



Decision

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Matter of: Trusted Mission Solutions, Inc.

File: B-418876.2

Date: November 13, 2020

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DIGEST

Protest challenging the agency's cost realism evaluation is denied where agency appropriately considered the protester's proposed technical approach and did not rely on a mechanical comparison of the protester's costs to the agency's internal cost estimates.

DECISION

Trusted Mission Solutions, Inc. (TMS), a small business located in Vienna, Virginia, protests the issuance of a task order to Octo Metric LLC, a small business located in Atlanta, Georgia, by the Department of the Treasury, Bureau of the Fiscal Service, under request for proposals (RFP) No. 20341420R00001 for development operations (DevOps) and software development services. The protester contends that the agency conducted an unreasonable cost evaluation of its proposal and unreasonably reduced the competition to only one offeror, Octo Metric.

We deny the protest.

BACKGROUND

On December 19, 2019, the Bureau provided a notice to holders of the National Institutes of Health CIO-SP3 governmentwide acquisition contract of a requirement to provide DevOps and software development services for the Department of the

Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB). TTB sought a contractor to support its modernization transformation from several legacy systems that support TTB functional areas to a unified software solution called MyTTB. The agency contemplated a five-phase procurement process resulting in the issuance of a hybrid task order with cost-plus-award-fee, labor-hour, and fixed-price contract line items. The Bureau contemplated that the resulting task order would consist of a 5-month base period, followed by four 12-month option periods, and concluding with a final 7-month option period. Agency Report (AR), Tab 7, RFP at 27.¹

As explained below, the five phases were as follows: (1) opt-in, (2) pre-proposal conference, (3) relevant experience, (4) proposal submission, and (5) technical challenge. In phase one, offerors were invited to opt in to the procurement based on a draft performance work statement (PWS). Contracting Officer's Statement (COS) at 3. In phase two, the agency conducted a pre-proposal conference with contract holders that had opted in. *Id.* In phase three, the Bureau invited offerors to submit relevant experience information, including narratives, by January 31, 2020, based on instructions provided by the agency. *Id.*

On February 14, following the evaluation of each offeror's relevant experience, the agency issued a solicitation setting forth the process for submitting technical proposals. The solicitation anticipated the evaluation of the following non-cost factors, in descending order of importance: relevant experience, technical approach, past performance, and technical challenge. RFP at 74. The non-cost factors, when combined, were equal in importance to the cost factor. *Id.* The RFP provided for the selection of the most advantageous offeror using the fair opportunity guidelines of Federal Acquisition Regulation (FAR) 16.505, noting that the agency would not use any aspects of FAR subpart 15.3. *Id.* The solicitation also stated, in bold and underlined font, that the agency would not consider any information in volume one (contractual documents) or volume two (cost proposal) when evaluating an offeror's technical proposal. *Id.* at 65.

The solicitation contemplated that the agency would evaluate cost proposals to ensure compliance with the proposal instructions, and noted that "a determination of realism as it relates to the [o]fferor's overall proposed solution is required to be considered for award." *Id.* at 72. The solicitation provided that the invitation to offerors to participate in phase five, the technical challenge, would be based on their ratings under the non-cost factors. The RFP did not state when, in the competition, the agency would consider cost.

After the completion of the technical challenge, the agency would select the best-suited contractor based on the cost and non-cost factors. The solicitation afforded the agency the right, at that stage, to conduct "exchanges" "to address any remaining issues, if necessary, and finalize a task order with that contractor." *Id.* at 75. The RFP noted that these issues "may include technical and price." *Id.* If the agency could not successfully

¹ Unless otherwise noted, citations to the RFP are to RFP amendment 5.

address any remaining issues, it reserved the right to “communicate with the next best-suited contractor based on the original analysis and address any remaining issues.” *Id.*

Following the evaluation of proposals, the agency found the proposals of Octo Metric and TMS were the highest rated under the three non-cost factors. Both offerors were invited to participate in the technical challenge. At the end of this process, the evaluation ratings of Octo Metric and TMS stood as follows:

	Octo Metric	TMS
Relevant Experience	High²	High
Technical Approach	High	High
Past Performance	Superior	Superior
Combined Ranking (Relevant Experience +Technical Challenge +Past Performance)	1 (Tied)	1 (Tied)
Technical Challenge	High	High
Total Proposed Cost	\$58,273,090	\$45,049,245
Cost Analysis Results	Realistic	Not Realistic

COS at 7-11.

The agency conducted a comparative analysis between Octo Metric and TMS and concluded that Octo Metric was the best-suited contractor due to concerns with TMS’s staffing and the affordability and realism of its costs. The agency then conducted exchanges with Octo Metric to resolve concerns with Octo Metric’s technical and cost approach. *Id.* at 16

Following those exchanges, the task order was issued to Octo Metric. This protest followed.³

² High confidence was defined as the agency having “high confidence that the [o]fferor understands the requirement, proposes a sound approach that demonstrates the [o]fferor’s ability to be successful in performing the work with little or no Government intervention.” COS at 4.

³ Because the awarded value of the task order exceeds \$10 million, this protest is within our jurisdiction to consider protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity multiple-award contracts. See 41 U.S.C. § 4106(f)(1)(B).

DISCUSSION

TMS challenges the agency's evaluation of TMS's cost proposal and asserts that the agency unreasonably reduced the competition to one offeror, Octo Metric. With respect to the cost evaluation, the protester contends that the Bureau evaluated TMS's costs as unrealistic based on a mechanical comparison of those costs to the agency's internal government cost estimate (IGCE) without adequately considering TMS's technical approach. In addition, the protester contends that the agency made other errors in its cost evaluation, such as finding certain TMS costs to be unaffordable and finding TMS's cost proposal to be noncompliant with the solicitation instructions. Last, the protester contends that the agency used these cost issues to eliminate TMS's proposal thereby unreasonably limiting the competition to only one offeror.

We have examined each issue raised by the protester, but find no basis to sustain the protest.

Cost Realism

The protester argues that the agency mechanically relied on the IGCE to determine that TMS's staffing and costs were unrealistic and ignored TMS's innovative technical approach. In this respect, the protester notes that both its technical and cost proposals explained its reduction in staffing and costs by describing its approach of modernizing the old legacy system to eliminate legacy teams, while optimizing the size of TMS's modernization teams. See, e.g., AR, Tab 35, Cost Proposal at 12-13; AR, Tab 36, Technical Proposal at 21. TMS contends that this approach was in line with the agency's guidance that it was looking for a "technical approach that is technically sound and provides for an innovative and feasible solution." RFP at 67. The protester argues that its ratings under both the technical approach and technical challenge factors demonstrate that it proposed just such an approach.

Where a cost-reimbursement contract or order is to be awarded, an offeror's estimated costs of contract performance should not be considered controlling since the estimates may not provide valid indications of the final actual costs which the government is required to pay. *Target Media Mid Atlantic, Inc.*, B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 4. Consequently, the contracting agency must perform a cost realism analysis to determine what the costs are likely to be under the offeror's technical approach, assuming reasonable economy and efficiency. *Magellan Health Servs.*, B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13. Our review of an agency's cost realism analysis is limited to determining whether the cost analysis is reasonably based and not arbitrary, and is adequately documented. *Booz Allen Hamilton, Inc.*, B-409355, B-409355.2, Mar. 19, 2014, 2014 CPD ¶ 100 at 7.

Here, we find that the agency's cost realism evaluation relied on more than simply the IGCE to find that TMS's costs and staffing were unrealistic. In this regard, the agency's

cost evaluation team noted TMS's proposed technical approach of eliminating legacy teams by shifting resources to modernized team structures. The agency nonetheless concluded that neither TMS's cost proposal nor its technical proposal had adequately explained how TMS would reduce the overall number of full-time equivalents (FTEs) from [DELETED] in the base period to [DELETED] in option periods four and five. See AR, Tab 18, Cost Evaluation Report at 11 (noting that the technical proposal "did not describe the level of effort reduction demonstrated in the [c]ost [p]roposal, instead suggesting they would . . . 'shift resources from legacy to modernized team structures as certain contract situations exist.'"); *id.* at 21 ("While the [t]echnical [p]roposal discusses the plan to shift resources from legacy work to MyTTB work, the reduction shown in the Cost Proposal from [DELETED] FTEs to [DELETED] FTEs is not realistic, and it is inconsistent with the [t]echnical [p]roposal."). The cost evaluators also noted that an analysis of the cost volume had uncovered a number of realism concerns including inadequately explained shifts in resources and "major reductions" in various tasks. *Id.* at 22. The agency concluded that these issues "create serious concerns regarding the realism to deliver to the objectives outlined in the PWS." *Id.*

We find the agency's analysis to be reasonable. As we noted in *Target Media Mid Atlantic, Inc.*, *supra* at 5, "a proper cost realism evaluation prevents an offeror from improperly 'having it both ways'--that is, from receiving a technical evaluation rating based on its proposed performance but failing to propose costs that reasonably reflect that performance." While the agency was impressed with TMS's proposed technical approach, when it examined TMS's cost proposal it found that TMS's proposed staffing contained major reductions without an adequate explanation as to how this would be accomplished. Although the protester contends that the agency should have credited TMS's explanation of shifting resources away from the legacy work, we agree with the agency that the protester largely did not provide specific details to support how TMS would meet performance objectives at the vastly reduced staffing levels. For example, the cost proposal did not contain a basis of estimate explaining how TMS would meet performance objectives after reducing staffing to only [DELETED] FTEs. In light of this missing information, and the drastic reductions reflected in TMS's cost proposal, we find the realism concerns flagged by the agency's cost evaluation team to be reasonable.

The protester also argues that the agency was aware of these cost concerns, but nonetheless assigned TMS a high confidence rating for its technical approach. In support of this point, the protester notes that the technical evaluation report was dated after the cost evaluation report, and that the technical evaluation team included two evaluators who were also on the cost evaluation team.

In response to this argument, the agency explained that it conducted the cost and technical evaluations concurrently. The technical evaluation team reached its consensus ratings prior to the completion of the cost evaluation, and, at that point, two technical evaluators joined the cost evaluation team. COS at 7. Following its completion of the cost evaluation, the agency considered reevaluating TMS's technical proposal but decided against doing so in order to stay consistent with the Bureau's evaluation plan. Memorandum of Law at 17. We find this explanation reasonable and

consistent with the solicitation's direction that information from offerors' cost proposals would not be considered in the agency's technical evaluation. See RFP at 65.

Moreover, we note that the agency expressly considered both TMS's technical approach and the Bureau's cost concerns within the award decision document, belying any contention that consideration of TMS's highly rated approach would have led to the elimination of the agency's cost and staffing concerns. See, e.g., AR, Tab 20, Award Recommendation at 31 (noting that, because of the cost concerns, both the technical evaluation team and the contracting officer agreed that Octo Metric represented the best value to the government).

Cost Compliance Issues

In addition to the cost realism issues noted above, the agency noted several other cost issues, including that (1) TMS's base period and first option period costs were unaffordable, (2) TMS proposed multiple rates for the same labor categories, and (3) TMS did not provide cost buildup information for its proposed subcontractor. AR, Tab 18, Cost Evaluation Report at 25. The protester argues that these issues were not disqualifying and were either improperly assessed or were of no consequence. We have reviewed these findings and find them to be reasonable concerns that were adequately documented by the agency.

For example, the agency found that TMS's base period and first option period costs were unaffordable. The protester argues that this finding is unsupported and contradicted by the fact that the source selection authority found TMS's total cost to be below the IGCE. We disagree. In this respect, we note that the cost evaluation report reasonably explained that the unaffordability of the two periods at issue was in relation to the agency's budget and the IGCE. See AR, Tab 18, Cost Evaluation Report at 25. We also find that the agency's finding that the base and option years were unaffordable was not inconsistent with its conclusion that TMS's total cost was affordable.

Reduction in Competition

TMS contends that the agency eliminated its proposal from the competition, effectively reducing the competition to only one offeror, Octo Metric. The protester argues that such a reduction is subject to "close scrutiny due to the elimination of competition." Comments at 11 (*citing Comten-Comress*, B-183379, June 30, 1975, 75-1 CPD ¶ 400 at 6). In the protester's view, the agency should have avoided this result by keeping TMS in the competition and conducting discussions to resolve any issues with its proposal.

Based on our review, we find that the agency did not eliminate TMS's proposal from the competition, and instead conducted a best-value comparison between the proposals of TMS and Octo Metric. See AR, Tab 20, Award Recommendation at 31. In this respect, the agency examined and compared the two proposals, noted their highly rated technical approaches, and concluded, based on the cost and staffing issues discussed

above, that “Octo Metric represented the best value to the [g]overnment and was the apparent [b]est-[s]uited [c]ontractor.” *Id.*

After selecting Octo Metric as the best-suited contractor, the agency conducted exchanges to resolve the Bureau’s remaining concerns relating to Octo Metric’s proposal. Section M.2.4 of the solicitation expressly permitted such one-party exchanges, stating that “[o]nce the [g]overnment determines the contractor that is the best-suited (*i.e.*, the apparent successful contractor), the [g]overnment reserves the right to communicate with only that contractor to address any remaining issues, if necessary, and finalize a task order with that contractor.” RFP at 75.

We find the agency’s best-value comparison to be both reasonable and consistent with the solicitation, and do not agree that the agency improperly reduced the competition to one offeror. Rather, it selected the best-value offeror and only then conducted exchanges with that offeror. This approach was consistent with, and permitted by, the solicitation.

The protest is denied.

Thomas H. Armstrong
General Counsel