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Decision

Matter of: RELI Group, Inc.

File: B-418005

Date: December 23, 2019

Edward T. DeLisle, Esq., and Andres M. Vera, Esq., Offit Kurman, for the protester. Linda A. Santiago, Esq., and Douglas W. Kornreich, Esq., Department of Health and Human Services, for the agency. Evan C. Williams, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency conducted improper price realism analysis of awardee's proposal is denied where the protester provides no basis to conclude that the price realism analysis was unreasonable or inconsistent with the terms of the solicitation.
 2. Protest challenging the agency's best-value tradeoff decision is denied where the agency looked beyond the adjectival ratings to conclude that the protester's proposal was essentially equal to the awardee's proposal under the non-price evaluation factors, and therefore reasonably made award to the lower-priced offeror.
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DECISION

RELI Group, Inc., an 8(a) small business of Catonsville, Maryland, protests the award of a contract to Fed Pro Services, LLC, of Canton, Mississippi, under request for proposals (RFP) No. 75FCMC19R0037, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for services to support the End-Stage Renal Disease Quality Incentive Program (ESRD QIP).¹ RELI contends that the agency unreasonably evaluated the realism of the awardee's proposed price, and made a flawed best-value decision.

¹ The ESRD QIP is a federal program where providers are paid based on the quality of care they provide to Medicare beneficiaries. RFP, Statement of Work (SOW), at 1. Each year, the ESRD QIP calculates performance measure scores for providers based upon data received from a variety of sources. Id.

We deny the protest.

BACKGROUND

On June 25, 2019, the agency issued the RFP as a set-aside for companies participating in the Small Business Administration's 8(a) Business Development Program, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), RFP Cover Letter, at 1. The RFP sought proposals to provide services to support the ESRD QIP's requirement to validate data elements that are used to measure the performance of providers of renal dialysis services.² RFP, SOW, at 2; Contracting Officer's Statement (COS) at 1. The RFP contemplated the award of a fixed-price contract with a 1-year base period and four 1-year option periods. RFP at 2. The solicitation provided that award was to be made on a best-value tradeoff basis to the offeror whose proposal "offers the best overall value to the Government." Id. at 102.

Proposals were to be evaluated based on the following non-price factors, listed in descending order of importance: technical understanding and approach, staffing, project management plan, and past performance. Id. at 102. These non-price evaluation factors, when combined, were to be considered approximately equal to price. Id. at 102.

As relevant to this protest, the solicitation required offerors to submit business proposals to support their proposed prices. Id. at 95-100. The RFP stated that business proposals would be evaluated as follows:

The business proposal evaluation will consist of a price analysis, cost realism analysis and limited cost analysis, if necessary. A price analysis will be used to assist in determining the reasonableness to perform case reviews. The cost realism analysis will consist of review and evaluation of specific elements of each Offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed.

Id. at 104.

The agency received multiple proposals prior to the July 25, 2019 closing date, including those of RELI and Fed Pro. COS at 2. The Technical Evaluation Panel (TEP) evaluated the offerors' technical proposals under the non-price factors listed in the solicitation. Id.

² Specifically, the solicited services included the following tasks: project management, communication, and equipment procurement; data validation methodology and sampling plan; gather data; analyze data; submit results reports and recommendations for improvement; case review data validation; and postage and copying. RFP, SOW, at 8-20.

With respect to price, the agency performed two separate evaluations of offerors' business proposals. First, the TEP Chair evaluated the reasonableness and realism of offerors' proposed direct labor hours by examining level of effort. AR, Tab 14, TEP Chair Business Proposal Evaluation (Fed Pro). Second, the Financial Management Specialist (FMS) performed a price analysis, which included a comparison of the direct labor rates proposed for a sample of an offeror's direct labor categories to median labor rates from salary.com³ for comparable position titles. AR, Tab 12, FMS Business Proposal Evaluation (Fed Pro).

The agency's evaluation results were as follows:

	RELI	Fed Pro
Technical Understanding and Approach	Very Good	Very Good
Staffing	Exceptional	Very Good
Project Management Plan	Very Good	Exceptional
Past Performance	Exceptional	Exceptional
Overall Technical Rating	Very Good	Very Good
Price	\$9,966,211.28	\$2,676,478.00

AR, Tab 17, Source Selection Determination (SSD), at 1-4; COS at 2. The contracting officer, acting as the source selection authority (SSA), conducted a comparative analysis of the proposals, and concluded that Fed Pro's proposal represented the best value to the government. AR, Tab 17, SSD, at 5. On September 13, 2019, the agency notified RELI that it was not selected for award and provided it with a written debriefing. RELI, the incumbent contractor, filed this protest with our Office on September 23.

DISCUSSION

RELI contends that the agency unreasonably evaluated the realism of Fed Pro's proposed price. In addition, RELI argues that the agency made an unreasonable best-value decision. For the reasons discussed below, we find no basis to sustain the protest.⁴

³ Salary.com is a commercial service that tracks salary data for various labor positions throughout U.S. labor markets. See www.salary.com (last visited Dec. 17, 2019).

⁴ The protester has presented arguments in addition to those discussed in this decision. While we do not specifically address each of them, we have considered all of RELI's allegations and find no basis to sustain the protest. For example, the protester challenged the adequacy of the written debriefing provided by the government. Protest at 4. After receipt of the agency's response to the protest, RELI withdrew this challenge. Comments at 3.

Price Realism

As stated above, the solicitation provided for a price realism analysis to determine whether the offeror's proposed price was "realistic for the work to be performed." RFP at 104 (using the terms price and cost interchangeably).⁵ RELI challenges the agency's price realism evaluation, alleging that Fed Pro's proposed price is too low to be deemed realistic. Protest at 5-6; Comments at 2-5. In response, the agency maintains that its price realism analysis of Fed Pro's proposal was reasonable and consistent with the solicitation. Memorandum of Law at 8-11; COS at 6-8.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring an offeror's understanding of the requirements. See Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 9. Although the FAR does not use the term "price realism," our Office has consistently used the term to describe the type of analysis provided for in FAR § 15.404-1(d)(3), which involves assessing the realism of fixed-price proposals. See, e.g., IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 11. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. AMEC Earth & Env'tl., Inc., B-404959.2, July 12, 2011, 2011 CPD ¶ 168 at 8. Further, there is no general requirement that an agency base its analysis on a comparison to the incumbent contractor's prices. Science & Mgmt. Res., Inc., B-291803, Mar. 17, 2003, 2003 CPD ¶ 61 at 3. Our review of an agency's price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. AAR Def. Sys. & Logistics, B-413284, Sept. 22, 2016, 2016 CPD ¶ 274 at 9.

Here, as stated above, the agency evaluated prices in two separate analyses, performed by two different individuals. First, the agency analyzed the realism of Fed Pro's proposed level of effort. To this end, the TEP Chair compared Fed Pro's level of effort with the level of effort contained in the independent government cost estimate (IGCE), and found the respective levels of effort to be comparable. AR, Tab 14, TEP Chair Business Proposal Evaluation (Fed Pro), at 2. Second, the agency examined Fed Pro's direct labor rates. Specifically, the FMS compared the direct labor rates for a sampling of Fed Pro's proposed labor categories with the median labor rates for comparable position titles from the salary.com website. AR, Tab 12, FMS Business Proposal Evaluation (Fed Pro), at 2. Based upon this analysis, the FMS expressed no concerns related to Fed Pro's proposed direct labor rates, concluding that Fed Pro's

⁵ Even though the solicitation uses the terms price and cost to describe this aspect of the evaluation, we find it clear that the solicitation provided for an evaluation of the offerors' prices for realism. See Acepex Mgmt. Corp., B-279173.5, July 22, 1998, 98-2 CPD ¶ 128 at 6 (interpreting a solicitation to require a price realism analysis despite its use of both the terms price and cost where the solicitation contemplated the award of a fixed-price contract). Thus, while the record and the parties' filings use the terms cost and price interchangeably, we will use the term price realism throughout this decision.

direct labor rates were reasonable and “on par with the median rate.” Id. While not stating that the rates were realistic, the FMS’s analysis found that only one of the proposed direct labor rates for the labor categories sampled was lower than the comparable direct labor rate from salary.com. Id. Specifically, the proposed direct labor rate for Fed Pro’s Project Manager labor category was found to be [DELETED] percent lower than the comparable salary.com rate. Id. In the SSD, the contracting officer found that “[Fed Pro’s] costs [were] realistic based on the requirements of the work and their technical approach.” AR, Tab 17, SSD, at 2. In response to the protest, the contracting officer further explained that both the TEP Chair’s realism analysis and the FMS’s price analysis were relied upon when making the determination that Fed Pro’s proposed price was realistic. COS at 4.

RELI primarily argues that as the incumbent contractor, it has an understanding of the solicitation’s requirements, and based upon that knowledge, it asserts that Fed Pro’s lower proposed price cannot be realistic. Protest at 5. As an initial matter, we note the fact that Fed Pro’s proposed price was lower than RELI’s does not alone provide a basis for finding the agency’s price realism analysis unreasonable. There is no requirement in the solicitation, or in regulation, that the agency base its price realism analysis on a comparison of the prices proposed with the incumbent contractor’s proposed pricing. See Grove Resource Sols., Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 6-7. Instead, the protester must meet its burden to establish that the agency’s evaluation was unreasonable or inconsistent with the solicitation.

Based upon our review of the record, we find no basis to question the agency’s price realism analysis of Fed Pro’s proposal. First, we find unobjectionable the contracting officer’s price realism findings, which considered the comparison of Fed Pro’s proposal to the level of effort in the IGCE and the FMS’s price analysis of direct labor rates. Indeed, the FAR recognizes a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including a comparison of proposed prices with an IGCE. See FAR §15.404-1(b)(2)(v). Further, the agency’s chosen methodology is not inconsistent with the solicitation, which broadly stated the agency would review and evaluate specific elements of each offeror’s cost estimate to determine whether they are realistic for the work to be performed. RFP at 104.

In addition, we find that the protester has failed to establish that the agency’s price realism analysis is flawed. The protester acknowledges in its comments that Fed Pro’s proposed level of effort is consistent with the IGCE. Comments at 4. Notwithstanding this concession, RELI continues to assert its challenge on the basis that Fed Pro’s proposed price is roughly half of the IGCE. Id. Notably absent from RELI’s filings, however, is an explanation of why--despite the agency’s uncontested finding that Fed Pro’s proposed level of effort was realistic--Fed Pro’s proposed price is nevertheless so low that it must be rejected as unrealistic. On this point, we note that even though RELI had access to both Fed Pro’s technical and business proposals, as well as the agency’s evaluations thereof in the agency report, it has not identified any specific reason that Fed Pro’s proposed price evidences a risk that it cannot perform its technical solution at the price offered. Although the protester generally disagrees with the level of scrutiny

the agency applied to Fed Pro's proposed price, an agency has considerable discretion in determining the nature and extent of required price realism and proposal risk assessments in the context of fixed-price contracts. Resource Ltd., B-406492, B-406492.2, June 6, 2012, 2012 CPD ¶ 195 at 5. For these reasons, we find no basis to question the adequacy of the agency's price realism evaluation, or its conclusion that Fed Pro's proposed price was realistic. See Optex Systems, Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6 ("Indeed, nothing about an obligation to review prices for realism bars an offeror from proposing--and an agency from reasonably deciding to accept--a below-cost offer.").

Best-Value Decision

Next, RELI contends that the agency's best-value decision was flawed because CMS failed to make a qualitative comparison between Fed Pro's and RELI's proposals, and essentially made award on a lowest-priced, technically acceptable (LPTA) basis. Protest at 6-7; Comments at 5-6.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price results, subject only to the tests of rationality and consistency with the solicitation's evaluation factors. Diversified Tech. & Servs. of Va., Inc., B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 11. An agency's source selection decision must rest upon a qualitative assessment of the underlying technical differences among competing offers. The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8. Where a selection official reasonably regards proposals as being essentially technically equal, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. Staff Tech, Inc., B-403035.2, B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6-7.

Here, the record demonstrates that the agency's selection of Fed Pro's proposal was not a mechanical comparison of adjectival ratings, but rather, was based on a qualitative assessment of the proposals. The SSD shows that the contracting officer reviewed the TEP's findings, but also independently evaluated each proposal against the solicitation's evaluation criteria. AR, Tab 17, SSD, at 2-5. Based upon this detailed analysis, the contracting officer concluded that both RELI's and Fed Pro's proposals were essentially technically equal, and found Fed Pro's lower-priced proposal to provide the best value to the government. Id. at 2, 5; COS at 2, 4, 8.

The protester also challenges the reasonableness of the agency's finding that RELI's and Fed Pro's proposal were essentially equal.⁶ Comments at 5-6. First, RELI alleges

⁶ While the contracting officer's response to the protest repeatedly asserts that both RELI's and Fed Pro's proposal were found to be essentially technically equal, the SSD does not expressly make such a finding. Compare COS at 2, 4, 8 with AR, Tab 17, SSD, at 2 ("Since all 4 offerors were rated Very Good, price was considered."). We

that the agency abandoned a substantive analysis of the relevant technical factors and instead relied solely upon adjectival ratings to conclude the proposals were technically equal. Id. at 5. Second, RELI points out that while Fed Pro received a higher rating under the project management plan factor, RELI received a higher rating than Fed Pro under the staffing factor, which was considered more important than the project management plan factor. Id. at 6. Thus, according to the protester, its proposal should have been considered technically superior to Fed Pro. Id.

As we have consistently stated, evaluation ratings are merely guides for intelligent decision-making in the procurement process. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 19. Further, we have recognized that a finding that proposals are essentially equivalent technically means that overall there is no meaningful difference in what the proposals have to offer; it does not mean that the proposals are identical in every respect. Dorado Servs., Inc., B-401930.3, June 7, 2010, 2010 CPD ¶ 134 at 5.

As discussed above, the record shows that the contracting officer, acting as the SSA, conducted a detailed analysis of the strengths and weaknesses of all proposals. AR, Tab 17, SSD, at 2-5. In this regard, the SSD demonstrates that the SSA reviewed the TEP's evaluation findings, in which both RELI and Fed Pro were rated as "Very Good," and also independently evaluated each proposal against the RFP's stated evaluation criteria. Id. Further, when describing why Fed Pro offered the best value to the government, the SSA explained that the three offerors other than Fed Pro proposed "extremely high" levels of effort for a "contract that is in a maintenance phase instead of an implementation or development process." Id. at 2. Even though RELI argues that the proposals are not technically equal, and that its proposal should have been considered technically superior, based upon our review of the record, we find nothing improper about the agency's conclusion that there were no meaningful differences between RELI's and Fed Pro's proposals.

Since we find that the agency reasonably found RELI and Fed Pro's proposals to be technically equal, the agency's decision to make low price the deciding factor was fully consistent with the solicitation. CyberData Technologies, Inc., B-417084.3, June 6,

note, however, that the protester does not dispute that the agency made the determination that the two proposals were technically equal. Comments at 5-6.

2019, 2019 CPD ¶ 212 at 7. Accordingly, we find the agency's best-value decision was reasonable, consistent with the solicitation's stated evaluation criteria, and was sufficiently documented.

The protest is denied.

Thomas H. Armstrong
General Counsel