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Decision

Matter of: Computer Technology Associates, Inc.

File: B-403798; B-403798.2

Date: December 2, 2010

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David S. Cohen, Esq., and John J. O'Brien, Esq., Cohen Mohr LLP, for Deloitte Consulting LLP, an intervenor.

LTC Dana J. Chase and Capt. Bernal Rodriguez, Department of the Army, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's determination that protester's low labor rates for certain key labor categories were unrealistic, and thereby increased the technical risks associated with the protester's performance, is denied where the record shows that the determination was reasonable and consistent with terms of the solicitation, which provided for a price realism assessment.

DECISION

Computer Technology Associates, Inc. (CTA), of Falls Church, VA, protests the issuance of a task order to Deloitte Consulting LLP, of New York, NY under task order proposal request (TOPR) No. ALS-10-15121, issued by the Department of the Army for information management business architecture support. CTA argues that the Army's evaluation of its proposal was unreasonable and inconsistent with the terms of the TOPR.

We deny the protest.

BACKGROUND

The Army issued the TOPR to firms holding TRICARE Evaluation, Analysis and Management Support (TEAMS) contracts for providing information management business architecture support services to the TRICARE Management Activity Information Directorate. TOPR at 1. The TOPR contemplated the issuance of a

fixed-price task order with a 30-day transition period, a 7-month base period, three 12-month option periods, and a 30-day transition-out period. Selection of the TEAMS contractor for the task order was to be made on a competitive basis using a best value tradeoff process considering price and four non-price evaluation factors (listed in descending order of importance): (1) technical approach; (2) management approach; (3) experience; and (4) past performance. TOPR at 12. For the purpose of the best value tradeoff, the non-price factors, when combined, were considered to be more important than price. Id.

As it relates to the protest, under the technical approach factor, contractors were required to submit, as part of their non-price proposal, an incoming transition plan, which addressed 12 specific transition items (e.g., coordination with government representatives; review, evaluation and transition of current support services; transition of historic data to new contractor system; transfer of any government-furnished equipment; information and inventory management assistance; distribution of contractor-purchased government-owned assets, including facilities, equipment, furniture, phone lines, computer equipment, etc.). TOPR at 2-3. With respect to transition, the TOPR specifically indicated that “[t]ransition in and out efforts shall be priced separately for the periods specified in this solicitation.” TOPR at 2. In addition, as relevant to the issues raised in the protest, under the experience factor, the TOPR advised that the agency would evaluate the amount of relevant experience possessed by proposed key personnel. TOPR at 14.

With respect to price, contractors were required to complete pricing spreadsheets and to propose on all contract line items “either by price or ‘NSP’ (Not Separately Priced).” TOPR at 5. Notwithstanding the fixed-price nature of the task order, contractors were required to provide detail about the labor categories they intended to use on the various contract line items and associated labor rates. TOPR at 5-6. The TOPR indicated that total price would be evaluated for “fairness and reasonableness,” and also advised that “unsubstantiated costs that are considered unrealistic, not fully supported, or both, may cause the overall technical evaluation to be adjusted in one or more of the non cost/price evaluation factors.” TOPR at 14.

The Army received six timely proposals in response to the TOPR, to include proposals from CTA and Deloitte. CTA’s proposal was rated as “acceptable” overall under the first three non-price evaluation factors (technical approach, management approach, and experience) and low risk under the past performance factor. Deloitte’s proposal received an overall combined rating of “good” for the technical approach, management approach, and experience factors. The record of the Army’s evaluation of CTA’s non-price proposal reflects that under the technical approach factor, the Army identified seven proposal strengths and one deficiency based on the Army’s determination that CTA failed to include an incoming transition plan as required by the TOPR. Under the management approach factor, the Army noted several strengths and no weaknesses or deficiencies.

Regarding the experience factor, the Army again noted several strengths with CTA's proposal, however, it also identified a weakness associated with one of the key personnel proposed by CTA, specifically its program manager. The record indicates that the Army was concerned by the fact that the individual proposed by CTA had not performed previously as a program manager in support of a government contract. While CTA's proposed program manager had performed as a military project manager, the Army found that this experience was "considerably different from that as a member of a major industry partner," that she did not have "management experience over a diverse group of private sector employees at such a technical level," and that this "causes concern to the Government." Agency Report (AR) Tab 5, Evaluation Board Consensus Report, at 28.

CTA's total price for the transition, base, and option periods was \$17,430,622.44, which was lower than Deloitte's total price of \$20,704,101.58, as well as the independent government estimate of \$25,047,017.61. Based on its evaluation of CTA's price proposal, the agency identified two areas of concern, however. First, the Army indicated that while CTA appeared to understand the requirements, some of CTA's costs were not realistic because they were not consistent with the level of technical expertise CTA stated it would provide. More specifically, the Army indicated that it was "especially concerning" that CTA identified a base rate of [DELETED] per hour for its "System Architect-Senior positions" and [DELETED] per hour for its "System Architect-Middle positions" since these rates were "well below the market rates for these positions." AR, Tab 5, Evaluation Board Consensus Report, at 29. By way of comparison, the Army noted that the TEAMS contractors' average rates for these positions were [DELETED] and [DELETED] per hour, respectively, and that a random sampling of GSA IT 70 schedule rates reflected rates of above [DELETED] and [DELETED], respectively. Id. The Army also noted that CTA's rates were significantly lower than those CTA was billing as the incumbent contractor; CTA had proposed to use the same individuals that it was using on the incumbent contract, but at significantly lower labor rates. According to the Army, CTA's low rates for key personnel labor categories created "a risk that CTA would be unable to hire and retain quality staff at their proposed low price." AR, Tab 5, Evaluation Board Consensus Report, at 30. The Army's evaluation team concluded that the potential "[t]urnover and lack of Architecture knowledge would create a burden on the Government as well as a performance risk." Id.

The Army was also concerned by the fact that CTA did not separately price the transition line items in its price proposal—CTA had identified these items as "Not Separately Priced" or "NSP." Id. at 29, 31. The evaluators indicated that the TOPR required firms to submit transition plans (noting that CTA, as the incumbent, was not exempt from this provision since the requirements had changed from those under the incumbent contract). By failing to separately price the transition items, the agency found that it was "hard to properly analyze [CTA's] proposed price," which the evaluators characterized as "unacceptable." Id.

Ultimately, in making the award decision, the source selection authority (SSA) found that it was in the government's best interest to issue the task order to Deloitte, whose proposal was higher rated and higher-priced, as compared to CTA's. The SSA considered CTA's "acceptable" ratings, its "low risk" past performance rating, and specifically noted the concerns regarding CTA's "extremely low rates for key personnel labor categories," which "introduces a risk to the Government in the area of quality and turnover." AR, Tab 6, Source Selection Decision, at 37. Upon learning of the award decision, CTA filed this protest.

DISCUSSION

CTA challenges the agency's evaluation of its technical and price proposals.¹ Regarding its technical proposal, CTA maintains that the Army improperly evaluated its proposed program manager as a weakness under the experience factor, and that the Army erroneously concluded that CTA's proposal contained a deficiency for allegedly failing to submit an incoming transition plan. CTA also argues that the Army's evaluation of its price proposal was inconsistent with the terms of the TOPR and unreasonable. We conclude that the protester's arguments are without merit.

Technical Evaluation

In considering protests challenging an agency's evaluation of proposals, we will not reevaluate proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the terms of the solicitation, and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. An offeror's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

CTA argues that the Army's concerns about the experience of its program manager introduced an unstated evaluation factor, specifically, that program managers were required to have private sector experience managing government contracts. CTA also maintains that its program manager's experience "is directly similar to and related to this particular TRICARE TEAMS contract" and that CTA's numerous strengths combined with a qualified program manager should have caused CTA to

¹ Our Office dismissed a supplemental protest filed by CTA alleging that the agency's evaluation of Deloitte's price proposal was unreasonable and unfair where Deloitte's labor rates were low in the same way that CTA's labor rates were low. Because CTA had no knowledge or insight regarding Deloitte's labor rates or the agency's evaluation of Deloitte's proposal, CTA's allegations were based entirely on its own unsupported speculation and thus failed to state a valid basis of protest as contemplated by our Bid Protest Regulations. 4 C.F.R. § 21.1(c)(4) and (f) (2010).

receive a rating higher than “acceptable” under the experience factor. CTA’s Comments at 14-15.

There is no basis for CTA’s claim that the Army’s evaluation of CTA’s program manager was inconsistent with the terms of the TOPR or that the Army’s evaluation under the experience factor was otherwise unreasonable. In evaluating proposals, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3. As noted above, the TOPR provided for evaluating the “amount of relevant experience possessed by proposed Key Personnel,” which included the program manager position. TOPR at 14. The Army’s concerns with CTA’s program manager were logically encompassed within this provision where they stemmed from the Army’s determination that the individual proposed by CTA to perform as the program manager did not have relevant experience performing in this capacity.

While recognizing that CTA’s program manager had experience working as a project manager for the government, the Army found this experience to be “considerably different from that as a member of a major industry partner” and thus it did not provide her with “management experience over a diverse group of private sector employees at such a technical level,” which would be required while performing as CTA’s program manager. AR, Tab 5, at 28. CTA may believe that the proposed program manager’s government project management experience directly translates into the type of experience necessary to perform as private sector program manager, and that it should have received a higher rating under the experience factor; CTA’s challenges, however, amount to little more than disagreement with the Army’s findings and therefore do not support a conclusion that the agency’s evaluation was unreasonable or otherwise improper.

CTA’s contention that the Army improperly evaluated its transition plan is also without merit. As noted above, the TOPR required firms to submit, as part of their technical proposals, an incoming transition plan, which addressed 12 specific items. Under the technical approach factor, to which the transition plan pertained, the TOPR provided that the agency would evaluate a contractor’s “understanding of tasks to be performed, as well as the technical approach and methodology for accomplishing tasks under any resultant award to meet the requirements of the PWS.” TOPR at 13. The record reflects, consistent with the Army’s findings, that CTA did not submit a transition plan as contemplated by the TOPR. Acknowledging that “some transition activities are still required” even though it is the incumbent contractor, CTA merely proposed that, upon award, it would immediately schedule a meeting with government representatives in order to introduce key personnel and to plan the transition. CTA also generally advised that it would “develop and deliver an Incoming Transition Plan.” CTA Proposal at 36. CTA’s proposal did not discuss the 12 transition items specified in the TOPR.

CTA argues that it was not required to submit a detailed incoming transition plan because, pursuant to the performance work statement (PWS), the selected contractor was required to develop a transition plan in collaboration with the government, and deliver the plan, after issuance of the task order. While it is true that an incoming transition plan was specified as a deliverable under the task order, this fact did not negate the specific requirement in the TOPR for contractors to submit an incoming transition plan, one which addressed the 12 specific items, as part of their technical proposals. Because the TOPR specifically required firms to submit this information, and because this information was a necessary aspect of the Army's evaluation of a contractor's understanding and its proposed technical approach, the Army acted reasonably and consistent with the terms of the TOPR when it identified CTA's failure to submit an incoming transition plan as a deficiency in its proposal, and properly used CTA's failure in this regard as a basis to downgrade its proposal.

Price Evaluation

CTA next argues that the Army's evaluation of its price was fundamentally inconsistent with the evaluation methodology established by the TOPR and that it was unreasonable. In this regard, CTA contends that the TOPR merely provided that the Army would evaluate total price for reasonableness, and that the agency had no basis on which to find its labor rates unrealistically low. CTA also argues that it should not have been penalized because it did not separately price its incoming and outgoing transition efforts since the TOPR expressly authorized firms to identify contract line items as "not separately priced." CTA's arguments are without merit.

Where, as here, award is to be made on a fixed-rate basis, the realism of a firm's proposed labor rates is not ordinarily considered, since the risk and responsibility for contract costs and resulting profit or loss rests on the contractor. PharmChem, Inc., B-291725.3, et al., July 22, 2003, 2003 CPD ¶ 148 at 7. An agency may, however, at its discretion, provide for the use of a price realism analysis under a fixed-price solicitation for various reasons, such as to assess the risk in a firm's approach. Id. The nature and extent of an agency's price realism analysis are matters within the agency's discretion, and our review is limited to determining whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5.

Here, notwithstanding CTA's suggestions to the contrary, the TOPR specified that the Army would consider whether the underlying costs of firms' price proposals were realistic. In this regard, the TOPR required firms to provide labor rate information with their price proposals, and advised that "unsubstantiated costs that are considered unrealistic, not fully supported, or both, may cause the overall technical evaluation to be adjusted in one or more of the non cost/price evaluation factors." TOPR at 14.

As noted above, the Army identified CTA's labor rates for certain key personnel labor categories as being "well below the market rates for these positions." AR, Tab 5, Evaluation Board Consensus Report, at 29. The record reflects that the Army used various indicia of the labor market (i.e., the average labor rates for the same key personnel labor categories of the other TEAMS contractors, relevant GSA rates, as well as the labor rates actually billed by CTA in its performance of the incumbent contract) in reaching its conclusion that CTA's labor rates were significantly below market, and therefore unrealistic. While CTA maintains that the Army should have considered other indicia of the labor market which suggested that CTA's labor rates were not unrealistic—specifically, the labor rates of CTA's subcontractors, which were only somewhat higher than those used by CTA—we have no basis to conclude that the labor market research performed by the Army, which considered a wide range of labor rates, was inherently unreliable, unreasonable, or otherwise improper.

In the Army's view, CTA's failure to identify realistic labor rates increased the risk associated with CTA's technical proposal due to concerns about whether CTA would be able to hire and maintain key personnel with the level of technical expertise needed to perform as CTA had proposed. This finding of technical risk was consistent with the TOPR's evaluation scheme where the TOPR provided that unrealistic costs could be used as a basis for adjusting the technical evaluation findings, as well as one of the fundamental concepts of price realism analysis, which is to identify risk associated with a firm's technical approach. PharmChem, Inc., supra; Federal Acquisition Regulation § 15.404-1(d)(3) (explaining that cost realism analysis may be used on competitive fixed-price contracts to assess performance risk). Given this record, we have no basis to conclude that the Army acted unreasonably or contrary to the terms of the solicitation, procurement law, or regulation when it found that certain of CTA's key personnel labor rates were unrealistic, and associated the risk posed by this lack of price realism with CTA's technical performance in making the tradeoff decision.²

CTA also complains that the Army improperly downgraded its proposal for not separately pricing the transition items since the TOPR expressly authorized firms to identify contract line items as "not separately priced." CTA correctly notes that by the terms of the TOPR it could identify contract line items as "not separately priced." However, because CTA failed to submit a transition plan as required by the TOPR, the Army evidently questioned whether CTA's decision not to separately price its

² CTA argues that by considering the risk associated with its low labor rates, the Army somehow implicitly adjusted CTA's price upward or downgraded it simply for having submitted a low price. There is no basis for CTA's contentions in this regard. The contemporaneous evaluation record clearly reflects that the agency considered the technical risks associated with CTA's low labor rates as part of the tradeoff decision and it did not, in any way, upwardly adjust CTA's fixed-price or otherwise downgrade CTA simply for having submitted a low price.

transition items was due to CTA's failure to appreciate that it would incur such costs even as the incumbent, or suggested that CTA would recover them under the other CLINs, which had their own realism concerns, as explained above. AR, Tab 5, Evaluation Board Consensus Report, at 30; Contracting Officer's Statement at 16. Both of these concerns provided a reasonable basis for the agency to attribute risk to CTA's proposal as a result of CTA's decision to not separately price the transition contract line items.

In any event, the record reflects that the agency's evaluation in this regard did not factor into the agency's tradeoff analysis. See AR, Tab 6, Source Selection Decision, at 37 (solely discussing the technical risks associated with CTA's low labor rates for key personnel positions). Thus, there is no reasonable basis to conclude that the evaluator's concerns regarding CTA's decision to not separately price the transition contract line items resulted in any prejudice to CTA. See Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7 (prejudice is an essential element of every viable protest).

The protest is denied.

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