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Decision

Matter of: Emergint Technologies, Inc.

File: B-408410.3

Date: April 4, 2014

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DIGEST

Source selection authority reasonably selected higher-rated, higher-priced proposal for award where he identified technical discriminators between proposals and determined that advantages associated with the higher-rated proposal were worth the difference in price.

DECISION

Emergint Technologies, Inc., of Atlanta, Georgia, protests the issuance of a task order to DB Consulting Group, Inc., of Silver Spring, Maryland, under request for task order proposals (RFTOP) No. 2012-IM-00103, issued by the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, for information services support for CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) in Atlanta, Georgia.¹ The protester

¹ The RFTOP was issued under CDC's information management services (CIMS) indefinite delivery/indefinite quantity contract No. 200-2010-37211. As the value of the task order at issue is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

argues that the agency's source selection tradeoff determination is inconsistent with the terms of the solicitation and insufficiently documented.

We deny the protest.

BACKGROUND

This is the third protest to our Office involving this solicitation, which was originally issued as RFTOP No. 2012-IM-0103 on March 31, 2012. The RFTOP contemplated the issuance of a time-and-materials task order for a multi-year period.² The solicitation provided for issuance of the order to the contractor whose proposal was considered most advantageous to the government, price and technical factors considered. The RFTOP advised that technical factors would be more important in the evaluation than price, but that the agency would not make an award at a significantly higher overall cost to the government to achieve only slightly superior performance. RFTOP at 54. Technical factors consisted of management plan, staffing plan, similar experience, transition/start up plan, and technical approach.

The solicitation described the agency's projection of the initial mix of labor categories necessary to perform the tasks (based on the incumbent contractor's staffing), but advised that the number of contractor employees and the mix of labor categories might vary over the life of the task order and that offerors should "propose the solution that they determine to be most appropriate for the requirement." *Id.* at 3. Offerors were to provide labor rates for their proposed labor categories. The only guidance provided regarding the evaluation of price was that the agency might conduct an analysis to determine price reasonableness.

Three offerors submitted proposals prior to the April 16, 2012 closing date. The agency conducted an evaluation, culminating in the selection of DB's proposal, which was both higher-rated and higher-priced than the protester's. Emergint subsequently protested the selection decision to our Office, and we sustained the protest, finding that (1) while the solicitation did not provide for a price realism analysis, the agency discounted the protester's lower price in its best value tradeoff decision based on its conclusion that the protester's low pricing posed performance risk and reflected a lack of understanding, and (2) the record did not support the technical evaluation of Emergint's proposal. *Emergint Tech., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295. We recommended that if the agency considered a price realism analysis to be necessary, it should amend the RFTOP to provide for one,

² While, as originally issued, the solicitation contemplated a 5-year period of performance (1 base, plus 4 option years), the final price proposal request (dated April 16, 2013) sought prices for a 4-year period (1 base, plus 3 option years).

allow submission of revised proposals, reevaluate the proposals received, and make a new source selection decision. Id. at 11.

The agency responded by issuing an amended RFTOP (now numbered 2012-IM-05-00103) to DB and Emergint on February 8, 2013. The amended RFTOP instructed offerors to provide both an on-site labor rate and an off-site labor rate for each of their labor categories, and advised them that the agency might conduct a price realism analysis of their proposals “for such purposes as determining an offeror’s understanding of the solicitation’s requirements or assessing risk associated with an offeror’s proposal.” Amended RFTOP at 58. The amended RFTOP also made minor changes to the relative weights of the technical approach and the transition/startup plan evaluation factors;³ as amended, factor weights were as follows: management plan (35%), staffing plan (30%), similar experience (15%), transition/startup plan (15%), and technical approach (5%).

The agency received revised proposals from both offerors. A technical evaluation panel (TEP) reviewed the proposals and compiled a consensus technical evaluation report, which provided a point score and a summary of the strengths and weaknesses under each evaluation factor for each proposal. Point scores and number of strengths/weaknesses identified were as follows:

	Emergint	DB
Management Plan	29.3 (12 Strengths/10 Weaknesses)	32.7 (14 Strengths/2 Weaknesses)
Staffing Plan	21.7 (6 Strengths/7 Weaknesses)	28 (8 Strengths/2 Weaknesses)
Similar Experience	15 (2 Strengths/0 Weaknesses)	13.7 (2 Strengths/1 Weakness)
Transition Plan	14.3 (1 Strength/1 Weakness)	15 (4 Strengths/0 Weaknesses)
Technical Approach	3.7 (6 Strengths/4 Weaknesses)	4.7 (11 Strengths/1 Weakness)
Overall Point Score	84	94.1

Technical Evaluation Report, Mar. 8, 2013, 2-10. The protester’s evaluated on-site price was \$52,867,543 and its off-site price was \$54,516,160, whereas DB’s

³ This represented a decrease in the relative weight of the technical approach factor from 10% to 5% and an increase in the weight of the transition/start up plan factor from 10% to 15%.

evaluated on-site price was \$57,083,578 and its off-site price was \$61,585,365. Agency Report at 7.

After reviewing the results of the evaluation, the agency selected Emergint to receive the order. DB subsequently protested to our Office. We dismissed DB's protest as academic after the agency notified us that it intended to take corrective action in response to the protest by conducting a new tradeoff determination and issuing a new source selection decision. DB Consulting Group Inc., B-408410, Aug. 27, 2013.

To assist in making the new tradeoff decision, the source selection authority (SSA) asked the TEP to provide a discussion of the relative strengths, weaknesses, and risks of the two proposals; to identify key discriminating factors between the two; and to recommend which of the two represented the best value to the government. The TEP responded with a memorandum comparing the two proposals and identifying key discriminators between them. The TEP concluded that there were technical advantages associated with DB's proposal that far outweighed Emergint's price advantage. As a result, it recommended that DB receive the order. TEP Tradeoff Analysis and Recommendation, Oct. 24, 2013, at 3.

The SSA relied on the TEP's analysis in making his tradeoff decision, identifying the following as key discriminating features between the two proposals:

- DB's proposal demonstrated a superior understanding of the technical approach to the work to be performed.
- DB's proposal provided stronger information regarding the overall management team and its structure, as well as strategies for mitigating risk in contract performance.
- DB's proposal demonstrated a superior approach to incumbent retention and recruitment.

Id. at 1-2. The SSA's tradeoff analysis included detailed explanations as to the basis for the above findings. For example, in support of the third finding, the SSA explained as follows:

In its comparative analysis of the offerors' proposals under the Staffing Plan factor, the panel found that DB provided a clear and strong case for the retention of incumbent staff, a well-articulated approach to rapid recruitment, a turnover rate well below the industry average, and rapid recruitment for special projects with limited duration through the use of a relevant example. The panel found these to be key discriminating factors in support of its recommendation to award the task order to DB as the best value to the government. By contrast, the panel found a significant number of weaknesses in Emergint's proposal under the Staffing Plan factor. Among the weaknesses

noted were: (1) recruitment time frames (e.g., 90 days for a Biostatistician and 25 days for a Web Designer) were seen to be high and represented greater risk given the high number of Web Designers on this task order (18); (2) Emergint did not address changing workload requirements without carrying unallocated resources; and (3) Emergint failed to disclose its turnover rates after 2010 which, combined with a further indication of increasing turnover rates for the period 2008-2010, posed an additional concern of risk to the panel. The panel also had significant concerns regarding seemingly low labor rates across many of the labor categories including but not limited to Web Designer and Project Manager potentially impacting over 50 percent of the required staffing. The panel found these weaknesses represented a significant risk regarding Emergint's ability to recruit and retain qualified staff and its ability to promptly carry out the requirements of this task order.

Award Decision Memorandum at 3-4. The SSA concluded, consistent with the TEP's recommendation, that DB's proposal represented the best value to the government. The agency issued an order to DB on January 1, 2014. This protest followed.

DISCUSSION

The protester challenges the agency's source selection decision, arguing that it was inconsistent with the evaluation scheme set forth in the solicitation and inadequately documented.⁴ As discussed below, we find the protester's complaints to be unsupported.

Source selection decisions, including those made in task order competitions, must be reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 9. Additionally, an agency's business judgments must be adequately documented, including the rationale for any cost/technical tradeoffs made and the benefits associated with the additional costs. FAR §§ 16.505(b)(1)(iv)(D), (b)(7)(i)); NOVA Corp., B-408046, B-408046.2, June 4, 2012, 2013 CPD ¶ 127 at 5.

⁴ In its initial protest to our Office, Emergint also objected to a number of the agency's findings of weakness pertaining to its proposal. The agency furnished detailed responses to the protester's complaints in its report, and, in commenting on the report, the protester did not take issue with, or otherwise seek to rebut, the agency's responses. Under these circumstances, we consider the protester to have abandoned the arguments. TPMC-Energy Solutions Env'tl. Servs. 2009, LLC, B-408343.2 et al., Aug. 23, 2013, 2013 CPD ¶ 215 at 8.

Emergint contends that the SSA departed from the solicitation's stated evaluation scheme by failing to consider the relative merits of the two proposals under the similar experience and the transition/start up plan factors in his tradeoff decision. The protester further argues that the SSA deviated from the factor weighting scheme set out in the RFTOP by giving equal weight to the advantages identified in DB's proposal under the technical approach, management plan, and staffing plan factors.

Regarding the protester's first argument, it is apparent from the record here that the SSA was aware of the relative strengths and weaknesses of the two proposals under the experience and transition plan factors, and that his failure to identify key discriminators under these factors simply reflected his conclusion that neither proposal had a distinguishing advantage (or advantages) under either factor. We note in the foregoing connection that the TEP, upon whose analysis and recommendation the SSA relied, failed to identify key differences between the proposals under either factor. We furthermore note that there is no requirement that a tradeoff decision include a detailed comparison of proposals under each evaluation factor; it need only identify the differences between the proposals that are of significance for purposes of the tradeoff. See Worldwide Info. Network Sys., Inc., B-404548, Nov. 1, 2013, 2013 CPD ¶ 254 at 6 (there is no need for extensive documentation of every consideration factored into a tradeoff decision).

Regarding Emergint's second argument, the fact that technical approach was a lower-weighted factor did not preclude the SSA from identifying an advantage pertaining to it as a key discriminator. In this regard, an advantage under a lower-weighted factor may properly be relied upon as a key discriminator for purposes of a source selection decision. Wisconsin Physicians Serv. Ins. Corp., B-401068.14, B-401068.15, Jan. 16, 2013, 2013 CPD ¶ 34 at 10.

Emergint also argues that the source selection decision was inadequately documented in that it fails to explain why the SSA considered the benefits associated with DB's proposal to be worth a price premium.

The record fails to support the protester's allegation. As noted above, the SSA identified several advantages in DB's proposal that he regarded as key discriminators between the two proposals; further, he found that these discriminators supported paying DB's higher price. As recognized by the protester, the SSA was not required to quantify the tradeoffs made in selecting the higher-rated, higher-priced proposal for award. Lockheed Martin Integrated Sys., Inc., supra, at 10. Moreover, to the extent that the protester is suggesting that the SSA could not reasonably have considered the advantages identified to be worth the price premium in question, its complaint constitutes mere disagreement with the SSA's judgment, which is not sufficient to demonstrate that the tradeoff was

unsupported. MCR Federal, LLC, B-401954.2, Aug. 17, 2010, 2010 CPD ¶ 196 at 11.

The protest is denied.

Susan A. Poling
General Counsel