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Decision

Matter of: Joint Logistics Managers, Inc.

File: B-410465.2; B-410465.3

Date: May 5, 2015

Robert E. Korroch, Esq. and William A. Wozniak, Esq., Williams Mullen, for the protester.

Thomas O. Mason, Esq., Francis E. Purcell, Jr., Esq., Christopher J. Kimball, Esq., and Erin M. Estevez, Esq., Cooley LLP, for PrimeTech International, Inc., the intervenor.

Robert J. Drone, Esq., United States Marine Corps, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency failed to engage in meaningful or equal discussions with the protester concerning its price is denied where the record shows that the agency did not consider the firm's price to be unreasonably high and, as a result, it was within the agency's discretion not to raise the issue during discussions.

2. Protest that the agency's best value tradeoff decision was flawed in various respects is denied where the record shows that the best value tradeoff decision was reasonable, documented in the record, and that the source selection authority exercised her independent judgment in making the decision.

DECISION

Joint Logistics Managers, Inc. (JLMI), of Prince George, Virginia, protests the award of a task order to PrimeTech International, Inc. (PTI), of North Kansas City, Missouri, by the United States Marine Corps (USMC) under request for task order response (TOR) No. M67004-14-R-0036 for various support services. JLMI argues that the agency failed to engage in meaningful discussions with the firm concerning its price, and that the source selection authority (SSA) failed to conduct a rational source selection decision and improperly failed to exercise her independent judgment in deciding to award the task order to PTI.

We deny the protest.

BACKGROUND

The TOR, issued on July 23, 2014, sought proposals to provide “Care of Supplies in Storage” services in support of the agency’s Distribution Management Center, Storage Operations Department, located in Albany, Georgia. TOR at 11. The TOR contemplated issuance of a time-and-materials task order consisting of one base year and one option year under the Marine Corps Logistics Support Services Program multiple award, indefinite-delivery, indefinite-quantity (ID/IQ) contract. Id. at 1, 11.

Award was to be made on a best-value basis, considering technical approach, past performance, and price. Id. at 50. The non-price factors, when combined, were to be significantly more important than price, with both factors, individually, being more important than price. Id. at 51. However, the importance of price was to increase if proposals were considered essentially equal in terms of technical capability or if a price was so significantly high as to diminish the value of technical superiority to the government. Id.

Under the technical approach factor, proposals were to be evaluated against four considerations, and assigned an adjectival rating of outstanding, good, acceptable, marginal or unacceptable, as well as a technical risk rating of low, moderate or high. Id. at 52. Price was to be evaluated for realism, fairness, reasonableness and balance considering both the base and option periods. Id. at 54.

Three proposals were received, including those from PTI and JLMI. Agency Report (AR), exh. 1, Source Selection Decision Document (SSDD), at 1. After an initial evaluation, the agency entered into discussions with each offeror. As relevant here, the agency notified JLMI that its proposal contained no weaknesses or deficiencies. Id. Final proposal revisions were received from each offeror and evaluated by the agency. The SSA adopted the recommendations of the agency’s technical, past performance and pricing teams. Id. at 7. The relevant results were:

	PTI	JLMI
Technical Rating	Good	Outstanding
Technical Risk Rating	Low	Low
Past Performance Confidence Rating	Substantial	Substantial
Past Performance Relevance Rating	Relevant	Relevant
Total Initial Price	[DELETED]	[DELETED]
Total Final Price	\$16,621,152.93	\$19,515,203.55

Id. at 3, 5.

The SSA found the prices of both PTI and JLMI to be fair, reasonable and realistic based on a comparison with the offers received, and the government's own estimates. Id. at 6. With respect to JLMI's proposal, the SSA found that its price reflected a clear understanding of the requirements, was consistent with its technical proposal, was balanced, and was [DELETED] lower than the government estimate. Id. at 6-7. The SSA adopted the technical evaluation board's (TEB) analysis, finding that JLMI's proposal was technically superior to PTI's and, in particular, that the firm's outstanding rating was based on [DELETED]. Id. at 7. She also adopted the TEB's calculation that the value of [DELETED] was [DELETED] and compared that amount against the proposal's \$2.9 million price premium over that of PTI. Id. Based on this analysis, the SSA found that the technical superiority of JLMI's proposal was not justified given its price premium and determined that PTI's proposal was the best value to the government.¹ Id. at 7-8. This protest followed.

DISCUSSION

JLMI argues that the agency improperly failed to conduct meaningful discussions with the firm concerning its proposed price, and that discussions improperly favored PTI over JLMI. Protest at 7-9; Protester's Comments at 2-3. In this regard, the protester argues that the agency never advised the firm that its price was considered unreasonably high, and that the contracting officer knew, prior to engaging in discussions, that JLMI's price was too high for it to receive the award. Protest at 8; Protester's Comments at 2. We find this allegation to be without merit.

When an agency engages in discussions with an offeror, the discussions must be meaningful. In order to be meaningful, discussions must be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving award. Powersolv, Inc., B-402534, B-402534.2, June 1, 2010, 2010 CPD ¶ 206 at 7. While the precise content of discussions is largely a matter of the contracting officer's judgment, such discussions must, at a minimum, address significant weaknesses, deficiencies and adverse past performance information to which the offeror has not yet had an opportunity to respond. Federal Acquisition Regulation (FAR) §15.306(d)(3); American States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5.

With respect to issues related to price, however, we have long held that the decision to inform an offeror that its price is too high during discussions is discretionary. See

¹ Since the amount of the task order issued to PTI is \$16,621,152.93, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. See 10 U.S.C. § 2304c(e)(1)(B).

Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 12. In this regard, when discussions are conducted, we have held that price need be discussed only if the price is found by the agency to be unreasonable. Id.; see also Price Waterhouse, B-220049, Jan. 16, 1986, 86-1 CPD ¶ 54 at 4. Similarly, we have held that agencies need not conduct discussions with respect to price, even where the offeror's price is significantly higher than competitors, but is still below the government's reasonable price estimate. Price Waterhouse, supra, at 4. Unless an offeror's proposed price is so high as to be unreasonable or unacceptable, an agency is not required to inform an offeror during discussions that its proposed price is high in comparison to a competitor's proposed price, even where price is the determinative factor for award. Peridot Solutions, LLC, B-408638, Nov. 6, 2013, 2013 CPD ¶ 260 at 3.

Our review of the record shows that the agency found JLMI's price to be fair and reasonable based on a comparison with other offers received. AR, exh. 1, SSDD, at 6. JLMI's proposed price was also [DELETED] lower than the government's independent estimate. Id. at 7. Thus, the record does not support JLMI's allegation that the agency found the firm's proposed price to be unreasonably high. On the contrary, the agency found the firm's price to be fair and reasonable, id., a finding JLMI has not challenged. As a result, the agency was not required to raise the issue of the firm's price with JLMI during discussions.

JLMI next argues that the agency engaged in unequal discussions because it discussed with PMI weaknesses in the firm's technical proposal, but did not advise the protester that its price was significantly high. Protester's Comments at 3.

In conducting discussions with offerors, agencies may not engage in what amounts to disparate treatment of the competing offerors. Front Line Apparel Group, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4. However, while discussions may not be conducted in a manner that favors one offeror over another, they need not be identical among offerors; rather, discussions are to be tailored to each offeror's proposal. Metropolitan Interpreters and Translators, Inc., B-403912.4 et al., May 31, 2011, 2012 CPD ¶ 130 at 7.

The record shows that, during discussions, the agency informed PTI of two specific weaknesses in its technical proposal. AR, exh. 8, PTI Discussion Email, at 1. The agency informed JLMI that its proposals contained no deficiencies or weaknesses. AR, exh. 9, JLMI Discussion Email, at 1. Our review of the record shows no evidence that the agency treated any aspect of JLMI's technical proposal as a weakness; to the contrary JLMI's proposal received numerous strengths and the highest technical rating. AR, exh. 1, SSDD, at 3. Thus, we conclude that JLMI's allegation of unequal discussions to be without merit because the discussions were properly tailored to each offeror's proposal.

The crux of JLMI's unequal discussions allegation appears to be its argument that the firm's significantly higher price should have been treated akin to a significant weakness, thereby warranting discussions. Protester's Comments at 3. JLMI argues the agency's error was that it informed PTI of its weaknesses, but did not "advise JLMI that its price was significantly high, so that JLMI could assess whether it should alter its price more than it did to enhance its proposal's potential for award." Id. The flaw in JLMI's argument is that a significantly higher price, or a price that is too high, is not a significant weakness or a deficiency as contemplated by the regulatory scheme delineating the rules for discussions.

Again, discussions must, at a minimum, address significant weaknesses, deficiencies and adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR §15.306(d)(3); American States Utilities Servs., Inc., supra, at 5. The FAR defines a significant weakness as a flaw that appreciably increases the risk of unsuccessful contract performance. FAR § 15.001. A deficiency is defined as a material failure to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. Id. We do not read either of these definitions as applying to circumstances where a price is significantly high or too high as a function of competitive standing.

Moreover, while issues pertaining to price are within the ambit of discussions, see e.g., FAR § 15.306(d) (discussions may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract), these issues are treated distinctly from significant weaknesses and deficiencies in the non-price proposal. In this regard, contracting officers are specifically given the discretion, rather than imposed with the obligation, to discuss whether an offeror's price is considered to be too high or too low. FAR § 15.306(e)(3); see also Theodor Wille Intertrade AG, B-409976.3, Jan. 22, 2015, 2015 CPD ¶ 65 at 4 (discussing the discretion given to contracting officers with respect to discussions related to price). In sum, we find no merit to JLMI's protest allegation.

JLMI finally challenges the agency's best-value tradeoff decision. The firm argues that the decision lacked a comparative assessment of the merits of each offeror's proposals, and failed to weigh the technical factors as significantly more important than price, as required by the stated evaluation scheme. Protest at 9-10; Protester's Comments at 4-7. The protester also argues that the SSA failed to exercise her independent judgment in deciding to award to PTI. Protester's Comments at 7-8. JLMI's allegations are without merit.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Halfaker and Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 5. Rather, we will review the record only to determine whether the agency's evaluation was

reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. While agency selection officials may rely on reports and analyses prepared by others, the ultimate selection decision must reflect the selection official's independent judgment. The Bowen Group, B-409332.3, Aug. 6, 2014, 2014 CPD ¶ 236 at 5. Finally, while an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced proposal must acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and explain why they are not worth the price premium. See Research and Development Solutions, Inc., B-410581, B-410581.2, Jan. 14, 2015, 2015 CPD ¶ 38 at 9.

Contrary to the protester's allegation, the record plainly shows that the SSA exercised her independent judgment in weighing the merits of each proposal. AR, exh. 1, SSDD, at 7-8. In this regard, the SSA states that she conducted an integrated assessment and comparison of the strengths, weaknesses, and risks of the submitted proposals. Id. at 2. The record also shows that the SSA adopted the evaluation recommendations of the TEB in making her best value determination. Id. With respect to JLMI, the SSA agreed with the TEB that the technical discriminator was the firm's proposed [DELETED]. Id. at 7. She also adopted the TEB's rationale quantifying the value of the [DELETED]. Id. Ultimately, however, the SSA determined that the added technical value did not justify paying \$2.9 million more for JLMI's technically superior proposal. Id. at 7-8. That the SSA ultimately agreed with, and adopted, the evaluation results of the TEB does not render her analysis unreasonable, or lacking in independent judgment.²

Moreover and, again, contrary to JLMI's allegations, the SSA's award decision and rationale are adequately documented in the record. See generally AR, exh. 1, SSDD. The record shows that the TEB evaluated the technical merits of each proposal, assigning four strengths to JLMI's proposal, resulting in an outstanding rating, and two strengths to PTI's proposal, resulting in a good rating.³ AR, exh. 5, Final Proposal Technical Evaluation Board, at Enclosures 1 and 3. As discussed above, the TEB found the technical discriminator between the two proposals to be

² The record does not support JLMI's allegation that the agency failed to apply the stated evaluation criteria in weighing the relative merits of JLMI and PTI's non-price and price proposals. Instead, the record shows that the TEB and the SSA recognized the technical superiority of JLMI's proposal, but did not believe that technical superiority justified paying a \$2.9 million price premium.

³ While the protester argues that the SSA ignored two weaknesses found in PTI's proposal in making her source selection decision, the record shows that these weaknesses were identified to PTI during discussions, and addressed to the government's satisfaction during final proposal revisions. AR, exh. 1, SSDD, at 1.

JLMI's [DELETED]. The SSA adopted the TEB's evaluation, but ultimately concluded that JLMI's technical superiority did not justify the price premium of its proposal. Given the record here, we have no basis to question the agency's selection of PTI as the best-value offeror.

The protest is denied.

Susan A. Poling
General Counsel