



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Epic Systems, Inc.

File: B-418104; B-418104.2

Date: January 2, 2020

John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

Shiva S. Hamidinia, Esq., Lars E. Anderson, Esq., and James P. Miller, Esq., Odin Feldman Pittleman P.C., for TriPoint Solutions, LLC, the intervenor.

Rebecca Saroyan, Esq., General Services Administration, for the agency.

Kasia Dourney, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of awardee's price is denied where the nature and extent of the agency's price realism analysis was a matter within its discretion, and the record shows that the evaluation was reasonable.

2. Protest challenging the agency's best-value determination is denied when the agency reasonably concluded that the protester's quotation was only slightly superior to the awardee's quotation under the non-price evaluation factors, and therefore reasonably made award to the lower-priced vendor.

DECISION

Epic Systems, Inc. (Epic), a small business of Aldie, Virginia, protests the issuance of a task order to TriPoint Solutions, LLC (TriPoint), a small business of Potomac Falls, Virginia, under request for quotations (RFQ) No. 1350328, issued by the General Services Administration (GSA) for data science research analysis to support the Defense Travel Management Office (DTMO). Epic argues the agency's evaluation of vendors' quotations and resulting award decision were improper.

We deny the protest.

BACKGROUND

The agency issued the RFQ via the GSA's e-Buy system on May 14, 2019, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to vendors holding federal supply schedule (FSS) No. 70 contracts, special item number 132-51, information technology professional services.¹ Agency Report (AR), exh. 1, RFQ at 4. The solicitation, issued as a competitive section 8(a) set-aside,² anticipated award of a fixed-price single task order for a base year and four 1-year option periods. The task order was to be issued on a best-value tradeoff basis, for information technology systems analysis, database planning, data science, data analytics and programing services. Id. at 4, 21.

Vendors were advised that the quotations would be evaluated on the basis of the following four factors, in descending order of importance: (1) technical solution; (2) experience; (3) past performance; and (4) price. RFQ at 21. Additionally, the technical solution factor consisted of three subfactors, in descending order of importance: (1) technical approach; (2) management approach; and (3) staffing plan. AR, exh. 12, Award Decision Memorandum (ADM) at 2. If technical solution, experience, and past performance factors were evaluated as more equal, the importance of price could increase. RFQ at 21.

The RFQ advised that the technical solution and the experience factors would be evaluated based on whether the quotation exceeded, met, or did not meet the solicitation's objectives; past performance would be evaluated using these same ratings, in addition to a possible rating of neutral. RFQ at 22-23.

As relevant here, with regard to price, the government was to evaluate whether a proposed price was "fair, reasonable and realistic for the project"; vendors were advised that "excessively high or low" prices might "be considered unrealistic" and not receive "further consideration." Id. at 23. The RFQ specified that the price quotation should be broken down by contract line items and include the proposed labor categories, the applicable hourly rates, and estimated hours to be used in support of the requirement. Id. at 21. Finally, the RFQ's instructions asked vendors to offer discounts to their GSA schedule labor rates, when possible. Id.

¹ The e-Buy portal is designated in FAR subpart 8.4 as GSA's electronic RFQ system where ordering activities post requirements. FAR § 8.402(d).

² Section 8(a) of the Small Business Act authorizes the Small Business Administration to enter into contracts with government agencies and to provide for performance through subcontracts designed to assist "developing" small business concerns which are owned and controlled by designated disadvantaged individuals. See 13 C.F.R. Part 124; Joa Quin Mfg. Corp., B-255298, Feb. 23, 1994, 94-1 CPD ¶ 140.

The agency received quotations from 12 vendors, including TriPoint and Epic. Contracting Officer’s Statement (COS) at 2-3. The technical evaluation team³ (TET) reviewed and evaluated the quotations, in accordance with the evaluation instructions, and concluded that only four vendors submitted quotations that received a rating of at least “meets”⁴ under the non-price evaluation factors. AR, exh. 12, ADM at 7. The TET prepared a technical evaluation consensus report, and submitted it to the contracting officer (CO), who was also the source selection authority (SSA) for the procurement. COS at 3; AR, exh. 12, ADM at 8.

The TET evaluated the four technically acceptable quotations as follows:

	Epic	Vendor A	Vendor B	TriPoint
Technical Solution	Meets	Meets	Meets	Meets
Technical Approach	Exceeds	Meets	Meets	Meets
Management Approach	Meets	Meets	Meets	Meets
Staffing Plan	Meets	Meets	Meets	Meets
Experience	Exceeds	Meets	Meets	Meets
Past Performance	Exceeds	Exceeds	Exceeds	Exceeds
Price	\$20,895,914	\$19,969,625	\$15,651,370	\$13,713,458

Id. at 8. The SSA reviewed the consensus report and accepted all ratings provided by the TET. Id. at 7.

The SSA then conducted a detailed best-value tradeoff analysis between the four technically acceptable quotations, noting that three of the four vendors--TriPoint and two others--received identical ratings under all non-price factors and subfactors. Id. at 9. The SSA further observed that Epic received a slightly higher rating of “exceeds” under its experience evaluation factor, which, according to the SSA, was “understandable given that Epic . . . was the incumbent [c]ontractor for a nearly identical requirement.” Id. at 10. Notwithstanding Epic’s slightly higher rating, the SSA noted that TriPoint received an “exceeds” rating for its past performance, “which [was] a strong indicator of better than satisfactory performance.” Id. The SSA found that “TriPoint’s ratings were almost identical to Epic[’s]” and, hence, paying a price premium of “\$7 million could not be supported on these facts.” Id.

³ The TET was composed of the employees of the DTMO, with the oversight of the GSA project manager/TET chair as a non-rating member. AR, exh. 12, ADM at 6.

⁴ We have slightly modified the nomenclature for the agency’s adjectival ratings used in the solicitation and its records; throughout the decision, we will refer to a “meets” rating instead of “met,” and an “exceeds” rating instead of “exceed.”

As part of her best-value analysis, the SSA compared the price quotations of the three vendors with technically equal ratings, and concluded that:

[g]iven the equivalent technical scores of these three offerors, the Contracting Officer cannot support an award decision to either [vendor B] with a significant price premium of 12% or to [vendor A] with an even more substantial 31% price premium for equally rated technical proposals.

Id. at 9. Next, she examined “the pricing elements” of TriPoint’s and Epic’s quotations, and found that TriPoint “actually propose[d] more resources in terms of labor hours than Epic[:] . . . a total of 138,336 labor hours vs. Epic Systems Inc.’s 132,770 labor hours.” AR, exh. 12, ADM at 9. The SSA documented that of “the four technically acceptable offerors, TriPoint[’s] . . . proposed total labor hours of 138,336 is the closest to the total IGCE [independent government cost estimate] labor hours of 139,000.” Id. at 11. She further analyzed TriPoint’s proposed price by comparing its proposed skill level mix and staffing plans and noted they were “deemed technically acceptable by the TET.” Id.

The SSA recognized the significant difference of the prices proposed by Epic and TriPoint and asked TriPoint to validate its pricing; specifically, she asked that TriPoint confirm whether the proposed pricing “adequately represent[ed] the technical solution proposed by your firm.” COS at 3; AR, exh. 11, Price Validation, at 1-3. TriPoint responded in the affirmative. Id. The SSA further determined that:

This large disparity in the pricing can be explained in Epic[’s] . . . substantially higher labor rates. Epic Systems Inc. proposed a [DELETED] pricing discount from their GSA schedule 70 rates whereas Tripoint Solutions LLC proposed significant discounting from their labor rates of [DELETED], which explains the reason for the significantly lower overall price despite a slightly higher number of proposed labor hours.

AR, exh. 12, ADM at 9. In sum, the SSA concluded that she:

was unable to select Epic Systems for award based on only a slightly higher technical rating for their “experience” evaluation factor of “exceeds” compared to TriPoint’s “meets” for experience, all factors considered. In essence, such an award would fail to result in significantly reduced performance risk, significant added advantage, or superior attainment of all PWS requirements or objectives, all factors considered. To the extent that any advantage might be realized through Epic Systems Inc.’s slightly higher rated proposal, the Contracting Officer could not support or justify the payment of 34% price premium for the slight difference in technical rating.

Epic Systems Inc.’s higher rating of “exceeds” for the “technical approach” subfactor and the “exceeds” for the “experience” factor are predictors of marginally reduced performance risk. However this added benefit does

not render a justifiable basis for the Government to pay an extra \$7,182,455.63 to Epic Systems Inc. when TriPoint Solutions LLC's proposal provides a similar level of assurance for satisfactory performance.

Id. at 9-10. Accordingly, the SSA determined that TriPoint provided the best value to the government because award to TriPoint would result in "substantial cost savings." Id. Subsequently, the CO awarded the contract to TriPoint on September 30, 2019. COS at 3. This protest followed.

DISCUSSION

Epic raises various issues regarding the agency's evaluation of quotations. Epic asserts that the agency improperly evaluated the awardee's proposed price,⁵ and argues that the agency's "cost-technical" tradeoff analysis was unreasonable. We have considered all the issues and arguments raised by Epic and, although we do not address them all, find no basis on which to sustain the protest.⁶ Below, we discuss Epic's primary contentions.

⁵ Besides challenging the agency's evaluation of the awardee's proposed "extremely low price," Epic asserts that the agency should have concluded that TriPoint's quotation was technically unacceptable because it is "inconceivable" how the awardee could have met the requirements with its proposed "low price." Protest at 14. As we discuss below, because we find the agency's evaluation of TriPoint's price quotation reasonable, we need not consider this protest ground, which was "[b]ased upon the extremely low price that TriPoint proposed." Id.

⁶ Epic also protests the agency's evaluation of its technical quotation, arguing that it should have been rated "exceeds" under the technical solution factor, based on the "exceeds" rating it received under technical approach subfactor and two ratings of "meets" under the management approach and staffing plan subfactors. We have reviewed this protest ground and conclude that it provides no basis to sustain the protest. Specifically, the record shows that the agency recognized the advantages in Epic's technical quotation but reasonably concluded that--notwithstanding the "exceeds" rating under the technical approach subfactor--it did not merit an overall rating of "exceeds." Instead, "taking into consideration all of the three subfactors," the agency concluded that it demonstrated "an approach which [was] capable of meeting all requirements and objectives," consistent with the RFQ's definition of "meets." AR, exh. 9, Epic--Consensus Report, at 1. On this record, we see no reason to question the agency's evaluation of Epic's technical quotation. We have also considered Epic's allegations that TriPoint engaged in an improper bait and switch of its key personnel, and find no merit to the protester's assertions.

Evaluation of TriPoint's Price Quotation

Epic argues that the agency's evaluation of TriPoint's price quotation was flawed because TriPoint's price was "unreasonably low and therefore unrealistic"; and the agency failed to assess whether TriPoint's low price reflected a lack of understanding of the requirements that could result in a performance risk. Protest at 14; Protester's Comments at 11.

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. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Analyzing whether an offeror's fixed price is so low that it reflects a lack of understanding of solicitation requirements is the crux of a price realism evaluation. See Science Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 10; NJVC, LLC, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4, et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17.

Here, the RFQ provided that the agency would evaluate whether the proposed price was "fair, reasonable and realistic," and advised that prices that were "excessively high or low [might] be considered unrealistic" and receive "no further consideration." RFQ at 23. Although the solicitation did not state that vendors' prices would be evaluated for "realism" per se, it effectively provided for such an evaluation when it established that GSA could reject a quotation if the proposed price was considered "excessively . . . low," and therefore "unrealistic." See, e.g., Flight Safety Servs. Corp., B-403831, B-403831.2, Dec. 9, 2010, 2010 CPD ¶ 294 at 4-5; see also Optex Sys., Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 4. Moreover, the RFQ instructed that in addition to proposing a price broken down by contract line items, for the "purposes of evaluation," vendors were to include in their pricing quotations their proposed labor categories, the applicable hourly rates, and estimated hours to be used in support of the requirement. RFQ at 21. As explained above, analyzing whether a vendor's fixed price is so low that it reflects a lack of understanding of the RFQ's requirements is the crux of a price realism evaluation, and by informing vendors that their quotations would be evaluated in this manner--by assessing vendors' proposed labor categories and estimated hours, and rejecting any that was found unrealistic--the RFQ established that GSA would evaluate vendors' prices for realism.

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 each other and with an IGCE. See FAR §§ 15.404-1(b)(2)(i), (ii), (iv), (v); Islandwide Landscaping, Inc., B-293018, Dec. 24, 2003, 2004 CPD ¶ 9 at 2; Quality Elevator Co., Inc., B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 7. While the RFQ here did not specify the method the agency was to use to conduct the price realism

evaluation, as discussed above, the agency employed price competition, and then compared TriPoint's price with the other three technically acceptable quotations. Further, the SSA analyzed TriPoint's skill level mix and proposed labor hours, and compared its proposed labor hours with the IGCE's estimated labor hours for the requirement, documenting that TriPoint's quotation was very close to the GSA's estimate. AR, exh. 12, ADM at 11. Noting the significant disparity between TriPoint's and Epic's price quotations, she affirmatively validated TriPoint's price quotation and determined that its proposed price, lower than the protester's proposed price by 34 percent, was due to TriPoint's discounted schedule 70 rates. Id. The SSA concluded that TriPoint's price was consistent with its proposed technical solution, and given that the labor mix and staffing plan were deemed technically acceptable by the TET, it reflected an understanding of the PWS requirements, and was therefore realistic. Id. at 12.

Notwithstanding the protester's assertions that TriPoint's proposed low price should have prompted greater concern within the GSA, or at a minimum, a more probing price realism analysis, the depth of an agency's price realism evaluation is a matter within the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. As our Office has consistently explained, a protester's disagreement with the nature and extent of the agency's price realism methodology, by itself, does not provide a basis on which to sustain a protest. See BillSmart Solutions, LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 10-11.

Epic also argues that the agency failed to adequately document the basis for its conclusion that the awardee's proposed price was realistic. For procurements conducted pursuant to FAR subpart 8.4 that require a statement of work, such as this one, FAR § 8.405-2(e) designates limited documentation requirements. In a FAR subpart 8.4 procurement, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. Neopost USA Inc., B-404195, B-404195.2, Jan. 19, 2011, 2011 CPD ¶ 35 at 7; FAR § 8.405-2.

While the contemporaneous record is, indeed, somewhat limited, based on our review of the record and the agency's explanation, we find that the documentation is sufficient to permit us to assess the reasonableness of the agency's analysis. In addition, we find the agency's post-protest explanations included in the agency report helpful in analyzing the price evaluation process included in the contemporaneous record. See The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 13 (detailed rationale for contemporaneous conclusions, intended to fill in previously unrecorded details is generally considered by our Office so long as the explanations are credible and consistent with the contemporaneous record). Accordingly, Epic's challenge to the adequacy of the documentation provides no basis to sustain the protest.

Best-Value Tradeoff Analysis

Epic asserts that GSA's best-value tradeoff decision was improper because the agency failed to afford the appropriate importance to the technically higher rated quotation,

despite the RFQ's language providing that non-price factors are more important than price, "with price only increasing in importance . . . when the proposals become more equal" under the non-price factor. Protest at 12. Epic contends that its proposal "was rated much higher than TriPoint's" under the non-price factors, and hence, it should have been awarded the contract. Id. We find the agency's tradeoff analysis unobjectionable, and deny this protest ground.

As noted above, the RFQ provided for a best-value source selection based upon an integrated assessment of each vendor's quotation under the technical solution, experience, past performance and price evaluation factors. RFQ at 21. When making tradeoff decisions in a best-value source selection, selection officials have considerable discretion. Omega Apparel, Inc., B-411266, June 26, 2015, 2015 CPD ¶ 205 at 6. The propriety of the cost/technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was rational and consistent in light of the RFP's evaluation scheme. Id. Where a selection official reasonably regards proposals or quotations 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. See Staff Tech, Inc., B-403035.2, B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6-7. Accordingly, an agency may select a lower-priced, technically lower-rated offer, as long as the SSA acknowledges and documents any significant advantages of the higher-priced, higher-rated offer and explains why it is not worth the price premium. Id. The documentation supporting the decision must be sufficient to establish that the SSA was aware of the relative merits and costs of the competing proposals. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Contrary to the protester's assertions, the contemporary record here documented the SSA's rationale for selecting Epic's quotation as representing the best value to the government. AR, exh. 12, ADM at 7-12. The SSA's 13-page source selection decision specifically acknowledged that Epic's quotation was slightly superior to TriPoint's under one technical factor and one subfactor. Id. at 10. The SSA, however, ultimately concluded that, notwithstanding the RFQ's terms instructing that non-price factors were significantly more important than price, TriPoint's quotation offered the best value to the government because Epic's advantages under the experience factor and technical approach subfactor were not significant enough to warrant the substantial price premium of 34 percent (over \$7 million) associated with Epic's proposal. Id. at 10, 12.

Epic's protest provides no basis to question the SSA's tradeoff decision. We conclude that the SSA's reasoning was rational, consistent with the RFQ's evaluation scheme, and adequately documented.

The protest is denied.

Thomas H. Armstrong
General Counsel