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Decision

Matter of: Trinity Ship Management, LLC

File: B-416167; B-416167.2

Date: June 19, 2018

David M. Sheehan, Esq., and Sima G. Fried, Esq., Thomas & Libowitz, P.A., for the protester.

Rachel M. Kelly, Esq., and James P. Winthrop, Esq., Department of the Navy, for the agency.

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DIGEST

1. Protest that agency misevaluated résumé for one of awardee's employees as acceptable is denied where the résumé showed that the employee's experience and qualifications met the solicitation criteria.
 2. Protest that agency misevaluated prices by including prices for mutually exclusive contract line items (CLIN) is dismissed where solicitation expressly provided that price evaluation would include all CLINs so the post-award challenge to price evaluation was an untimely challenge to the terms of the solicitation.
 3. Protest that awardee's low price should have been rejected as a mistake or an intention to violate the terms of the solicitation is denied where protester's challenge lacked a factual basis for its claims, and did not meaningfully challenge the agency's determination that the awardee was a responsible offeror.
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DECISION

Trinity Ship Management, LLC, of Portsmouth, Virginia, a small business, protests the award of a contract to Great Eastern Group, Inc. (GEG), of Fort Lauderdale, Florida, also a small business, under request for proposals (RFP) No. N00189-17-R-0065, issued by the Department of the Navy, Naval Supply Systems Command, for

commercial mariner and logistics support services on four training vessels¹ of the United States Fleet Forces Command Carrier Strike Group Four. Trinity argues that the Navy miscalculated GEG's proposal as acceptable under threshold pass/fail criteria, miscalculated Trinity's price, and improperly accepted GEG's lower-priced proposal.

We dismiss the protest in part and deny it in part.

BACKGROUND

The RFP, issued as a commercial item solicitation on September 25, 2017, requested proposals to perform services over a base year and four option years. RFP at 100 (incorporating clause at Federal Acquisition Regulation (FAR) § 52.217-9). The performance work statement (PWS) described the scope of the contract as providing qualified mariners to crew the four vessels in port and at sea, which, depending on the specific vessel and its status, could include supplying the chief mate, chief engineer, second mate, additional engineer staff, ships communications officer, boatswain, and able seamen, and a head steward. RFP PWS at 8-9. The contractor's overall responsibilities ranged from ensuring the safe operation of the vessels, and providing vessel maintenance and emergency damage control, to furnishing, preparing, and serving onboard meals and providing off-ship laundry. *Id.* at 9. The RFP also specified that the contractor was required to comply with the labor standards of the Service Contract Act. RFP at 48 (incorporating by reference the clause at FAR § 52.222-41, the service contract labor standards clause).

The RFP specified the duties, credentials, and security clearance requirements for each position. Offerors were required to submit résumés for a program manager, two ship's communications officers, and an electronics material officer. *Id.* at 60. As relevant here, the qualifications for the ship's communications officers included proficiency with relevant equipment and naval networks, skill in diagnosing and repairing equipment, "[a] minimum of six (6) months shipboard experience as a 1st Radio Electronics Technician in a shipboard environment; or equivalent experience," and possession of a top secret security clearance. RFP PWS at 18-19.

Offerors were to submit proposals that would be evaluated under six factors, including personnel résumés, mission essential contractor services plan, contractor work rules, past performance, and price. RFP at 56. With respect to price, for each 12-month

¹ The vessels are identified as the TSV-1 PREVAIL, TSV-2 HUGO, TSV-3 HUNTER, and TSV-4 NARRAGANSETT. Trinity states that it has been the incumbent contractor for the past 15 years and also provided services for a predecessor vessel. Comments at 1.

period,² the RFP provided separate contract line items (CLIN) and sub-CLINs as follows:

- One CLIN per vessel for 12 months of “merchant mariner services and logistical support”³ (4 CLINs),
- One sub-CLIN for each of the four vessels for 12 months of laundry services (4 sub-CLINs),
- One CLIN for consumable items,
- One cost-reimbursement CLIN for travel,
- One CLIN for 12 months of program manager services,
- One CLIN per vessel for 12 months of services at “ROS status condition only” (4 CLINs)
- One cost-reimbursement CLIN for food service,
- One cost-reimbursement CLIN for a food item survey, and
- One CLIN for marine protection and indemnity insurance.

RFP at 6-13.⁴

The RFP also required detailed price and cost information, and provided a set of instructions about the preparation of price proposals. In particular, the RFP required offerors to complete a pricing schedule in RFP § B; a pricing spreadsheet (RFP attachment IV) to provide details of the offeror’s fully burdened labor rates; and an offeror-produced spreadsheet for “detail[ed] separate pricing information for each contract year and the option to extend period, as well as a total for all five (5) years of performance and the [6-month] option to extend period.” RFP at 56. Additionally, the RFP directed each offeror to state whether its accounting system “include[d], within overhead or G&A [general and administrative], travel and/or material,” and warned that a failure to identify those indirect cost elements would “result in those costs being deemed as mutually agreed upon unallowable costs.” Id. at 57. The RFP also stated that offerors were required to “propose prices for each contract line item in each period of performance, to include the Option to Extend Services period.” Id.

² Although the RFP does not appear to identify the beginning and end dates of each contract term, the structure of the RFP pricing implies an initial year, four option years, and a 6-month extension of services.

³ The merchant mariner services and logistical support CLINs for each vessel indicated that over 12 months each vessel would be at reduced operating status (ROS) for 160 days +/- 10 percent, at augmented ROS for 25 days +/- 10 percent, at full operating status for 120 days +/- 10 percent, and in port for 60 days +/- 10 percent. RFP at 6-8.

⁴ The RFP provided both fixed-price and cost-reimbursement CLINs, and the cost-reimbursement CLINs are specifically so labeled above.

The RFP provided a set of eight “important notes,” of which two are relevant here. Consistent with the CLIN structure described above, note 4 stated that the Navy intended to bring the TSV-1 PREVAIL under the contract in mid-March 2018, and that the other vessels would be added to the scope of the contract by the Navy exercising the corresponding optional CLINs, and then added the following explanation:

While all CLINs with a unit of issue of ‘Months’ cite a quantity of ‘12’ [months] (or ‘6’ [months] for the Option to Extend period), option CLINs may be exercised for a period of less than 12 months.

Id. Note 5 described the relationship between the merchant mariner services and logistical support CLINs (X001-X004) and the ROS status condition only CLINs (X009-X012) as follows:

The CLINs for ‘ROS STATUS CONDITION ONLY’ and ‘MERCHANT MARINER SERVICES AND LOGISTICAL SUPPORT’ for a particular vessel will not take place concurrently. The CLINs for ‘ROS STATUS CONDITION ONLY’ are meant to be exercised when a vessel enters an extended maintenance period.

Id. at 57-58.

The evaluation of proposals was to be conducted in three phases. In the first phase, the Navy would evaluate proposals under the personnel résumés factor on an acceptable/unacceptable basis that would assess whether each of the four candidates had the specified education, certifications, experience, and security clearance, as well as a letter of intent for any personnel that were not currently employed by the offeror (or a subcontractor or team member). Id. at 60, 63. Proposals rated acceptable after the first phase would proceed to the second phase, which evaluated proposals on an acceptable/unacceptable basis under three factors: the DSS-approved facility clearance factor, the mission essential contractor services plan factor, and the contractor work rules factor. Id. Proposals found acceptable under all three of the phase two factors would then be evaluated in the third phase under the past performance factor, to assess the offeror’s past performance record for relevance and confidence, under which the agency would give greater weight to “contracts which the Government feels are most relevant to the RFP.” Id. at 65.

Finally, under the price factor, the RFP stated that prices would be evaluated in accordance with FAR § 15.404-1(b), and would “be evaluated based on the price included in the ‘Schedule of Supplies/Services.’” Id. at 65. The RFP also incorporated the provision at FAR § 52.217-5 (Evaluation of Options), id., which provided that for award purposes, the agency would “add[] the total price for all options to the total price for the basic requirement.” FAR § 52.217-5. The RFP advised that any information submitted by an offeror could be considered in the evaluation “to support the reasonableness” of proposed prices, and that the method of price evaluation would be “solely within the discretion of the Contracting Officer.” RFP at 65. The RFP also stated that for “for evaluation purposes only in determining the total cost of the entire contract,”

the agency would use fixed amounts in place of the three cost-reimbursement CLINs (travel, food service, and food item survey) in each contract year.⁵ Id.

The Navy received proposals from two offerors: Trinity and GEG. After an initial evaluation, the Navy held discussions with the offerors, during which Trinity was advised that, among other things, its proposal failed to include fixed prices for all CLINs because the firm had inserted the word “VARIABLE” for the unit price of multiple CLINs. The Navy noted that the failure to provide fixed unit and extended prices for the CLINs that were identified as fixed-price in the RFP was inconsistent with the solicitation. Accordingly, if Trinity failed to revise its pricing to fixed pricing as the RFP required, its final proposal revision (FPR) would be considered ineligible for award. Agency Report (AR), Tab 6, Discussions Letter to Trinity, at 1-2.

The discussions for GEG identified a discrepancy in the résumé for one of the two ship’s communications officer positions. The first candidate’s résumé described almost 12 years of Navy experience in electronics and communications roles, which was followed by 2 years and 5 months of employment by Trinity as a ship’s communications officer aboard the TSV-1 PREVAIL. AR Tab 3, GEG Factor I Proposal, at 4. In discussions, the Navy explained that although all four of the firm’s personnel résumés were acceptable, the evaluators were aware that the résumé for the proposed ship’s communications officer described above inaccurately claimed experience as the communications officer aboard the TSV-1 PREVAIL. The evaluators had first-hand knowledge that the claim was not accurate because the candidate had actually served as assistant steward and chief steward aboard that vessel during the period listed. AR, Tab 11, Discussions Letter to GEG, Jan. 16, 2018, at 1.

In its FPR, Trinity responded to the Navy’s discussions by providing unit and extended prices for the fixed-price CLINs. For CLINs X009-X012 (the “ROS status condition only” CLINs), Trinity provided fixed and extended prices as requested, but below those prices Trinity listed the total for each CLIN as \$0. E.g., AR Tab 7, Trinity FPR, at 77, 81 (CLINs 0009-0012), 84-85, 88 (CLINs 1009-1012), etc. Trinity included notes that explained its pricing and addressed the inconsistency, as follows (in relevant part, for the base period, for example):

Trinity recognizes that CLINs 0001-0004 will not take place concurrently with CLINs 0009-0012, and that the Net Amount provided for CLINs 0001-0004 may not be fully utilized should CLINs 0009-0012 be exercised.

Trinity has established a monthly price for CLINs 0009-0012 as required, which is reflected under the Unit Price in CLINs 0009-0012; however, for bid purposes only, the Net Amount is listed as zero (\$0.00) dollars because a Net Amount greater than zero listed under CLINs 0009-0012

⁵ The Navy used the same fixed price values for the cost-reimbursement CLINs for both offerors, and thus did not perform a cost realism analysis.

would appear to represent a duplication of billing (excess of 12 months) to the Government.

Id. at 82; see also id. at 89, 96, 103, 110, 117 (parallel notes for successive option periods).

In GEG's FPR, the firm acknowledged that the résumé for one of the ship's communications officer candidates was inaccurate, but explained that it had been unaware of the inaccuracy when it submitted the proposal. AR Tab 12, GEG Letter Response to Discussions, Jan. 19, 2018, at 1. GEG also emphasized that the résumé nevertheless showed that the candidate met all requirements for the ship's communications officer position. Id. at 1-2.

In evaluating the FPRs, the Navy recognized that although Trinity's revised pricing submission included unit pricing and extended pricing in response to discussions, the FPR also provided a price of zero for the ROS status condition only CLINs X009-X012. In calculating Trinity's evaluated price, the Navy used the extended prices for those CLINs, rather than the zero amounts that Trinity had proposed. AR, Tab 9, Contract Review Board Presentation, at 4.

The evaluation of GEG's FPR again found its proposal acceptable generally, including with respect to the proposed ship's communications officers. Id. The contracting officer also found GEG's total evaluated price of \$53.6 million to be fair and reasonable. Id. at 4-5. The contracting officer then determined that GEG had submitted the lowest-priced technically-acceptable proposal, and selected it for award on that basis. Id. at 11-12. This protest followed.

PROTEST

Trinity challenges the evaluation of GEG's proposal as acceptable in phase 1, argues that the Navy misevaluated Trinity's price, and contends that the RFP contained a latent ambiguity that resulted in GEG benefiting from unfair price competition. We address each of the arguments and conclude that none has merit.

First, Trinity challenges the evaluation of GEG's proposal in phase 1 under the personnel résumés factor, arguing that the Navy should have rejected one of the ship's communications officers proposed by GEG. Trinity argues that the candidate received an other-than-honorable discharge from military service, and had been unable to perform for Trinity as a ship's communications officer for the TSV-1 PREVAIL because of an inability to obtain a required security clearance. Trinity argues that the lack of a security clearance necessitated the candidate's reassignment to duties on the TSV-1 PREVAIL as a steward, and later, as chief steward, and that the candidate's performance for Trinity was unsatisfactory. Protest at 3-4. Additionally, Trinity argues that the candidate's résumé inaccurately claimed experience as the ship's communications officer on the TSV-1 PREVAIL despite serving only as steward or chief steward. As a result, Trinity argues that GEG's proposal should have been evaluated as unacceptable under the personnel résumés factor.

The Navy argues that its evaluators had first-hand knowledge of the circumstances of GEG's ship's communications officer's service on the TSV-1 PREVAIL, including that the candidate had not served as the ship's communications officer despite that claim in the résumé. The agency argues that it properly raised those issues with GEG during discussions, and that ultimately, the evaluators reasonably concluded that the candidate had the required qualifications and experience, including the possession of a top secret security clearance. On that basis, the Navy argues that the evaluators reasonably rated GEG's FPR acceptable under the phase 1 evaluation criteria. AR at 14-15.

The evaluation of an offeror's proposal is a matter within the agency's discretion. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. By itself, a protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. E.g., KinetX Aerospace, Inc., B-406798 et al., Aug. 21, 2012, 2012 CPD ¶ 303 at 7 (denying protest challenging evaluation of personnel qualifications that record showed was reasonable and consistent with solicitation). Even so, a material misrepresentation by an offeror may provide a basis for the agency to disqualify the proposal and cancel the contract award. Dev Tech. Group, B-412163, B-412163.5, Jan. 4, 2016, 2016 CPD ¶ 10 at 9. However, a misrepresentation is material only where the agency has relied upon it and it likely had a significant impact on the evaluation. Id.

The contemporaneous record shows that the Navy's evaluation of GEG's FPR as acceptable under the personnel résumés factor was reasonable. In particular, the record supports the agency's conclusion that GEG's candidate for the first of the two ship's communications officer positions possessed all the required experience and qualifications based on the candidate's Navy service alone, and that the candidate possessed the required top secret security clearance. Trinity's allegations do not provide a basis to question the agency's evaluation. Even though, as GEG acknowledged during discussions, the résumé misrepresented the candidate's role working for Trinity aboard the TSV-1 PREVAIL, the record provides no basis to conclude that the misrepresentation could meet our Office's definition of materiality; rather, as noted above, the Navy evaluators were aware of the accurate information and raised the issue in discussions. Similarly, Trinity's arguments about the candidate's military discharge, past difficulty obtaining a security clearance, and alleged unsatisfactory performance as a Trinity employee, are not sufficient to show that the Navy's judgment was unreasonable when the agency concluded that the candidate met the requirements for the position. The agency's judgment was based on application of the RFP criteria to the undisputed aspects of the candidate's résumé, which supports the agency's judgment that the candidate possessed the required experience, qualifications, and security clearance. Accordingly, we deny this ground of protest.

Trinity also argues that the price evaluation was erroneous. To start, Trinity argues that its evaluated price was miscalculated as \$105.7 million, which it argues was nearly

double the price it actually offered. Protest at 5. In contrast, Trinity argues that GEG's evaluated price of \$53.6 million should have alerted the Navy that both firms' prices were allegedly "preposterous on [their] face." Supp. Protest at 1.

With respect to its own pricing, Trinity argues that the Navy improperly included in the total price the prices for the two mutually-exclusive CLINs--i.e., both the merchant mariner services and logistical support CLINs (X001-X004) and the "ROS status condition only" CLINs (X009-X012). As set forth above, although Trinity listed unit and extended price entries in its FPR for the two mutually-exclusive CLINs, it included CLIN totals of zero dollars for the "ROS status condition only" CLINs, which it explained in the notes accompanying its price proposal. When the Navy included the prices of both of the mutually exclusive CLINs for each vessel per year, Trinity's evaluated price increased by \$50.2 million. Trinity contends that the resulting evaluated price was thus absurd because it did not relate to any price that the Navy would actually incur under any possible course of performance.

At the same time, Trinity argues that GEG's proposed prices were so low that the firm must have interpreted the allegedly ambiguous terms of the RFP in the opposite manner. Trinity argues that GEG must have been misled to propose pricing that did not take into account that CLINs X001-X004 were mutually exclusive of CLINs X009-X012. In Trinity's view, no reasonable offeror would have proposed such low prices, which Trinity estimates were \$32.6 million for CLINs X001-X004, and \$21.0 million for CLINs X009-X012.⁶ Trinity argues that GEG's prices were significantly below the government estimate and do not allow GEG to cover the costs of paying Service Contract Act compensation, "protect against undue risk, and achieve something in the way of [general and administrative costs] and profit." Supp. Protest at 3.

The Navy responds that the RFP was not ambiguous because it expressly provided for prices to be evaluated by adding all CLINs. Accordingly, the Navy argues that it properly included Trinity's actual prices for the ROS status condition only (CLINs X009-X012) rather than the \$0 amounts, and that the agency used the same method for both offerors. Additionally, the Navy argues, Trinity lacks a factual basis to contend that GEG will not comply with the Service Contract Act, or that the firm will be unable to perform at the prices in its FPR.

Where an agency includes the prices of mutually-exclusive CLINs to establish an offeror's price for purposes of source selection, the price analysis is defective. Kruger Constr., Inc., B-286960, Mar. 15, 2001, 2001 CPD ¶ 43 at 5 (sustaining post-award challenge to price evaluation, which was timely because evaluation unreasonably applied evaluation-of-options provision by including mutually exclusive CLIN prices). However, that principle applies where the options are entirely mutually exclusive. Where a solicitation allows agency to exercise one option CLIN for services but does

⁶ Trinity bases this argument on the redacted record and information that the firm received in the debriefing.

not preclude a later deactivation so that the agency can exercise a different optional CLIN for a different service level, a post-award challenge to inclusion of the full value of both CLINs in price evaluation will be dismissed as an untimely challenge to the evaluation-of-options provision in the solicitation. E.g., STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 6 n.3. Here, the RFP provided that prices would be evaluated by “adding the total price for all options to the total price for the basic requirement.” FAR § 52.217-5. Trinity did not challenge the inclusion of that provision in the RFP before the due date for proposals, and instead attempted to leverage the price evaluation to its advantage by providing conflicting pricing for the ROS status condition only CLINs in its FPR. Although Trinity now argues that the RFP contained a latent defect, the price evaluation method used by the Navy was expressly stated, Trinity plainly recognized the issue before submitting its FPR, and the Navy reasonably followed the RFP evaluation methodology. As a result, Trinity had failed to show that the RFP contained a latent defect in the pricing evaluation. Trinity’s post-award challenge to the price evaluation is thus untimely and will not be considered.

Trinity also challenges GEG’s ability to perform at the prices it proposed. In the context of a fixed-price contract, a claim that a competitor submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. An offeror may, in its business judgment, decide to submit a price that is extremely low. Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4. In such cases, the agency’s determination that the contractor can perform the contract at the offered price is an affirmative determination of responsibility, which this Office will not review except in limit circumstances. Those exceptions are where a protester can show that definitive responsibility criteria in the solicitation were not met, or where the protester provides evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c). Trinity has been unable to provide such a showing; its protest is not meaningfully supported beyond simply emphasizing GEG’s low price.

Altogether, the contemporaneous record confirms that the Navy reasonably evaluated GEG’s proposal as acceptable under the personnel résumés factor, the evaluation of both firms’ pricing was accurate and consistent with the RFP, and the selection of GEG’s lower-priced proposal for award was reasonable. Accordingly, the record before our Office provides no basis to sustain Trinity’s protest.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel