award without discussions. Id. at 3.

The technical factor included the following four subfactors, listed in descending order of importance: (1) staffing approach; (2) technical approach; (3) management process and quality control; and (4) transition plan. AR, Tab 14, Basis for Award, at 1, 3-4. The RTOP stated that the technical factor and subfactors would be evaluated to determine the extent to which the proposal demonstrated a clear understanding of the requirements in the performance work statement (PWS), adequately and completely responded to the PWS and other RTOP requirements, and proposed an approach that was workable and achievable. Id. at 6. The RTOP provided the following subfactor and overall ratings to be assigned under the technical factor: outstanding; good; acceptable; marginal; and unacceptable. Id. at 7.

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 labor rates established in their IDIQ contracts, and propose labor hours deemed appropriate to meet the government's requirements. AR, Tab 14, Basis for Award, at 5. The RTOP further stated that offerors may discount the labor rates proposed, but advised that any Service Contract Act (SCA) covered labor categories would be subject to the requirements of the wage determination for the required places of performance.¹ Id. The RTOP also provided cost figures to be used to propose other direct costs (ODCs) for line items that would be paid on a cost reimbursement basis, such as travel and shipping costs. Id.

¹ The RTOP was initially issued without the wage determination because the agency had not yet received the determination from the Department of Labor. The agency amended the RTOP on December 12, 2017, to provide General Schedule equivalent rates in order for offerors to prepare their price proposals. AR, Tab 7, RTOP amend. 0003. The RTOP was subsequently amended again to provide the wage determination on January 26, 2018. AR, Tab 10, RTOP amend. 0006. Another amendment was later issued on January 29, to provide a corrected wage determination. AR, Tab 12, RTOP amend. 0008.

The agency timely received and evaluated six proposals. Contracting Officer's Statement of Fact and Memorandum of Law (COS/MOL) at 3. For the technical evaluation, the evaluators identified three strengths and no weaknesses in Skyline's proposal. AR, Tab 19, Skyline's Initial Technical Evaluation, at 5. For MSTI, the evaluators identified seven strengths and no weaknesses. AR, Tab 18, MSTI's Initial Technical Evaluation, at 5. The evaluation results were as follows:

	Skyline	MSTI
TECHNICAL	GOOD	GOOD
Staffing Approach	Good	Good
Technical Approach	Acceptable	Outstanding
Management Process and Quality Control	Acceptable	Good
Transition	Good	Good
EVALUATED PRICE	\$37,041,646	\$33,974,063

AR, Tab 31, Award Decision, at 2. The source selection authority (SSA) was briefed on the results of the evaluation on January 30, 2018. See AR, Tab 30, SSA Briefing Slides.

On January 31, the agency was advised by the incumbent contractor, a proposed subcontractor of MSTI, that it had terminated its teaming arrangement with MSTI, and would not be participating in proposal preparation or performance of the task order if MSTI were to receive the award. AR, Tab 20, Email from Incumbent Contractor to Army, Jan. 31, 2018. The Army then contacted MSTI, which confirmed that the incumbent contractor had terminated its teaming arrangement with MSTI, and further stated that it had engaged a substitute subcontractor to provide the intended services, and that its proposed key personnel remained committed to performance of the task order as provided in their commitment letters to MSTI. See AR, Tab 21a, Email from MSTI to Army, Jan. 31, 2018. As a result, the Army decided to enter into discussions with all offerors and "request that each offeror confirm their initially proposed teaming arrangements and commitment letters are still valid and up to date," as well as provide offerors with weaknesses an opportunity to address them. AR, Tab 21, Contracting Officer's Memorandum to File, Feb. 1, 2018.

On February 1, the agency amended the RTOP to reduce the transition period from either February 6 or the date of award through February 14. AR, Tab 13, RTOP amend. 0009. In addition, the RTOP amendment provided all offerors with the following evaluation notice (EN), which stated in pertinent part:

Please validate your Commitment Letters for all Key Personnel for both Prime and [Subcontractors], and confirm they still stand as originally proposed.

Identify any change or impact this may have to your technical proposal or pricing proposal/spreadsheet. If no changes [are] needed to your

technical and/or pricing proposal, then respond to the EN stating no change to technical proposal or pricing proposal/spreadsheet.

If revisions to the Technical and/or Price/Cost Proposals are required as a result of your response to this EN, only submit change pages to the Technical proposal under this EN. Submit revisions/change pages to the Cost-Price Spreadsheet, *in [Microsoft] Excel format*. Highlight changes in your change pages using the “Track Changes” feature of [Microsoft] Word and/or highlight changes in the [Microsoft] Excel document.

Supp. COS/MOL at 10-11; AR, Tab 22, RTOP amend. 0009, MSTI EN 0001; Tab 23, RTOP amend. 0009, Skyline EN 0001. The agency also identified as a weakness for MSTI the termination of MSTI's teaming arrangement with the incumbent contractor, and issued a second EN requesting that MSTI “explain how you plan to mitigate this loss and replace the previous sub-contractor.” AR, Tab 22, RTOP amend. 0009, MSTI EN 0002. Only one other offeror received a second EN to allow it to address a weakness identified in its technical proposal. See AR, Tab 41, Offeror D EN 0002. Responses to the ENs were due the same day by 4:00 p.m. Eastern Time. AR, Tab 22, RTOP amend. 0009, at 1.

After reevaluating proposals, the agency determined that the strengths assigned to MSTI, though slightly revised due to its substitution of a subcontractor, remained the same, and that its ratings were also the same. AR, Tab 28, MSTI Final Technical Evaluation. Since Skyline made no revisions to its technical proposal, Skyline's strengths and ratings also remained the same. AR, Tab 26, Skyline Response to ENs; Tab 29, Skyline Final Technical Evaluation. MSTI's evaluated price remained the same, but Skyline's evaluated price was reduced to \$[DELETED], as a result of the reduction in the transition period. See AR, Tab 31, Award Decision, at 7; Tab 27, Skyline Revised Price Proposal, Feb. 1, 2018.

Award was made to MSTI on February 2. Skyline was provided a debriefing and these protests followed.²

DISCUSSION

Skyline argues that the agency engaged in improper and unequal discussions with offerors, failed to engage in meaningful discussions with Skyline, and improperly evaluated MSTI's proposal revisions. Comments & Supp. Protest at 2-10. Skyline also raises multiple arguments challenging the propriety of the agency's evaluation of MSTI's price proposal.³ Comments & Supp. Protest at 11-16. Skyline further argues that its

² The task order at issue is valued in excess of \$25 million. Accordingly, our Office has jurisdiction to consider Skyline's protest. 10 U.S.C. § 2304c(e)(1)(B).

³ Skyline's initial protest alleged that the agency had failed to evaluate MSTI's price proposal for compliance with the SCA, and alternatively argued that, if the agency
(continued...)

technical proposal should have been more highly rated because it received multiple strengths and no weaknesses in the most heavily weighted technical subfactor--staffing approach. Protest at 15-16. Although our decision does not specifically discuss all of Skyline's arguments, we have considered them all and find no basis to sustain the protest.

Discussions

Skyline argues that the agency improperly engaged in discussions to provide MSTI an opportunity to cure the material defect in its proposal created by the termination of the teaming arrangement between MSTI and its proposed subcontractor. Comments & Supp. Protest at 2. Skyline further argues that the discussions were unequal because they were not tailored to offerors' proposals and did not allow offerors to address any significant weaknesses or deficiencies identified in the evaluations. Id. at 3-5. In addition, Skyline argues that discussions were "essentially meaningless" because offerors were only permitted to revise their proposals as a result of their responses to the ENs, and offerors that did not have key personnel or subcontractor substitutions were not permitted to revise their proposals. Id. at 5-6. Skyline asserts that if given the opportunity, it could have improved its technical proposal and significantly reduced its proposed price. Id. at 7; see also id., Exh. 1, Decl. of Skyline's Chief Executive Officer.

The agency argues that it did not improperly engage in discussions, but was faced with an unusual circumstance just prior to making award. Supp. COS/MOL at 2. The agency states that, acting in good faith, the contracting officer entered into discussions with all offerors because the fact that MSTI had ended its teaming arrangement with the incumbent contractor indicated the potential that other offerors may have similar circumstances with respect to proposed subcontractors or key personnel commitments. Id. at 10. The agency also argues that its discussions were tailored to offerors' proposals insofar as offerors with weaknesses were provided the opportunity to address them. Id. at 3-5. The agency further argues that it was not required to provide offerors the opportunity to make unlimited revisions to their proposals because the competition

(...continued)

asserted that the RTOP did not require such an evaluation as a result of the delayed provision of the wage determination, the RTOP contained a latent ambiguity. Protest at 8-14, 17-18. The agency explained that it had properly evaluated MSTI's price proposal and concluded it would comply with the SCA because all of its proposed labor rates exceeded the corresponding rates in the wage determination. COS/MOL at 9-11, 15-19; see also AR, Tab 39, Comparison of MSTI's Rates to Wage Determination. Since Skyline did not respond to or rebut the agency's response in its comments, and instead raised new challenges to the agency's evaluation of MSTI's price proposal, Skyline's failure to comment on the agency's response renders these arguments abandoned and we will not consider them further. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

was conducted pursuant to FAR part 16 to which FAR part 15 procedures are inapplicable. Id. at 5.

With regard to competitions for task and delivery orders under IDIQ contracts, FAR § 16.505 does not establish specific requirements for discussions; exchanges with offerors under task order competitions, like other aspects of such a procurement, must be fair, equal, and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9. Where, as here, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7. In this regard, discussions, when conducted, must be meaningful, that is, they may not be misleading. SMS Data Prods. Grp., Inc., B-414548 et al., July 12, 2017, 2017 CPD ¶ 222 at 8. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area where the proposal could be improved. Id.; Clark/Caddell Joint Venture, B-402055, Jan. 7, 2010, 2010 CPD ¶ 21 at 7. In addition, although generally when an agency opens discussions with offerors, the offerors may revise any aspect of their proposals, including portions of their proposals which were not the subject of discussions, agencies may limit the revisions that offers may make to their proposals following discussions in appropriate circumstances. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 22.

Here, the RTOP advised that the agency intended to evaluate proposals and make award without discussions. AR, Tab 14, Basis for Award, at 3. The record shows that, one day after the SSA had been briefed about the evaluation results, and just prior to making award, the agency was informed that MSTI would no longer be teaming with the incumbent contractor. AR, Tab 20, Email from Incumbent Contractor to Army, Jan. 31, 2018. The record further shows that the contracting officer called MSTI that same day to confirm that the information was true, and was advised by MSTI that it had procured a substitute subcontractor and that its key personnel remained committed to contract performance. See AR, Tab 21a, Email from MSTI to Army, Jan. 31, 2018. The next day, the contracting officer documented these events in a memorandum to the procurement file, concluding as follows:

In light of this information, the Government will enter into discussions and request that each offeror confirm their initially proposed teaming arrangements and commitment letters are still valid and up to date. Two individual offerors will also be given the opportunity to address specific weaknesses, and a request for final proposal revisions will be issued concurrently with the [ENs].

AR, Tab 21, Contracting Officer's Memorandum to File, Feb. 1, 2018. Under these circumstances, we find reasonable the contracting officer's concern that such an occurrence could exist among the other competitors, and decision to engage in

discussions to confirm with all offerors that their proposed teaming arrangements and commitment letters remained valid.⁴

We also do not agree with the protester's allegation that discussions were unequal and not meaningful because they were not tailored to offerors' proposals. As noted, the agency did not identify any weaknesses in its initial evaluation of Skyline's proposal. AR, Tab 19, Skyline's Initial Technical Evaluation, at 5. The record shows that the agency provided offerors with weaknesses an opportunity to address them during its conduct of discussions. See AR, Tab 22, RTOP amend. 0009, MSTI EN 0002; Tab 41, Offeror D EN 0002. Even discussions conducted under FAR part 15 procedures require only that the agency identify in discussions "deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3). Given the absence of any weaknesses or deficiencies in Skyline's proposal, the agency was not otherwise obligated to identify for Skyline any areas of its proposal that could have been improved.

Further, we find unobjectionable the contracting officer's limitation on proposal revisions to only those issues identified in the ENs. Although Skyline argues that if given the opportunity it could have improved its proposal under the technical factor and proposed a lower price, the protester had no reasonable expectation of such an opportunity. Here, the RTOP stated that the government intended to make award without discussions. In addition, while the ordering procedures set forth in FAR § 16.505 require agencies to provide contract holders with a "fair opportunity" to be considered for task or delivery orders, these procedures also expressly state that the contracting officer may use streamlined procedures, and that "the policies in subpart 15.3 do not apply to the ordering process." FAR § 16.505(b)(1)(ii). Accordingly, the agency was not required to provide offerors the opportunity to make final proposal revisions as is required in a procurement conducted pursuant to FAR part 15. See FAR § 15.307(b) ("At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision."). Therefore, we find the agency's conduct of discussions here to be reasonable.

⁴ The protester also argues that the contracting officer failed to establish a competitive range, and violated FAR § 15.306(b)(2), by engaging in pre-competitive range communications with MSTI. Comments & Supp. Protest at 3-4; see also Supp. Comments at 5. That FAR section states that agencies may engage in communications with offerors before establishment of the competitive range to enhance the government's understanding of or allow reasonable interpretation of proposals, or to facilitate the evaluation process, but not to cure proposal deficiencies or material omissions or otherwise revise the proposal. FAR § 15.306(b)(2). As discussed infra, strict compliance with FAR subpart 15.3 is not required in task order competitions conducted under FAR § 16.505. In addition, in light of the timing of events, the stated intentions in the contracting officer's memorandum to engage in discussions with all offerors in the competition, and the fact that the agency did engage in discussions with all offerors, we conclude that the agency's conduct here was fair and equal.

Proposal Evaluation and Selection

Skyline also argues that the agency's "hasty re-evaluation" of MSTI's revised technical proposal is unreasonable because MSTI failed to provide updated letters of commitment from its key personnel, and because MSTI's revised price proposal is materially incomplete. Comments & Supp. Protest at 9-10; see also Supp. Comments at 9 (alleging that MSTI failed to submit detailed pricing for labor for the base and option years, or for ODCs and travel, in either its original or revised proposal). Skyline additionally argues that the agency failed to evaluate whether MSTI's proposed pricing was unbalanced as required by the RTOP. Comments & Supp. Protest at 11-16. The protester also argues that Skyline's technical proposal should have received a higher rating because it received "multiple strengths" and no weaknesses, and that the agency's best-value determination is flawed because it is predicated on a flawed underlying evaluation. Protest at 15-16, 18-19; Comments & Supp. Protest at 17-18.

The agency argues that it properly evaluated MSTI's proposal in accordance with the solicitation. Supp. COS/MOL at 5-7. The agency explains that it prioritized award of the task order and agency personnel shifted other tasks and worked long hours to accomplish reevaluation and task order award as quickly as possible. COS/MOL at 12; Supp. COS/MOL at 7. The agency argues that because proposal revisions were minimal, the agency was able to quickly update the already drafted evaluation reports. Id. The agency also argues that the ENs did not require an offeror to submit updated letters of commitment unless its personnel changed, the RTOP amendment did not require that offerors provide a completely new price proposal, and MSTI fully complied with the solicitation proposal preparation instructions and ENs. Supp. COS/MOL at 7. Finally, the agency argues that its evaluation of proposals was reasonable and in accordance with the solicitation. COS/MOL at 29.

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. Imagine One Tech. & Mgmt., Ltd., supra. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an agency acted unreasonably. Id.

We find the agency's evaluation of proposals here was reasonable. As noted, the EN provided to all offerors requested that offerors validate their commitment letters for all key personnel and confirm that they still stand as originally proposed. See AR, Tab 22, RTOP amend. 0009, MSTI EN 0001. The record shows that both before and after receiving the EN, MSTI advised the agency that its key personnel remained committed to performance of the task order. AR, Tab 21a, Email from MSTI to Army, Jan. 31, 2018; Tab 24, MSTI Response to ENs, Feb. 1, 2018, at 1 ("The Key Personnel in our proposal are committed to MSTI and have signed commitment letters."). We also note that each key person's letter of commitment provided by MSTI in its initial proposal

stated that the proposed individual “plan[s] to accept an official offer of employment from [MSTI] to fill the position . . . and will be available to begin supporting the contract during the 30-day transition period.” AR, Tab 15, MSTI Technical Proposal, at A-1 to A-3. Accordingly, we agree with the agency that MSTI was not required to provide updated commitment letters for its key personnel.

In addition, contrary to the protester’s allegation, MSTI’s price proposal was complete and the agency reasonably evaluated MSTI’s proposed pricing. Offerors were required to submit a fixed-price proposal using the labor categories and associated labor rates in their IDIQ contracts, propose labor hours deemed appropriate to meet the government’s requirements, and use the provided ODCs for line items that would be paid on a cost reimbursement basis. AR, Tab 14, Basis for Award, at 5. The record shows that MSTI’s proposal conformed to the solicitation instructions and provided the required labor pricing for the base and options years, and proposed ODCs using the cost figures provided in the RTOP. AR, Tab 16, MSTI Price Proposal (Excel worksheet contained several tabs, including ones for ODCs, labor rates for the base year and labor rates for the options years).

Further, the RTOP stated that, with respect to the price evaluation, the agency would calculate a total evaluated price. AR, Tab 14, Basis for Award, at 8. Further, the RTOP stated the agency may reject a proposal if the prices proposed were materially unbalanced and therefore posed an unacceptable risk to the government. Id. The solicitation further stated that unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. Id. As noted above, the RTOP informed offerors that they could discount the labor rates proposed and cautioned that SCA-compliance was required for all places of performance. Id. at 5.

The agency recognized in its award decision that MSTI’s proposed rates exceeded those provided in the wage determination for SCA-covered positions, however, the agency also recognized that MSTI’s price was lower than all other offerors’ prices because MSTI had proposed significant discounts for its management staff, who are exempt from the SCA wage determination requirements. AR, Tab 31, Award Decision, at 14; Tab 39, Comparison of MSTI’s Rates to SCA Wage Determination. Here, MSTI met the SCA wage requirements and provided discounts to personnel exempt from the SCA wage requirements, as permitted by the RTOP. See AR, Tab 14, Basis for Award, at 5. The agency’s evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria and Skyline’s disagreement with the agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably.

Finally, we do not agree with the protester’s arguments that its technical proposal should have been more highly rated. In this regard, our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Where the evaluation and

source selection decision reasonably consider the underlying basis for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair, equitable, and consistent with the terms of the solicitation, the protester's disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. Palmetto GBA, LLC; CGS Administrators, LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 7. An offeror is not entitled to the highest rating simply because its proposal is not evaluated as having weaknesses. Archer Western Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5 n.5.

As noted, in its final evaluation of proposals, the agency identified seven strengths and no weaknesses for MSTI, and three strengths and no weaknesses for Skyline. AR, Tab 28, MSTI Final Technical Evaluation; Tab 29, Skyline Final Technical Evaluation. Both Skyline and MSTI received an overall technical rating of good, although MSTI was more highly rated in two subfactors--outstanding for its technical approach and good for its management process and quality control as compared to Skyline's ratings of acceptable. AR, Tab 31, Award Decision, at 6. The SSA concluded that because MSTI had "the strongest technical approach at the lowest competitive price," MSTI provided the best value to the government. Id. at 14. On this record, the protester's arguments do not provide a basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel