



Decision

Matter of: LA TERMICA Srl

File: B-416964.2; B-416964.3

Date: January 30, 2019

Salvatore Cino, Esq., for the protester.

Kenneth Jerome Rich, Sr., Esq., and Patricia Windon Walter, Esq., Department of the Navy, for the agency.

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DIGEST

1. Protest challenging price evaluation is denied where the agency evaluated price reasonableness in accordance with the stated evaluation criteria and where the solicitation did not require a price realism analysis.
2. Protest challenging the adjectival ratings assigned to protester's proposal is denied where the protester's objections did not rise beyond disagreement with the agency's evaluation judgment.

DECISION

LA TERMICA Srl (La Termica), of Naples, Italy, protests the award of design-build/design-bid-build construction contracts to five firms under request for proposals (RFP) No. N33191-16-R-1022, issued by the Department of the Navy for new construction, renovation, alteration, and repair projects at Naval Support Activity Naples, Italy and surrounding areas.¹ The protester contends that the agency conducted a flawed price evaluation, assigned unreasonable adjectival ratings to La Termica's proposal, failed to properly evaluate one of the awardees' construction certificates, and

¹ The five firms are as follows: ICM S.p.A, of Vicenza, Italy; Consorzio Stabile Appalti Pubblici (COSAP), of Naples, Italy; SEB. Co Costruzioni di Sebastianelli Gaetano & C. S.a.s (SEB), of Naples, Italy; Edilem S.R.L, of Naples, Italy; and Co.PEL. S.r.l, of Villa di Briano Caserta, Italy.

converted the basis of award from best-value tradeoff to lowest-priced technically acceptable.²

We deny the protest.

BACKGROUND

The RFP, which was issued on January 10, 2017, contemplated the award of indefinite-delivery, indefinite-quantity contracts for the construction (design-bid-build and design-build), renovation or repair, and demolition of facilities, waterfront, airfields, or other related infrastructure, primarily at the Naval Support Activity Naples and surrounding areas. Contracting Officer's Statement (COS) at 1. The contractors are to provide the design, construction, supervision, equipment, materials, labor, and all means necessary to provide the Navy with complete and usable facilities. Id.

The solicitation anticipated award would be made to the offerors whose proposals were determined to be the most advantageous to the agency considering both price and non-price evaluation factors. RFP at 15. The procurement would be conducted as a two-phase, design-build procurement that would result in the award of fixed-price contracts with a 1-year base period and four 1-year option periods. COS at 1-2.

During Phase I, proposals would be evaluated using three factors: technical approach, experience, and past performance. RFP at 16.³ Based on these factors, the agency anticipated that approximately ten of the most highly-rated offerors would proceed to Phase II. Id. During Phase II, the agency would evaluate two additional factors: safety and technical solution. Id. For the agency's best-value tradeoff decision, experience, safety, and technical solution were of equal importance, and, when combined, of equal importance to past performance. Id. When all of the non-price evaluation factors were combined, they were "approximately equal" to price. Id.

Under the technical approach factor, the agency would evaluate the composition and management of the firms proposed as the design-build team for the contract. Id. at 17. In contrast, under the technical solution factor, the agency would evaluate each offeror's

² No protective order was issued in connection with this protest, and accordingly the agency produced a redacted agency report for the protester that removed proprietary and source selection sensitive information. While our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information, our conclusions are based on our review of the entire record, including the non-public information.

³ Technical approach was to be evaluated as either acceptable or unacceptable. RFP at 16. If an offeror was rated unacceptable, its proposal would not be considered in Phase II. Id.

narrative responding to a seed project to determine how the requirements of the RFP would be met. RFP amend. 7 at 5.⁴

Offerors were to submit price schedules for the seed project, which would be evaluated by the agency under the price factor. The solicitation contemplated an analysis to be performed on the prices proposed for the seed project using one or more of the following techniques to ensure a fair and reasonable price:

- (1) Comparison of proposed prices received in response to the solicitation.
- (2) Comparison of proposed prices with the [independent government estimate (IGE)].
- (3) Comparison of proposed prices with available historical information.
- (4) Comparison of market survey results.

RFP amend. 7 at 7. The RFP also provided that:

The Government reserves the right to conduct a price realism analysis of proposed prices to determine [the] risk of unreasonably low proposed prices when compared to offeror-proposed prices submitted in response to the solicitation or in comparison with the IGE.

Id. (emphasis in original). The RFP additionally included a note in the price evaluation section that “[t]he magnitude of construction is between \$1,000,000 and \$5,000,000.” RFP amend. 5 at 7.

La Termica timely submitted a proposal, which was selected to participate in Phase II. After the phase II evaluation, the agency rated La Termica and the five awardees as follows:

⁴ The seed project consisted of replacement of an underground water distribution system and restoration of raw water tanks in the Naples, Italy area. RFP amend. 5 at 7.

	Technical Approach	Experience	Past Performance	Safety	Technical Solution	Total Price	Ranking Based on Price
ICM	Acceptable	Outstanding	Substantial Confidence	Acceptable	Acceptable	\$650,000	1
COSAP	Acceptable	Outstanding	Substantial Confidence	Acceptable	Acceptable	\$690,000	2
SEB	Acceptable	Outstanding	Substantial Confidence	Acceptable	Acceptable	\$735,000	3
Edilem	Acceptable	Outstanding	Substantial Confidence	Acceptable	Acceptable	\$749,593	4
Co. PEL.	Acceptable	Outstanding	Substantial Confidence	Acceptable	Acceptable	\$778,000	5
La Termica	Acceptable	Outstanding	Substantial Confidence	Acceptable	Acceptable	\$949,950	8 ⁵

Agency Report (AR), Tab 13, Source Selection Evaluation Board (SSEB) Report, at 2.⁶
All six proposals received an overall technical rating of acceptable. Id.

On the basis of this evaluation, the source selection authority concluded that “[s]ince all offerors were rated the same technically with no discernable differences, the offerors with the most favorable fair and reasonable prices will receive a contract . . . as their proposals represent the best value to the Government.” AR, Tab 7A, SSDD, at 2. On September 28, 2018, the agency announced the award of contracts to ICM, COSAP, SEB, Edilem, and Co.PEL. This protest followed.

DISCUSSION

The protester argues that the agency conducted an improper price evaluation, assigned unreasonable adjectival ratings to La Termica under the non-price factors, improperly evaluated SEB’s compliance with a certification requirement, and converted the basis of award from a best-value tradeoff to lowest-priced technically acceptable. We have reviewed these arguments and find no basis to sustain the protest.

Price Evaluation

As an initial matter, La Termica challenges the agency’s price reasonableness assessment. In this regard, the solicitation contemplated that the agency would use “one or more” of four possible price analysis techniques “to ensure a fair and

⁵ There were two proposals not selected for award that received overall technical ratings of acceptable, and had prices lower than La Termica’s.

⁶ The SSEB report, the protest, and the source selection decision document (SSDD) did not contain page numbers. Our Office separately assigned consecutively numbered pages to the unnumbered pages in these documents. The citations to these documents in this decision are to the page numbers assigned by our Office.

reasonable price.” RFP amend. 7 at 7. In conducting this assessment, the Navy only used one such technique: comparing prices received in response to the solicitation. The protester contends that the Navy’s use of only this technique was unreasonable because of the large gap between the awardees’ prices and the Navy’s own estimates, with the awardees’ prices falling far below the agency’s estimates. The protester argues that the agency’s price reasonableness determination should have used the other price techniques set forth in the RFP, which would have resulted in the agency concluding that the awardees’ prices were “extremely and unreasonably low.” Protest at 4.

We find no merit to this argument because it mistakenly conflates two different concepts: price realism and price reasonableness. In this respect, an agency’s concern in making a price reasonableness determination in a fixed-price environment is whether the offered prices are too high, as opposed to too low. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. In contrast, a price realism review is to determine whether prices are too low, such that there may be a risk of poor performance. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 13. Thus, the RFP price reasonableness techniques at issue here are simply not applicable to the question of whether the awardees’ proposed prices that were too low.

The protester additionally argues that the agency should have conducted a price realism determination because the solicitation provided a paragraph, in bold font, warning offerors that the agency “**reserves the right to conduct a price realism analysis.**” Protest at 5 (emphasis in original).

In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and where the RFP states that a proposal can be rejected for offering low prices. HP Enterprise Services, LLC, B-413888.2 et al., June 21, 2017, 2017 CPD ¶ 239 at 5. Here, because the RFP did not expressly state that the agency would conduct such an analysis, and instead only reserved a right for the agency the right to do so, we find the agency’s decision not to conduct a price realism assessment to be reasonable. See Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 13 n.9.

The protester further asserts that the agency misled offerors because the solicitation noted that the magnitude of construction was between \$1,000,000 and \$5,000,000. In the protester’s view, this range was clearly meant as a binding prescription, because they appeared within a notes section of the RFP that contained other proposal requirements. We disagree. In this respect, we find no indication in the language of the solicitation that these numbers were intended to be a binding prescription. For example, the solicitation does not state that proposals would be rejected if they were priced below these numbers, nor does anything within the RFP support such an interpretation. Indeed, we note that the protester’s proposed price was lower than the \$1,000,000 “minimum” provided.

In sum, we conclude that the agency's price evaluation was reasonable and consistent with the stated evaluation criteria.

Technical Evaluation

The protester additionally challenges the acceptable ratings assigned to its proposal under the safety and technical solution factors and contends that its overall technical rating should have been rated higher than acceptable. With respect to the safety factor, La Termica notes that its proposal was found to have "met the requirements for [this factor], indicated [an] adequate approach and understanding of the factor, and [had] no weaknesses or deficiencies . . . noted." Protest at 8. Based on these findings, La Termica argues that its rating under this factor should have been higher than acceptable. Similarly, for the technical solution factor, the protester argues that its proposal should have been rated higher than acceptable because it was found to have "met the narrative requirements and [have] no weaknesses or deficiencies." Id.⁷

In reviewing protests of an agency's technical evaluation, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6. An offeror's disagreement with the agency's evaluation, without more, does not establish that the evaluation was unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. With regard to adjectival ratings, technical evaluators have wide discretion when assigning such ratings, given that the ratings reflect both objective and subjective judgments concerning the relative merits of different proposals and their ability to meet the agency's needs. Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 9.

Here, while the protester disagrees with the assessed adjectival ratings, it has not asserted that the agency overlooked any particular aspect of its proposed approach, or otherwise committed some evaluation error. Disagreement with the agency's judgments, without more, does not give rise to a sufficient protest basis. Moreover, we see nothing inherently unreasonable in the assignment of a rating of acceptable where a proposal was found to meet requirements, but not to include any strengths or weaknesses.

The protester further argues that it should have received a higher overall technical rating, because it received the highest scores possible under the first three non-price evaluation factors. In this regard, La Termica received an acceptable overall technical rating based on an acceptable rating under technical approach, an outstanding rating

⁷ In addition to finding no weaknesses, the agency also found no strengths under either factor.

for experience, a substantial confidence rating for past performance, as well as acceptable ratings under the safety and technical solution evaluation factors.

On the record before us, we find no merit to this argument. We see nothing objectionable about the assignment of an overall rating of acceptable to La Termica, when the offeror was found to be acceptable under three of the five non-price evaluation factors. Moreover, it is well established that adjectival ratings are not binding on agencies but, rather, serve only as a guide to intelligent decision making. See Wesley Med. Resources, Inc.; Human Resource Sys., Inc., B-261938.5, B-261938.6, Nov. 20, 1995, 95-2 CPD ¶ 230 at 9 n.2. Accordingly, agencies are not required to mathematically average ratings to arrive at an overall rating. See id. Moreover, given that the five awardees received the same ratings as the protester under each of the five non-price factors, we fail to see how an adjustment to offerors' overall ratings would have improved the protester's competitive position.

Basis for Award

The protester contends that the agency converted the basis for award from a best-value tradeoff to lowest-priced technically acceptable. In support of this argument, the protester notes that the agency assigned identical ratings, under the safety and technical solutions evaluation factors, to 15 of the offerors that advanced to Phase II. This resulted in these offerors receiving identical acceptable overall technical ratings.⁸ The protester argues that this evidenced the agency's failure to qualitatively differentiate between offerors' proposals as it was obligated to do in a best-value tradeoff procurement.

Any alleged failure to differentiate, however, would not be prejudicial to La Termica unless its proposal offered benefits beyond those proposed by the lower-priced offerors whose proposals were assigned equal adjectival ratings. In this regard, La Termica's price was higher than all five of the awardees plus two other acceptable-rated offerors. As discussed above, however, the protester has not established that its proposal was misevaluated or that the agency failed to recognize benefits associated with La Termica's approach. Further, with one exception discussed below, the protester has not argued that any of the technical proposals submitted by these awardees and intervening offerors were misevaluated.

Given that La Termica's proposal was only the eighth lowest-priced, and the protester has not established that it should have been found to be qualitatively superior to the seven, lower-priced offerors, we see no reasonable possibility that the protester's proposal would have been selected for award even if the agency had given greater

⁸ We note that out of 30 total offerors, the agency selected 22 offerors to proceed to Phase II based on their highly rated proposals, and then found 7 of these offerors to be technically unacceptable based on their receiving unacceptable safety or technical solution scores.

weight to the non-price factors within its best-value tradeoff. See Northrop Grumman Info. Tech., Inc., B-401198, B-401198.2, June 2, 2009, 2009 CPD ¶ 122 at 4 (protester was not prejudiced where its higher-priced proposal was found to be essentially equal to the awardee's proposal, and where this would not have changed even if the protester prevailed on its protest ground).

Finally, the protester argues that one of the awardees, SEB, did not have a valid construction certificate, at the time of award, as required by the RFP. In this regard, the RFP requested that offerors demonstrate that they possess a certification from the Societa' Organismi d'Attestazione (SOA), which is an Italian certification body. RFP at 8. The solicitation required offerors to provide an unexpired SOA certificate in their proposals, and stated that the agency would reject any proposal that did not provide the requisite certificate. Id.

As discussed above, however, La Termica is not next in line for award. As a consequence, the protester is not an interested party to raise this protest ground. See CACI Dynamic Sys., Inc., B-406130, Feb. 28, 2012, 2012 CPD ¶ 77 at 7-8 (protester was not an interested party where, even if its arguments were correct, it would not be in line for award because of the presence of intervening offerors whose proposals were essentially equal in technical merit and lower-priced).

The protest is denied.

Thomas H. Armstrong
General Counsel