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Decision

Matter of: NTT DATA Services Federal Government, Inc.

File: B-417235.2; B-417235.3

Date: January 2, 2020

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DIGEST

Protest that agency's price realism analysis was inadequate is denied where the record shows that the agency conducted its price realism analysis using applicable price analysis techniques, and with results that were reasonable and consistent with the terms of the solicitation.

DECISION

NTT DATA Services Federal Government, Inc. (NTT), of Herndon, Virginia, protests the award of a contract to BAE Systems Technology Solutions & Services, Inc. (BAE), of Rockville, Maryland, under request for proposal (RFP) No. HSFE30-16-R-0009, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), for operations and management support services. NTT alleges that the agency unreasonably evaluated the proposals.

We deny the protest.

BACKGROUND

On April 28, 2017, FEMA issued the RFP to procure operations and management services to support its Office of the Chief Information Officer. Contracting Officer's Statement of Facts (COS) at 1. The selected contractor would support five areas,

including: program management; information technology (IT) operations and maintenance; telecommunications operations and maintenance; help desk services; and network operating services. Agency Report (AR), Tab 7, RFP, attach. J.2, Performance Work Statement, at 9. The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract to be performed over a 1-year base period, four 1-year option periods, and a 6-month extension period with a ceiling value of \$300 million. AR, Tab 5, RFP, at 1. Task orders could be issued as fixed-price, time-and-materials, or labor-hour orders. Id. at 2.

Award would be made on a best-value tradeoff basis considering technical approach, past performance, and price factors. AR, Tab 5, RFP, at 81. The technical approach factor was considered significantly more important than the past performance factor; additionally, when combined, the technical approach and past performance factors were significantly more important than the price factor. Id.

When submitting their price proposals, offerors were required to complete a pricing template. AR, Tab 5, RFP, at 83. The template included prepopulated labor categories, labor hours, and other direct costs; thus, offerors only provided their fully burdened labor rates. AR, Tab 6, RFP, attach. J.1, Government Site and Contractor Site Price Rates Template; see also AR, Tab 5, RFP at 78. FEMA would assess whether proposed prices were reasonable, balanced, and realistic. AR, Tab 5, RFP at 83.

Ten offerors submitted proposals prior to the July 10, 2017, closing date. COS, at 5. FEMA established a competitive range of four offerors, including both NTT and BAE. Id. at 6. All offerors in the competitive range submitted revised proposals by the closing date of May 9. Id. The evaluation produced the following relevant results:

	NTT	BAE
Technical	Good	Excellent
Program Management	Excellent	Excellent
IT Systems Operations and Maintenance	Good	Excellent
Telecomm. Operations and Maintenance	Good	Excellent
Help Desk Services	Excellent	Excellent
Network Operating Services	Good	Excellent
Past Performance	Good	Excellent
Price	\$196,328,321	\$157,964,963

AR, Tab 38, Source Selection Decision Document (SSDD), at 4. Based on the evaluation results, the source selection authority (SSA) identified BAE's proposal as offering the best value. The SSA noted that BAE's technical approach was superior to the other offerors' proposed technical approaches, and that BAE's past performance record also indicated a higher likelihood of successful contract performance than the other offerors. Id. at 8. Additionally, the SSA noted that BAE's proposed price was \$39

million less than NTT's proposed price. Id. After learning that its proposal was unsuccessful, NTT filed this protest with our Office.

DISCUSSION

NTT primarily alleges that FEMA unreasonably conducted the price realism analysis. NTT also alleges that its proposal should have been evaluated more favorably under the technical and past performance factors. We have reviewed all of NTT's allegations and find no basis to sustain the protest. We discuss the chief allegations below.

Price Realism

NTT alleges that FEMA unreasonably conducted the price realism analysis. NTT argues that FEMA should have used the internal government cost estimate (IGCE) or available market data to determine whether proposed prices were too low. Protester's Comments, at 9-11; Protest at 13. NTT also argues that FEMA failed to analyze whether BAE's proposed labor rates were too low in each of the option years. Id. at 12-13.

Where, as here, an RFP contemplates the award of a fixed-price contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. M7 Aerospace, LLC, B-415252.4, B-415252.5, Nov. 9, 2018, 2018 CPD ¶ 387 at 6-7. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Apogee Eng'g, LLC, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 8-9. Further, it is axiomatic that an agency's price evaluation must, at a minimum, comport with the terms of the solicitation. Digital Techs., Inc., B-406085, B-406085.2, Feb. 6, 2012, 2012 CPD ¶ 94 at 3.

In our view, FEMA reasonably conducted its price realism analysis because its methodology utilized price analysis techniques set forth in Federal Acquisition Regulation (FAR) § 15.404-1(b)(2). That section provides that an agency may determine realistic prices by, among other techniques, comparing offerors' prices and also comparing proposed prices against published price lists. FAR § 15.404-1(b)(2)(i), (iv). The record shows that FEMA combined those techniques to perform the instant price realism analysis. AR, Tab 35, Price Analysis Report, at 15.

FEMA compared offerors' prices because it used the proposed labor rates to formulate a statistical dispersion and interquartile range for each labor category. AR, Tab 35, Price Analysis Report, at 15. FEMA identified any labor rate falling below the 25th percentile as an outlier. Id. FEMA also compared proposed prices against a published price list because it compared the outlier prices against the General Service Administration (GSA) schedule labor rates. Id. at 16. As to BAE, FEMA determined that one of its proposed labor rates was an outlier, but nevertheless determined that the outlier price was comparable to GSA schedule rates; therefore, FEMA determined that

BAE's proposed pricing was realistic. COS at 15. We find the agency's methodology reasonable because it relied on qualified price analysis techniques to determine whether proposed prices were comparable to market averages. See Strategic Resources, Inc., B-406841.2, Nov. 27, 2012, 2012 CPD ¶ 346 at 10-11 (price realism evaluation that compared offerors' proposed prices was sufficient).

Although NTT may argue that the analysis may have been more effective by using the IGCE, available market data, or examining the option years pricing, we do not find any of those allegations persuasive since, as noted above, the nature and extent of an agency's price realism analysis are matters within the agency's discretion. See Tec-Masters, Inc., B-416235, July 12, 2018, 2018 CPD ¶ 241 at 7 (stating "an agency is not restricted to comparing the government estimate and the [proposed] price when performing its price realism analysis"). Critically important, the solicitation did not require FEMA to use those price analysis techniques or examine the option years' pricing as part of the price realism analysis, and NTT does not identify any procurement statute or regulation limiting the agency's discretion in this regard. See AR, Tab 5, RFP at 83.¹ Thus, even if we were to agree that these alternate or additional measures would have improved FEMA's analysis, we would not sustain the protest allegation because the agency has discretion to select the nature and extent of its price realism analysis. Cf. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4 (agency was not required to conduct in-depth price realism analysis of each contract line item number, even though that alteration may have made the overall analysis more reliable, since the nature and extent of the price realism analysis is reserved to the agency's discretion). Accordingly, we deny this protest allegation because the analysis was consistent with the terms of the solicitation and used price analysis techniques set forth in the FAR.

Finally, NTT argues that the analysis was unreasonable because FEMA failed to consider BAE's technical approach when evaluating BAE's proposed prices as realistic. For example, NTT argues that FEMA failed to consider whether it would be realistic for BAE to implement its proposed method of staffing and supply the necessary labor at its proposed price. Protester's Comments, at 9. We disagree.

¹ With regard to price realism, the RFP stated that proposed prices would be evaluated as follows:

Unrealistically low estimates may indicate an inability to understand requirements and a high-risk approach to contract performance. Accordingly, the Government may consider the findings of such an analysis in evaluating an Offeror's ability to perform and the risk of its approach.

AR, Tab 5, RFP at 83.

As the agency points out, the RFP was structured such that the evaluation was based purely upon a comparison between proposed labor rates because the RFP required offerors to complete a pricing template with set amounts for the labor categories and hours. Memorandum of Law at 20-21. Offerors were not permitted to propose unique technical approaches that reduced hours or substituted higher or lower skilled labor. Id. Thus, because the solicitation dictated the technical approach to be used for offerors' price proposals, we find that a comparison between proposed labor rates and published price lists was sufficient since that was the only variable (i.e., potential risk) for this particular competition.² See AMEC Earth & Envtl., Inc., B-404959.2, July 12, 2011, 2011 CPD ¶ 168 at 7 (price realism analysis limited to a comparison between proposed prices and other prices received and the IGCE was reasonable where the offerors' technical approaches were similar). In any event, we think that FEMA's analysis did, in fact, address the risk NTT complains about because, by ensuring that BAE's prices were comparable to the published price lists and the prices of the competitors, FEMA determined that BAE was competitive in the labor markets and therefore capable of hiring sufficient staff.³ See MOL at 14-15. Accordingly, we deny the protest allegation.

Competitive Prejudice

NTT argues that FEMA should have assigned its proposal the highest adjectival rating (i.e., excellent) because it received several strengths under each of the technical subfactors and should not have been assigned any weaknesses. Protester's Comments, at 15-16. NTT also argues that its proposal should have been assigned an excellent rating for the past performance factor because it received positive past performance reviews in both the past performance questionnaires and the contractor performance assessment reporting system. Id. at 16-18.

² In this regard, the record shows that NTT's price was the statistical outlier; NTT's total price was significantly higher than BAE's price, which was the second-highest of the four offerors within the competitive range. AR, Tab 38, SSDD at 4.

³ To the extent NTT argued that BAE's proposed pricing was materially unbalanced, we conclude that it has abandoned this allegation. In its protest, NTT argued that BAE must have understated pricing for some labor categories and overstated pricing for other labor categories. Protest at 18. Although the agency responded that BAE did not understate or overstate pricing for its labor categories, NTT did not provide any legal argument on this point in its comments. Accordingly, we dismiss this allegation as abandoned. See Medical Staffing Solutions USA, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3 (GAO will dismiss any allegation as abandoned when the protester's comments do not respond to the agency's position contained in the report).

Additionally, we also dismiss NTT's allegation that FEMA omitted the tenth offeror's proposed pricing from the price realism analysis. In its report, FEMA explained that the tenth offeror's proposed pricing was not included because its price proposal was incomplete. MOL at 18. NTT did not respond to the agency's position in its comments. Accordingly, we dismiss the allegation as abandoned.

We need not address these issues because we conclude that NTT suffered no competitive prejudice from any alleged miscalculation of its technical or past performance proposals. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov't, Inc., B-413220.4 et al., May 19, 2017, 2017 CPD ¶ 173 at 26.

Here, even if NTT prevailed on this protest ground and received the highest possible technical and past performance ratings, its price would still be significantly higher than BAE's price and its ratings would be the same as BAE's technical and past performance ratings. From the record, NTT has not shown, and we see no reasonable possibility, that the SSA would have selected NTT's higher-priced proposal instead of BAE's equally-rated, lower-priced proposal due to the large price disparity (i.e., \$39 million). Cf. American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3 (even if protester's proposal had received the highest possible ratings for the non-price factors, the protester did not establish competitive prejudice since its proposal was much higher-priced and would therefore would not have been selected for award). Accordingly, we deny this protest allegation.

The protest is denied.

Thomas H. Armstrong
General Counsel