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Decision

Matter of: MCR Federal, LLC

File: B-416654.5; B-416654.6

Date: March 6, 2020

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Colonel Patricia S. Wiegman-Lenz, Lieutenant Colonel John C. Degnan, Lawrence M. Anderson, Esq., and Malcolm L. Langlois, Esq., Department of the Air Force, for the agency.

Joshua R. Gillerman, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency’s evaluation of proposals and award decision is denied where the record shows that the evaluation was reasonable and consistent with the solicitation and applicable statutes and regulations.

DECISION

MCR Federal, LLC, of El Segundo, California, protests the issuance of a task order to Tecolote Research, Inc., of Goleta, California, under Fair Opportunity Proposal Request (FOPR) No. FA8802-18-F-0002, issued by the Department of the Air Force, Air Force Space and Missile Systems Center, for acquisition and financial support services. MCR challenges the agency’s evaluation of proposals and award decision.

We deny the protest.

BACKGROUND

The FOPR was originally issued on April 10, 2018, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to offerors holding indefinite-delivery, indefinite-quantity (IDIQ) contracts under the General Services Administration’s (GSA) One Acquisition Solution For Integrated Services Small Business Pool 5B contracts. Agency Report

(AR), Tab 2, FOPR, at 1.¹ The FOPR contemplated the issuance of a task order for the provision of acquisition, financial, and administrative services to support the Air Force's Space and Missile Systems Center's Launch Enterprise. Id. at 2, 61.

The task order was to be issued on a best-value tradeoff basis, considering the following factors: personnel management, technical expertise, and cost/price. Id. at 162. Under the personnel management factor, proposals would be rated as either acceptable or unacceptable. Id. at 162-163. For the technical expertise factor, proposals would be assigned an adjectival rating of outstanding, good, acceptable, or unacceptable. Id. at 164. The technical expertise factor was significantly more important than the cost/price factor, which was more important than the personnel management factor. Id.

The agency received and evaluated proposals, initially making award to Tecolote on July 19.² AR, Tab 1, Combined Contracting Officer's Statement of Facts/Memorandum of Law (COS/MOL) at 7. MCR protested the award to our Office. In response, the agency notified our Office of its intent to take corrective action by, essentially, reopening discussions, allowing submission of final proposal revisions (FPR), reevaluating proposals, and making a new award decision. Id. at 7-8. Our Office dismissed MCR's first protest as academic. MCR Federal, LLC, B-416654, Sept. 4, 2018 (unpublished decision).

On September 10, the agency issued what it terms "interchange notices" to MCR and Tecolote.³ COS/MOL at 7-8. Two notices were issued to MCR, advising the firm of perceived risks in MCR's proposal. The notices also informed offerors that final proposal revisions were due on September 12 at 5:00 p.m. Id.

MCR protested the agency's short response for FPRs, arguing that the Air Force failed to provide the firm with adequate time to respond to the interchange notices. Id. In response, the agency notified MCR that it was again proposing to take corrective action, this time by extending the response deadline until September 18 at 5:00 p.m. Id. at 8. Based on that proposed corrective action, the Air Force requested that our Office

¹ Unless otherwise noted, references to page numbers throughout the decision are to the sequential numbering for each tab in the report provided by the contracting agency in response to the protest.

² Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors" who submit "quotations" and are "issued" task orders, the record and the parties' briefing primarily use the terms "offerors," "proposals," and "award." For the sake of consistency with the record, we refer to the firms that competed here as offerors who submitted proposals for award of a task order.

³ The FOPR defined "interchanges" as "fluid interaction[s] between the [contracting officer] and the [o]fferors that may address any aspect of the proposal and may or may not be documented in real time." FOPR at 162.

dismiss the second protest. Our Office, however, declined to dismiss MCR's protest at that time. MCR Federal, LLC, B-416654.2, B-416654.3, Dec. 18, 2019, 2018 CPD ¶ 335 at 5.

We subsequently sustained MCR's protest, finding that the agency had failed to provide MCR with a fair opportunity to revise its proposal. Id. at 7-8. We recommended that the agency provide MCR a reasonable amount of time to respond to the agency's concerns, and that the agency evaluate proposals received in response to the interchanges. Id. at 8. We also recommended that, upon completion of this evaluation, the agency make a new source selection decision. Id.

The agency, thereafter, issued new interchanges on April 12, 2019, to MCR and Tecolote, providing the firms with an opportunity to submit FPRs by May 14. COS/MOL at 8. Upon receipt of FPRs, the agency reevaluated proposals, with the following results:

	MCR	Tecolote
Personnel Management	Acceptable	Acceptable
Technical Expertise	Good	Outstanding
Cost/Price	\$54,300,763	\$72,684,741

AR, Tab 12, Fair Opportunity Decision Document (FODD), at 11.

The Fair Opportunity Decision Authority (FODA) reviewed the Fair Opportunity Selection Evaluation Board's (FOSEB) analysis and performed an integrated assessment of proposals against the FOPR's evaluation criteria. Id. at 2. The FODA concluded that Tecolote's proposal represented the best value to the agency. Id. at 11-12. In making award, the FODA performed a tradeoff analysis between MCR and Tecolote, concluding that Tecolote's technical superiority, based on the expertise of its personnel and its exceptional approach to cost estimating, justified the 34 percent price premium associated with its proposal. Id. at 12.

On November 21, the agency notified MCR of award to Tecolote. AR, Tab 14, Notice of Award, at 1. After requesting and receiving a debriefing, MCR filed the current protest on December 2.⁴

DISCUSSION

⁴ This procurement is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B). Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 6 n.12. The authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying IDIQ task order contract, which in this instance is GSA. Wyle Labs., Inc., B-413989, Dec. 5, 2016, 2016 CPD ¶ 345.

MCR argues that in making its award decision the agency unreasonably found a discriminator in Tecolote's proposal for the awardee's purported ability to have 100 percent of its staff available on the first day of performance. The protester also alleges that the agency unreasonably failed to find Tecolote's proposal unacceptable because the proposal's transition plan allegedly violates the solicitation's page limitations. Finally, MCR contends that the agency failed to properly evaluate the reasonableness of Tecolote's price. In filing and pursuing this protest, MCR has made arguments that are in addition to, or variations of, those discussed below. While we do not address every issue raised, we have considered all of the protester's arguments and conclude that none furnishes a basis on which to sustain the protest.⁵ We address MCR's primary arguments below.

Staffing Availability

MCR alleges that the agency unreasonably identified a discriminator in its tradeoff determination based on Tecolote's purported ability to have all of its staff available on the first day of performance. Supp. Protest at 10-11. First, MCR contends that Tecolote wrongly coded the availability of 13.5 of its full-time equivalents (FTEs) in its staffing matrix. Id. at 12-13. MCR also argues that the agency's evaluation was internally inconsistent--and impermissibly departed from the personnel management factor's acceptable/unacceptable rating scheme--in considering this "day-1" staffing advantage a discriminator in its tradeoff determination. Supp. Protest at 11. For the reasons that follow, we deny this aspect of MCR's protest.⁶

As noted above, the FOPR included two non-price evaluation factors: personnel management and technical expertise. FOPR at 138. Under the personnel management factor, offerors were required to submit a transition plan that detailed how they would provide personnel with the technical expertise, experience, and advanced training necessary to successfully perform the requirements delineated in the performance work statement (PWS) within 30 days after contract award. Id. The agency was to assign proposals a rating of acceptable or unacceptable for this factor based, in part, on the offeror's ability to "plan, implement, and accomplish the seamless transition" of the offeror's workforce. Id. at 164.

⁵ For example, in its comments on the agency report, MCR withdrew the following allegations: that the agency unreasonably evaluated Tecolote's technical proposal as outstanding; that the agency improperly prejudiced MCR by basing its selection decision on a flawed rationale; and that the agency disparately evaluated proposals. MCR Consolidated Comments at 2.

⁶ MCR also alleged that three of Tecolote's personnel identified as "current team employees" were actually working for other companies. Supp. Protest at 11-12. MCR subsequently withdrew this allegation. MCR Consolidated Comments at 4.

For the technical expertise factor, offerors were required to complete a staffing matrix (provided in the solicitation) that included the experience and expertise level associated with each position proposed. Id. at 138. Under this factor, the agency was to evaluate the offeror's approach to the PWS by analyzing the proposed staffing matrix, through an assessment of the following components of the staff: labor and skill mix, key personnel, experience level, education, certification, technical experience and expertise, security clearance, availability, location placement, and team composition.⁷ FOPR at 165.

Relevant here, the staffing matrix contained an "availability" section which required offerors to code the availability of each proposed FTE on a scale of one to five, with "level-1" corresponding to a "current team employee" and "level-5" corresponding to "staff assigned upon award." AR, Tab 3, FOPR amend. at 93. The higher the designation, the greater the level of uncertainty about the availability of the proposed FTE. Supp. COS/MOL at 10.

MCR contends that Tecolote wrongly coded 13.5 FTEs in its staffing matrix as level-1 (current team employees), rather than the less-certain level-5 (staff assigned upon award). Supp. Protest at 12-13; MCR Consolidated Comments at 4-5. To support this argument, MCR points to Tecolote's transition plan which states that "[p]rior to contract start, we will transfer 13.5 staff (originally intended for [the Launch Systems Enterprise Directorate]) back from other [t]eam contracts to fill all remaining positions--we will not use high-risk contingent hires." Supp. Protest at 15 (citing AR, Tab 8, Tecolote's FPR at 302.). MCR argues that the only reasonable reading of the five-level availability scale detailed in the FOPR was that staff being transferred after award from "other team contracts" should have been coded with the riskier designation of level-5 (staff assigned upon award). Supp. Protest at 15.

The evaluation of proposals in a task order competition is a matter within the discretion of the contracting agency, and, in reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb.10, 2009, 2009 CPD ¶ 50 at 4; Dynamic Sec. Concepts, Inc., B-416013, B-416013.2, May 15, 2018, 2018 CPD ¶ 186 at 4. Our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the evaluation factors set forth in the solicitation. Kellogg Brown & Root Servs., Inc., supra.

The agency explains, and the record confirms, that it interpreted the level-1 availability designation to include current employees of the offeror, or of the offeror's team members. AR, Tab 11, FOSEB Report, at 44; Supp. COS/MOL at 11. We find that this is a reasonable reading of the solicitation, wherein the only definition provided in the FOPR is: "current team employee=1." As such, we do not find objectionable the agency's conclusion that Tecolote could code its current employees working on other

⁷ This factor also entailed an evaluation of offeror responses to two cost estimating problems in order to further assess the offerors' understanding of PWS requirements. FOPR at 165.

contracts--but available to be utilized for this requirement--as level-1 (current team employees). Moreover, MCR has failed to furnish a basis, or point to any authority, for why the agency could not assume that Tecolote would be able to direct its own employees to this requirement upon award. As such, we find no merit to this allegation.

Next, MCR contends that the FODA's use of Tecolote's "day-1" staffing advantage in his tradeoff determination is inconsistent with the FOSEB's assessment. Supp. Protest at 11. MCR argues that because the personnel management factor was rated on an acceptable/unacceptable basis, the factor could not properly serve as a discriminator in the agency's tradeoff. Id. While the FOSEB recognized this in their report, MCR argues that the FODA contradicted the evaluators by stating that the agency "receives a benefit from Tecolote requiring less time to be fully staffed and functional on day one." Id. (citing AR, Tab 12, FODD at 9).

We also find no merit to this allegation. Contrary to MCR's assertions, there is no inconsistency within the decision document. While the personnel management factor was rated on an acceptable/unacceptable basis, the technical expertise factor required the agency to qualitatively assess proposals. FOPR at 164. As detailed above, the staffing matrix was to be evaluated under the technical expertise factor, and FTE "availability" was one of the components that the agency would evaluate under this factor. Id. at 165. As a result, both non-price factors effectively necessitated an assessment of offeror staffing availability.⁸ Thus, because the technical expertise factor also involved a qualitative assessment of staff availability, we do not find that the FODA's consideration of the qualitative benefit associated with Tecolote's "day-1" staffing availability in his tradeoff decision to be inconsistent with solicitation or the FOSEB's evaluation.⁹

⁸ We also note that the FODA's analysis recognized the interplay of these evaluation factors, acknowledging that because the personnel management factor was rated on an acceptable/unacceptable basis, it was "not a discriminating factor between the offerors." AR, Tab 12, FODD, at 5. It is not until later in his analysis, under the technical expertise factor discussion, that the FODA considers the benefit associated with Tecolote's "day-1" staffing availability. AR, Tab 12, FODD at 9. In fact, the quotation from the FODA cited above by MCR in advancing this argument is actually from the FODA's discussion of proposals under the availability component of the technical expertise factor. Id.

⁹ Even if we were to find that the agency erroneously considered Tecolote's staffing availability in its selection decision, MCR has failed to demonstrate how it was competitively prejudiced by such an error. Competitive prejudice is an essential element of every protest, and requires that the protester prove that, but for the agency's actions, it would have received award. Straughan Env'tl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 12. In arriving at his selection decision, the FODA found that Tecolote's proposal was worth the price premium "because of the differential of expertise in personnel and [Tecolote's] exceptional approach to cost estimating." AR, Tab 12, FODD at 12. In the selection decision, the FODA highlights the expertise of Tecolote's personnel and notes the firm's more sophisticated and accurate cost

Transition Plan

MCR also contends that the agency should have found Tecolote's proposal unacceptable because the proposal's transition plan allegedly exceeded the FOPR's page limitations. Supp. Protest at 13-14. For the reasons that follow, we deny this aspect of MCR's protest.

As noted above, under the personnel management factor, offerors were required to submit a transition plan that detailed how their team would provide personnel with the technical expertise, experience, and advanced training necessary to successfully perform (within 30 days after contract award) the requirements delineated in the PWS. FOPR at 138. The FOPR set a five-page limit for the submission of transition plans. Id.

Prior to submitting its FPR, Tecolote requested permission from the agency to submit its FPR with "[t]racked [c]hanges activated whereby the [agency] can readily see what changed" ¹⁰ AR, Tab 24, Email from Tecolote on Interchanges and FPR, at 2-3. The agency allowed Tecolote to do so and, consistent with this grant of permission, Tecolote submitted its FPR with the track changes tool activated. Id. at 1; AR, Tab 8, Tecolote FPR, at 302-307.

MCR contends that when viewed with the track changes tool enabled, Tecolote's transition plan is six pages in length, with the sixth page containing critical information. Supp. Protest at 14; MCR Comments at 6. The protester argues that because Tecolote's transition plan exceeded the five-page limitation, the critical information on the sixth page should not be considered, therefore, rendering the transition plan unacceptable. MCR Consolidated Comments at 6. While acknowledging that the agency permitted Tecolote to submit its FPR with the track changes tool activated, MCR asserts that this grant of permission did not relax the FOPR's clearly stated page limit for transition plans. Id. Moreover, MCR argues that it was prejudiced by Tecolote's use of the track changes tool because this enabled Tecolote to improperly include additional information as part of its transition plan submittal. Id. at 8-10. In this regard, MCR contends that Tecolote strategically utilized the track changes tool to enable Tecolote to

modeling approach. Id. Thus, while the FODA does briefly reference that Tecolote's staff are "all [] available day one . . ." in his tradeoff determination, our review of the FODD shows that the agency justified payment of Tecolote's price premium predominantly due to the expertise of Tecolote's personnel and its cost estimating approach; not on the availability of its staff. Id.

¹⁰ "Track changes" is a feature of Microsoft Word that highlights revisions that have been made in a document. Generally, when the track changes tool is activated, deletions remain visible with a strikethrough and additions are marked with an underline. See Track Changes in Word, Microsoft Office Support, <https://support.office.com/en-us/article/Track-changes-in-Word-197ba630-0f5f-4a8e-9a77-3712475e806a> (last visited Mar. 5, 2020).

add new text, without having to actually remove previously provided explanatory text from its transition plan, as these revised portions remained visible, albeit in the struck-through “deleted” view of the track changes tool. Id. at 8. The effect, according to MCR, was that Tecolote was able to provide more information about its experience than if it adhered to the five-page limit. Id.

The agency responds that after it received Tecolote’s FPR, it viewed Tecolote’s proposal without the track changes tool enabled in the Microsoft Word document to validate compliance with the FOPR’s page limitations. Supp. COS/MOL at 12 (citing AR, Tab 22A, Tecolote Volume II Technical. The agency notes that the resulting transition plan adhered to the five-page limit. Id.

On this record, we have no basis to object to the agency’s acceptance of Tecolote’s transition plan as conforming to the FOPR’s page limitations. The record shows--and MCR does not dispute--that the transition plan complies with the five-page requirement when the transition plan is viewed without the track changes tool enabled. AR, Tab 22A, Tecolote Volume II Technical, at 6-10; AR, Tab 22B, Tecolote Transition Plan.¹¹

Moreover, we do not agree with MCR that was competitively prejudiced by Tecolote’s submission of its FPR with the track changes tool enabled. As noted above, the transition plan was a component of the personnel management factor, which was rated on an acceptable/unacceptable basis. As such, MCR has not persuasively demonstrated, and the record does not show, that Tecolote received additional credit in the agency’s evaluation of its transition plan for “deleted” content that remained visible (albeit struck-through) with the track changes tool activated. At most, providing the FPR with the track changes tool enabled allowed the agency to more readily review revisions. In essence, Tecolote’s provision of its FPR with the track changes tool enabled merely saved the agency the additional step of manually comparing, side-by-side, Tecolote’s prior submission with its FPR. We thus find that we have no basis to object to the agency’s acceptance of Tecolote’s transition plan as conforming to the FOPR’s page limitations.

¹¹ After reviewing the metadata of the saved version of Tecolote’s transition plan without the track changes tool enabled, MCR notes that this document was created during the pendency of the protest. MCR Consolidated Comments at 8. From this, MCR argues that there is no contemporaneous support for the agency’s position that it recognized that the transition plan complied with the FOPR’s page limitations. Id. This argument, though, is predicated on the erroneous assertion that Tecolote’s transition plan exceeded the FOPR’s page limitations. Because, as the agency states and the record reflects, Tecolote’s transition plan complies with the FOPR’s requirements when the track changes tool is not enabled, there was no requirement that the agency contemporaneously document Tecolote’s compliance. See 22nd Century Techs., Inc., B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 5.

Price Evaluation

Finally, MCR contends that the agency failed to evaluate the reasonableness of Tecolote's price. Supp. Protest at 15. In this regard, MCR contends that the agency addressed price reasonableness solely through the observation that adequate price competition existed, but failed to engage in a substantive comparison between offerors, citing, in support of its allegation, our decision in Cognosante LLC, B-417111 et al., Feb. 21, 2019, 2019 CPD ¶ 93 at 5. For the reasons that follow, we find that we have no basis to object to the agency's evaluation of the reasonableness of Tecolote's price.¹²

A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that our Office will only question where it is shown to be unreasonable. InfoZen, Inc., B-411530, B-411530.2, Aug. 12, 2015, 2015 CPD ¶ 270 at 5. Moreover, the depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. See Federal Acquisition Servs. Alliant JV, LLC, B-415406.2, B-415406.3, Apr. 11, 2018, 2018 CPD ¶ 139 at 11.

In evaluating price reasonableness, the solicitation here provided that proposals would be evaluated using one or more of the techniques defined in section 15.404 of the FAR. FOPR at 166. These techniques include, among other methods, a comparison of the proposed prices received in response to the solicitation (with adequate price competition normally establishing a fair and reasonable price), and a comparison of those prices with an independent government estimate. FAR §15.404-1(b)(2); see also Federal Acquisition Servs. Alliant JV, LLC, supra.

The protester's reliance on our decision in Cognosante, to buttress its argument that the agency failed to evaluate the reasonableness of Tecolote's price, is misplaced. In Cognosante, it was apparent from the record that the agency never performed "any assessment or comparison of final proposal prices" and chose, instead, to solely rely on adequate price competition to determine that the awardee's price was reasonable. Cognosante LLC, supra, at 6 (finding where "the agency relied on FAR § 15.404-1(b)(2)(i) to support its conclusion, but did not compare offeror's price to one another or make any findings about why [the awardee's] highest price should be viewed as reasonable . . . the agency failed to determine whether offeror's prices were fair and reasonable.").

Contrary to the facts in Cognosante, the record here shows that the agency utilized two price analysis techniques identified in the FAR--each of which would independently be

¹² MCR also asserts that the agency's best-value determination was tainted by the alleged flaws above. Supp. Protest at 16. As the record does not support MCR's challenges to the agency's evaluation of Tecolote's proposal, we find no merit to MCR's challenge to the agency's selection decision. See, e.g., Deep Space Sys. Inc., B-417714, Sept. 26, 2019, 2019 CPD ¶ 347 at 3 n.4.

sufficient--to find Tecolote's price reasonable. First, after the agency concluded that adequate price competition existed under section 15-403-1(c)(1) of the FAR, it compared Tecolote's price to MCR's price. AR, Tab 11, FOSEB at 46-47. In addition, the agency compared Tecolote's price to the independent government estimate (IGE), noting that Tecolote's price was 24.3 percent lower than the IGE. AR, Tab 11, FOSEB at 46-47; see QinetiQ North America, Inc., B-405163.2 et al., Jan. 25, 2012, 2012 CPD ¶ 53 at 17-18 (upholding agency's price reasonableness evaluation that utilized a comparison of offeror's proposed prices to the IGE).

Thus, we find this allegation to be without merit because the agency's price evaluation was consistent with the terms of the FOPR and the requirements of the FAR.

The protest is denied.

Thomas H. Armstrong
General Counsel