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Decision

Matter of: GlobalOpal, LLC
File: B-408414.7; B-408414.8
Date: March 19, 2014

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Eric S. Pommer, Esq., Law Office of Eric S. Pommer, for CJSeto Support Services, LLC, the intervenor.
Philip Hadji, Esq., and Craig Haughtelin, Esq., Department of the Navy, for the agency.
Kenneth Kilgour, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's failure to conduct a price realism analysis is denied where, in a fixed-price procurement, the solicitation did not call for a price realism analysis, and therefore the agency was precluded from conducting one.
 2. Protest that agency unreasonably assessed a weakness in protester's proposal does not furnish a basis for questioning the award where record demonstrates that the protester was not prejudiced by the evaluation.
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DECISION

GlobalOpal, LLC, of Rocklin, California, protests the Department of the Navy, Naval Facilities Engineering Command's (NAVFAC), award of a contract to CJSeto Support Services, LLC, of Ventura, California, under request for proposals (RFP) No. N39430-13-R-1203, for enterprise operations support (EOS) services. GlobalOpal¹ asserts that the agency failed to conduct a price realism analysis of the awardee's proposed price and otherwise misevaluated proposals.

We deny the protest.

¹ GlobalOpal is a joint venture of Global Blue DVBE, Inc. and OpalSoft, Inc., the incumbent EOS services contractor here. GlobalOpal Technical Proposal at 1.

BACKGROUND

The solicitation, set aside for service-disabled, veteran-owned small businesses, provided for award of a fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contract, with a 1-year base period and four option years. The required EOS encompassed 19 functional areas. Among the services to be provided were: information technology (IT) system provisioning; system monitoring and reporting; help desk troubleshooting and technical support; service request management and tracking; maintenance coordination and facility monitoring; ensuring continuity of operations during natural disasters and/or calamities; systems security implementation; Continuous Process Improvement (CPI) and standardization; and remote technical support, operations, and sustainment of mainframe systems. Performance Work Statement (PWS) § 1.2.

Award was to be made on a best-value basis, considering the following evaluation factors: technical capability; management plan and capabilities, including management plan and management staffing plan elements; safety; past performance; and price. RFP §§ M.1, M.2. Technical capability, management plan, and safety, combined, were of equal importance to past performance, while all of the non-price factors, combined, were approximately equal to price. RFP § M.1. The RFP provided that a price analysis would be conducted to determine “whether the price is fair and reasonable.” RFP § M.2.

Seven offerors, including GlobalOpal and CJSeto, submitted proposals in response to the solicitation. On May 20, 2013, the agency selected CJSeto’s proposal for award. When several offerors then protested the award to CJSeto, the agency, on June 28, advised our Office of its intent to undertake corrective action, including reevaluating proposals and making a new award decision. We then dismissed the protests as academic (B-408414 et al., July 1, 2013).

Upon completion of the reevaluation, the proposals of GlobalOpal, CJSeto and Offeror A (a firm important to the agency’s best-value trade-off) were assessed as follows:

Factor	CJSeto	Offeror A	GlobalOpal
Technical	Acceptable	Outstanding	Outstanding
Management	Acceptable	Outstanding	Good
Safety	Good	Good	Good
Overall Technical	Acceptable	Outstanding	Good
Past Performance	Satisfactory confidence	Satisfactory confidence	Substantial confidence
Price	\$17,017,689	\$19,967,825	\$21,375,413

Source Selection Evaluation Board (SSEB) Report at 5.

In its evaluation of GlobalOpal, the agency identified a number of strengths under the technical factor based upon OpalSoft's (one of the partners in the GlobalOpal joint venture) experience in creating EOS plans and procedures, and providing various EOS services for the Navy. The agency concluded that GlobalOpal's proposal demonstrated an exceptional approach to and understanding of the technical requirements, with strengths in all but one of the functional areas, resulting in an outstanding rating under the technical factor. While the Navy assigned GlobalOpal's proposal four weaknesses under the management factor, the agency determined that the proposal's strengths--including strengths for the staffing plan, skills and background of staff, and plan for recruitment and retention of staff--outweighed the weaknesses such as to warrant a rating of good. Evaluation Report at 35-41.

In contrast, CJSeto's proposal was rated as acceptable under the technical and management factors, based upon an adequate approach to and understanding of the technical and management requirements. Further, while the Navy assigned CJSeto's proposal several weaknesses under both of these factors, the agency determined that they would have "little impact" on performance and that none were significant. Id. at 25-31.

Based on the evaluation of proposals, the SSEB recommended, and the source selection authority (SSA) concurred, that GlobalOpal be eliminated from consideration for award. In this regard, when compared with Offeror A, the SSA and SSEB noted that while GlobalOpal received a higher past performance rating (substantial confidence versus satisfactory confidence), it had a lower overall technical rating (good versus outstanding) with a higher price (\$1.4 million more) than Offeror A. The SSA determined that it was not in the government's best interest to pay a price premium for a higher past performance rating but a lower overall technical rating. Source Selection Decision (SSD) at 3-6; SSEB Report at 6-7.

The SSA then compared Offeror A's proposal with that of CJSeto. Since both received the same past performance ratings (satisfactory confidence), the agency's trade-off with respect to those two proposals focused on whether Offeror A's higher overall technical rating (outstanding versus acceptable) was worth the price premium (\$2.95 million). Id. In this regard, the SSA determined that while the strengths in Offeror A's proposal indicated that Offeror A was "more capable" of performing well, CJSeto had demonstrated that it was capable of performing satisfactorily, with evaluated weaknesses being offset by strengths and expected to have little impact on contract performance. As a result, the SSA determined that CJSeto's proposal represented the best value based upon its significantly lower price. Id. Upon learning of the resulting award to CJSeto, GlobalOpal filed this protest.

DISCUSSION

In its protest to our Office, GlobalOpal argues that the agency should have assigned a risk to CJSeto's proposal for its low labor rates. In addition, GlobalOpal raises several challenges to the evaluation of proposals.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency; rather, we examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. An offeror has the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3. Here, we have considered all of GlobalOpal's arguments and find that none furnishes a basis for questioning the selection of CJSeto for award. We address several of GlobalOpal's arguments below.

Price Realism Challenge

The protester asserts that the awardee's proposed labor rates are substantially lower than the rates paid to the current workforce, and that therefore the agency should have recognized that it would be extraordinarily difficult for CJSeto to recruit and maintain personnel. We disagree.

GlobalOpal's complaint--that the agency failed to account for the risk involved in labor rates that are allegedly too low--is a challenge to the agency's failure to conduct a price realism analysis. See Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5. Because this procurement was conducted on a fixed-price basis, and because the RFP did not provide for a price realism analysis, the agency was precluded from conducting one. Id. As noted above, the RFP informed offerors that the price analysis would be limited to "whether the price is fair and reasonable," that is, whether the price is unreasonably high. RFP ¶ M.2 (amend. 0007). A price realism evaluation, in contrast, assesses whether an offeror's low fixed-price reflects a lack of understanding of contract requirements or risk inherent in its approach. Emergint Techs., Inc., supra. When awarding a fixed-price contract, offerors must be advised that the agency will conduct a price realism analysis, and absent a solicitation provision providing for such an evaluation, agencies are not permitted to conduct one. Triad Int'l Maint. Corp., B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 8.

CJSeto Staffing Plan

GlobalOpal asserts that the Navy improperly failed to find unacceptable, or in the alternative downgrade, CJSeto's proposal for its proposed staffing approach. In this regard, the RFP provided for evaluation, under one of two management plan elements, of the offeror's management staffing plan, describing the required plan as follows:

Proposal Submittal Requirements: The offeror shall submit a technical staff plan describing in detail the skills, work background, and demonstrated ability of the staff they plan to use to perform each of the 19 functional areas, with no service gaps. Included in this plan must be the company's on-going, long-term methodology for recruiting, training and retaining, on an uninterrupted basis, high quality personnel who will meet the PWS requirements for the life of the contract. If [a] teaming arrangement is proposed, describe the specialized experience that demonstrates the subcontractor's ability to efficiently perform the tasks required in the PWS.

RFP § L, at 30-31 (amend. 0001). Despite these requirements, responses were subject to a page limitation; the combined overall management plan, including the management staffing plan, was limited to 25 pages. Id. at 30.

CJSeto submitted a management staffing plan setting forth the labor category assigned to each PWS requirement; number of staff assigned each requirement; team member furnishing the assigned staff; and relevant experience and resources of the team members, which included [DELETED]. CJSeto Technical Proposal at 49-52. Also, consistent with the proposal submittal directions, CJSeto described the specialized experience of its team members as relevant to the requirements under the statement of work. In addition, CJSeto described its recruiting approach, indicating that "[DELETED]," but also setting forth an approach to recruitment in order to replace staff or account for contract growth. Id. at 53-55. CJSeto's management staffing plan, however, did not name particular proposed employees.²

² In contrast, and despite the 25-page limit, GlobalOpal submitted a 31-page "Factor 2 Management Plan and Capabilities" proposal section, numbered pages 1-25, but also including pages 4a, 4b, 4c, 5a, 13a, and 13b. Fourteen of those pages set forth a detailed staffing plan, describing GlobalOpal's staffing approach, including named proposed staff, in six broad staffing areas (encompassing a total of 19 functional requirements), as well as its overall recruiting, training and retention approach. GlobalOpal Technical Proposal, Factor 2, at 13-24. In addition, GlobalOpal submitted a 63-page appendix to its staffing plan, consisting of 37 resumes, each of which described the duties of the
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GlobalOpal argues that CJSeto's proposal failed to discuss its proposed staff, and that this failure should have rendered the proposal unacceptable, or at least constituted a weakness. GlobalOpal cites as support for this position the solicitation language requiring the offeror to "submit a technical staff plan describing in detail the skills, work background, and demonstrated ability of the staff they plan to use to perform each of the 19 functional areas" RFP § L, at 30 (amend. 0001). The agency responds that the RFP required offerors to submit a plan demonstrating the prospective likelihood of obtaining qualified employees, not to document the credentials of a specific workforce. Agency Comments at 2-3.

The protester's contentions are based on an isolated reading of the solicitation's proposal submission directions--requiring "describing in detail the skills, work background, and demonstrated ability of the staff they plan to use." Such a reading, however, fails to account for the likely number of employees (at least 39 for GlobalOpal) and the fact that the solicitation limited the response in the overall management area (including staffing plan) to 25 pages. RFP § L, at 30 (amend. 0001). Where a dispute exists as to the meaning of a solicitation provision, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions. ArmorWorks Enters. LLC, B-405450, Oct. 28, 2011, 2011 CPD ¶ 242 at 3.

The protester's interpretation also fails to account for the actual description of the intended evaluation under the management staffing plan subfactor of the management evaluation factor, which reads:

The Government will evaluate the plan to ensure that it reflects an ability to obtain and retain employees with the training and experience needed to perform the PWS. This evaluation will include an assessment of the offeror's ability to provide uninterrupted, high quality work through the life of the contract.

Offerors may be rated more favorably if appropriate cross-reference with the PWS is provided.

RFP § M, at 35 (amend. 0001). This language, focusing on whether the offeror's plan "reflects an ability to obtain and retain employees with the training and experience needed to perform the PWS," id., is consistent with the agency's approach to evaluating these proposals.

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position for which the employee was proposed, the employee's qualifications, and the employee's current duties, nearly all which were on Navy contracts.

Thus, we find to be reasonable, and consistent with the RFP, the agency's focus on whether an offeror demonstrated "the prospective likelihood of obtaining qualified employees." Agency Comments at 2-3. When considered against this standard, the agency evaluation of CJSeto's management staffing plan as meeting the RFP requirements was also reasonable. While CJSeto indicated [DELETED], it also set forth [DELETED]. Again, as set forth above, CJSeto's proposed management staffing plan identified the labor category assigned to each PWS requirement; number of staff assigned each requirement; team member furnishing the assigned staff; and specialized experience and resources of the team members, which included [DELETED], as relevant to the requirements under the SOW. CJSeto Technical Proposal at 49-52.³

As for the agency's evaluation of GlobalOpal's management staffing plan, the agency recognized the additional detail included in the plan as well as the advantage inherent in the fact that OpalSoft, one of the joint venture partners, was the incumbent contractor. Thus, the agency assigned a number of strengths to GlobalOpal's proposal, including for such features as: [DELETED] FTEs will be available on day one of the contract startup; GlobalOpal intends to keep the incumbents in place; the company's plan to identify candidates for future open requirements within [DELETED], and for critical positions within [DELETED]; details regarding the number of personnel that will be allocated to each of four functional teams, along with the skill level and certification information for each proposed employee; and the fact that the proposal indicates that qualified people will be assigned to meet the defined requirements by aligning their skills with the PWS task requirements. Evaluation Report at 41. Thus, we see no basis for GlobalOpal to object to its evaluation, or the agency's recognition of the superior detail in its proposal (which appears to have been achieved, in part, by exceeding the solicitation's page limitation).

GlobalOpal's Technical Factor Evaluation

GlobalOpal next argues that the agency improperly found "that GlobalOpal did not mention Deliverable 0022 in its proposal," when, in fact, according to the protester, its proposal mentions deliverable 0022 "in at least 3 places." Protest at 17. Under contract line item number (CLIN) 0022, the contractor was required to provide a matrix report of "All" tickets and incidents, both with respect to PWS § 3.6, Service Desk Support and Incident Management Services, requiring a "24 x 7 x 365 on-site operations desk," and PWS § 3.8, Inventory and Asset Control Services, requiring

³ For example, CJSeto's proposal indicated that [DELETED]; the proposal notes that [DELETED]. CJSeto Technical Proposal at 50-51.

on-site support to implement and maintain, track, remove and account for all managed properties.⁴ PWS §§ 3.6, 3.8.

While GlobalOpal's proposal referred to deliverable 0022 in its discussion of PWS section § 3.6, it fails to mention it in its discussion of PWS section § 3.8. See GlobalOpal Proposal, Factor 1, at 22-24. As a result, the agency found a weakness in the proposal's response to PWS § 3.8.⁵ Thus, the Navy's evaluation credited the portion of the GlobalOpal's proposal responsive to PWS § 3.6 with a required mention of deliverable 0022, while the agency reasonably did not assume that the protester intended that mention to carry throughout the proposal. In this regard, where a proposal is organized by sections that correspond to specific paragraphs in the PWS, an agency may reasonably expect that the proposal will address specific PWS requirements in the correspondingly numbered proposal sections. CACI Techs., Inc., B-408552, Nov. 1, 2013, 2013 CPD ¶ 255 at 7-9. Here, GlobalOpal had the burden of submitting an adequately written proposal, and its proposal was reasonably assessed a weakness when it failed to do so.

GlobalOpal's Management Factor Evaluation

The protester argues that the weakness the Navy assigned GlobalOpal's proposal for its failure to clearly define a communications plan was unreasonable, because the solicitation only required offerors to "identify" a communication plan, and not to provide details regarding such plan. Protest at 17; see Evaluation Report at 40. The agency responds that the protester's overly narrow focus on the requirement to "identify" a communication plan--to the exclusion of any of the plan's substance--would render the requirement meaningless. See Agency Report (AR) at 9.

The RFP required proposals to "clearly identify" a "communication plan for issues, status, concerns, and morale." RFP § L.5 (amend. 0006). The RFP further provided that proposals would be evaluated on "the degree to which the offeror establishes a well-defined and efficient line of authority, responsibility, and communication in managing a complex effort that involves many people and multiple work units, and multiple task orders simultaneously." RFP § M.2 (amend. 0007).

⁴ The PWS lists deliverable 0022 as a requirement under at least six sections. See PWS §§ 3.6, 3.7, 3.8, 3.9, 3.10, and 3.17.

⁵ Specifically, the agency concluded that "there was no mention of the matrix report of STS tickets deliverable 0022; there is a reference in proposal section 3.6 to an STS metrics report in tabular and graphical format, but we did not assume that this mention is carried throughout the rest of the proposal." Evaluation Report at 37 (emphasis added).

GlobalOpal's proposal stated that, with respect to day-to-day operations, "our plan is to have the EOS Project Manager, with support from GlobalOpal Corporate HQ when needed, handle all issues, concerns, and problem resolution between NAVFAC, EOS Team Leads, and subcontractors."⁶ GlobalOpal Proposal, Factor 2, at 12. Given the solicitation's requirement for a detailed plan, we find that the agency reasonably concluded that GlobalOpal's simple claim that its project manager would handle all problem resolution did not constitute a communications plan, and thus the agency reasonably assessed a weakness in this regard. See DM Petroleum Operations Co., B-409004, B-409004.5, Jan. 15, 2014, 2014 CPD 52.

GlobalOpal also challenges the reasonableness of the Navy's finding that the protester's proposal was unclear as to whether it was proposing a single project manager, which resulted in the assessment of a weakness. Evaluation Report at 40. The protester notes that its proposal included one "Project Manager" on the organizational chart in the proposal, and provided one resume listing the identity and qualifications of a "Project Manger." Protest at 13. The agency responds that confusion as to whether GlobalOpal was proposing a single project manager was created by: a reference in its proposal to an "on-site Project Manager"; the listing of a "Project Manager" in the block entitled "EOS Project Management" in the organizational chart; and the statement that "NAVFAC Senior Executives will have direct access to GlobalOpal Corporate HQ to discuss and resolve any issues or concerns not adequately addressed by the onsite Project Manager." GlobalOpal Proposal, Factor 2, at 2-3; AR at 6-7; see Evaluation Report at 40.

In this area, we agree with the protester that, when read in context, its reference to an "on-site Project Manager" appears to be merely an adjective describing the project manager, while the reference to "GlobalOpal Corporate HQ" does not describe a second project manager. That said, however, we find that the record supports the Navy's position that, even if GlobalOpal had not received a weakness under the management factor for failure to explicitly offer a single project manager, the lack of this weakness would not have altered the source selection decision.

The record here shows that Offeror A's proposal received an overall technical rating of outstanding while CJSeto's overall technical rating was acceptable. Nevertheless, the SSA did not consider the technical superiority of Offeror A's proposal to be worth the price premium over CJSeto's proposal. Id. at 4. SSEB Report at 5. Given the still higher price premium associated with GlobalOpal's proposal relative to CJSeto's, we find reasonable the agency position that removing one of GlobalOpal's several weaknesses under the management factor would not, by itself, materially enhance GlobalOpal's competitive position. In sum, GlobalOpal

⁶ GlobalOpal's proposal also provided for certain special events to foster information exchange, including [DELETED]. GlobalOpal Proposal, Factor 2, at 12.

cannot show that, but for the agency's actions, it would have had a substantial chance of receiving the award. See Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3.

The protest is denied.

Susan A. Poling
General Counsel