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Decision

Matter of: DMS International
File: B-409933
Date: September 19, 2014

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Michael J. Gardner, Esq., Troutman Sanders LLP, for Linxx Global Solutions, Inc., the intervenor.
James P. Winthrop, Esq., Department of the Navy, 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 is denied where the record shows that the agency's evaluation of proposals and best-value tradeoff analysis were reasonable.
2. Protest is dismissed where protester is not an interested party to challenge the award of the contract because, even if successful on the remaining issues raised, the firm is not in line for award.

DECISION

DMS International, of Silver Spring, Maryland, protests the award of a contract to Linxx Global Solutions, Inc., of Virginia Beach, Virginia, by the Department of the Navy under request for proposals (RFP) No. N00189-14-R-0021 for training instructional support. DMS challenges the agency's evaluation of the proposals under the non-price factors and the agency's best-value tradeoff decision.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RFP, issued on March 10, 2014, solicited offers to provide riverine training instructional support services for Navy personnel at Camp Lejeune, North Carolina. RFP at 3-8. The RFP anticipated the award of a fixed-price contract to the responsible offeror whose proposal represented the best value, after evaluation of

price and non-price criteria. Id. at 12. The non-price factors, listed in descending order of importance, were technical approach, past performance, and socio-economic plan. Id. The technical approach factor included three subfactors, one of which was performance approach. Id. at 12-13. Non-price factors were to be significantly more important than price. Id. at 12.

Price was to be evaluated utilizing price analysis techniques specified in Federal Acquisition Regulation (FAR) § 15.404-1(b). Id. at 15. The RFP stated that, while price was not the most important evaluation factor, it had the potential to become more significant during the evaluation process. Id. The degree of importance of price would increase “with the degree of equality of proposals in relation to the other factors on which selection is to be based,” and price could become the determining factor if the proposals were assessed as equal, or virtually equal, under the non-price evaluation factors. Id.

Seven proposals were received, including those from DMS and Linxx. Agency Report (AR), exh. 8, Contract Review Board Presentation, at 4. The agency conducted an evaluation of proposals and assigned adjectival ratings supported by detailed narratives for each factor and subfactor. Id. at 10-22; see generally exh. 5, Technical Report. Three proposals were excluded from further consideration based on their marginal ratings under the technical approach factor. Id. at 25. The final evaluation results of remaining offerors were as follows (prices have been rounded):

	Offeror A	Offeror B	DMS	Linxx
Technical Approach	Outstanding	Outstanding	Outstanding	Good
Past Performance	Substantial Confidence	Substantial Confidence	Substantial Confidence	Substantial Confidence
Socio-Economic Plan	Acceptable	Good	Outstanding	Outstanding
Overall	Outstanding	Outstanding	Outstanding	Good
Price	\$12,978,862	\$14,299,875	\$15,303,811	\$10,387,814

Id. at 22.¹

The source selection authority (SSA) compared the three proposals with overall outstanding ratings, and concluded that each was “equally outstanding” under the technical approach factor. Id. at 26. The SSA recognized slightly more confidence in Offeror A and DMS, than in Offeror B, under the past performance factor, and viewed DMS and Offeror B as having an advantage over Offeror A under the socio-economic plan factor. Id. Ultimately, she found that DMS had a slight non-price

¹ The RFP utilized adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable, and for past performance, substantial confidence, satisfactory confidence, limited confidence, no confidence and neutral. RFP at 16-17.

advantage over both offerors. Id. at 27. The SSA next conducted a price/non-price tradeoff, noting that, while the proposals were not exactly equal under the non-price factors, they were close in relative merit. Id. Therefore, given the “relative equality” of the proposals, the SSA made price a significant discriminator. Id. Under this analysis, the SSA found that Offeror A, “definitively emerges as the best value offeror out of those offerors rated ‘Outstanding.’” Id.

The SSA then conducted a tradeoff between Offeror A and Lynxx, noting Offeror A’s superiority under the technical approach factor, and Lynxx’s superiority under the socio-economic plan factor. Id. The SSA found both offerors to have “virtually identical” past performance, and concluded that the government has an “equally high expectation that both offerors will successfully perform the services required in the solicitation.” Id. at 27-28. The SSA also concluded that Offeror A’s advantages under the non-price factors were not significant enough to warrant the 20 percent price premium, and decided that Linxx’s proposal would provide the best value to the government. Id. at 28. This protest followed.

DISCUSSION

DMS argues that the agency improperly elevated the importance of price in its tradeoff decision, and unreasonably limited the final tradeoff decision to the two least-expensive and lowest-rated proposals. Comments at 4-5. DMS asserts that, as a result, the agency effectively neutralized the technical merits of its proposal, which was the highest-rated proposal under the non-price evaluation factors. Id. at 5. DMS contends that, had the agency not improperly elevated the importance of price, and conducted a meaningful comparison of its proposal to that of Linxx, its proposal would have represented the best value to the government. Id. at 8-9.

In reviewing a protest challenging an agency’s evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. 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. We find no basis to question the agency’s judgment here.

Tradeoff Decision

Our review of the record shows that DMS’ contention that the agency improperly elevated the importance of price in its source selection decision is without merit. As discussed above, the SSA found the three highest-rated proposals to be relatively equal under the non-price factors. AR, exh. 8, Contract Review Board Presentation, at 27. In light of the proposals’ relative equality, the SSA considered price to be a significant discriminator in weighing the relative merits of these proposals. Id. The

evaluation scheme permitted such a tradeoff, as it specified that price could be the determining factor where proposals were evaluated as equal, or virtually equal, under the non-price factors. RFP at 15. Thus, the question here is whether the SSA reasonably found the three highest-rated proposals to be relatively equal.

DMS' sole challenge to the merits of the agency's evaluation of the three highest-rated proposals under the non-price factors is that Offeror B received a strength for its significant level of experience and detailed technical understanding of relevant courses that DMS should also have received. Comments at 6 n.1. DMS argues that, having taught the courses contemplated by the RFP for the past seven years, no other offeror could realistically have a more significant level of experience, or a more detailed technical understanding of each course. Id.

Offeror B's evaluated strength was assessed for the proposal's highly-detailed course information. The agency found that this information demonstrated the firm's experience and detailed technical understanding of each course.² AR, exh. 5, Technical Report, at 26. In contrast, according to the Navy, DMS' proposal "simply provided a chart identifying the four riverine courses with no specific information about the course content or material." Supp. Legal Memorandum at 3. Based on this lack of detail in the DMS proposal, the Navy contends that it could not assign a strength to the proposal for demonstrating a detailed technical understanding of the relevant courses. Id. DMS has given us no basis to conclude that the agency's evaluation was unreasonable.

It is a well established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Group, LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9. In this case, the RFP required offerors to demonstrate understanding of and capability to meet the requirements of the RFP, including the relevant courses at issue here. Consequently, the protester was on notice that the agency would evaluate such considerations, and the onus was on DMS to submit sufficiently detailed information in its proposal to meet this requirement.³

² The strength was assigned under the performance approach subfactor, which evaluated offerors on their "ability to demonstrate understanding of and capability to meet" the requirements of the RFP. RFP at 12. While experience and capability are two distinct concepts, we have concluded that it is reasonable to consider a firm's experience in determining whether it has the capability to meet the requirements of the RFP. See Corps Solutions, LLC, B-409298.2, Aug. 21, 2014, 2014 CPD ¶ 244 at 6.

³ DMS does not refute the agency's assertion that its proposal lacked sufficient detail. Instead, the protester argues that the agency was aware of the firm's experience and technical understanding, and it was improper for the Navy to ignore
(continued...)

Having considered the protester's challenge to the agency's technical evaluation of the highest-rated offerors and found it lacking, we have no basis to question the agency's determination that the three highest-rated proposals were relatively equal in merit. Under such circumstances, price was to become a more important consideration, and could become the determining factor for award. RFP at 15. We conclude that the SSA's use of price as the determining factor in the tradeoff decision was reasonable. See TECHi2, LLC, B-297178.2, Nov. 28, 2005, 2005 CPD ¶ 210 (finding evaluation reasonable where price was discriminating factor based on technical equality of proposals, notwithstanding price's lesser weight).

DMS next argues that the SSA improperly failed to conduct a direct tradeoff between its proposal and that of the awardee, Linxx. Comments at 7. DMS argues that, had the agency conducted such a direct tradeoff, its proposal would have been selected as the best value to the government. Id. at 8. Our review of the record provides us no basis to find the agency's actions unreasonable.

In the context of a commercial items acquisition where evaluation factors are prescribed, offers are to be evaluated in accordance with the criteria contained in the RFP. FAR § 12.602(b); RFP at 12-17 (incorporating in its entirety FAR § 52.212-2, Evaluation-Commercial Items (JAN 1999)). The agency is required to select the offer that is most advantageous to the government based on the factors in the solicitation, and fully document the rationale for selection of the successful offeror including discussion of any tradeoffs considered. FAR § 12.602(c). In conducting a best-value tradeoff, source selection officials have broad discretion, and their exercise of that discretion in making award is governed only by the tests of rationality and consistency with the evaluation criteria. Gen. Dynamics Info. Tech., Inc., B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 3 n.1. While source selection officials are required to evaluate submitted proposals, and make a reasoned source selection decision, we have found the "indirect" comparison of proposals to be unobjectionable. See Client Network Servs., Inc., B-297994, Apr. 28, 2006, 2006

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personally known information about the firm's prior experience merely because it was not mentioned in the proposal. Supp. Comments at 4-5 (citing Safeguard Maintenance Corp., B-260983, B-260983.3, Oct. 13, 1995, 96-2 CPD ¶ 116). The protester's argument is without merit. An agency has no obligation to import and consider information not provided in the protester's proposal where the information could have been, but was not, included in the proposal. See Bowhead Science and Tech., LLC, B-409871, Aug. 26, 2014, 2014 CPD ¶ 248 at 5, 9 n. 9. It is only in certain limited circumstances, where the equities clearly dictate, that an agency has an obligation (as opposed to the discretion) to consider such outside information. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. Such circumstances are not found here.

CPD ¶ 79 (finding that the agency effectively found the awardee's proposal to be a better value than the protester's proposal, even without a direct comparison of the two).

The SSA conducted a price/technical tradeoff amongst the three proposals with the highest non-price ratings. As a result of this analysis, the SSA "definitively" selected Offeror A as the best value amongst these offerors. AR, exh. 8, Contract Review Board Presentation, at 27-28. In light of our finding above with respect to DMS' challenges to this aspect of the agency's evaluation, we have no basis to question the agency's conclusion that Offeror A represented a better value than DMS in a comparison of these proposals. The SSA then compared the merits of Offeror A's proposal to that of Linxx, ultimately determining Linxx to have submitted the best-value proposal. *Id.* at 27-28. DMS does not challenge the substance of the SSA's tradeoff between Offeror A and Linxx. Consequently, we have no basis to question the agency's determination in this regard. Based on the agency's analysis, if Offeror A's proposal is a better value than DMS', and Linxx's proposal is a better value than that submitted by Offeror A, it is reasonable to conclude that the SSA also effectively found that Linxx's proposal was a better value than DMS' as well.⁴

Interested Party Status

Prior to submitting the agency report, the agency asked that we dismiss this protest, arguing that DMS was not an interested party as it was not next in line for award. See generally Motion to Dismiss. We declined to grant the agency's request, as a fair reading of DMS' protest included a challenge to the tradeoff methodology, as

⁴ DMS argues that with a direct comparison, the SSA would have been required to consider DMS' superiority under the technical approach factor as well as its "unsurpassed Past Performance as the incumbent contractor," which would have resulted in DMS being selected as the best value to the government. Comments at 8-9. We disagree. Since the SSA found Offeror A and DMS to be equal with respect to technical merits, the record indicates that the comparison of Linxx to Offeror A evidences the most likely outcome of a comparison of Linxx to DMS under the technical approach factor. The SSA also found that DMS' past performance was equal to that of Offeror A, which was itself found to be "virtually identical" to the past performance of Linxx. AR, exh. 8, Contract Review Board Presentation, at 26-28. In this circumstance, we are reminded of the common notion that things that are equal to the same thing are also equal to one another. On this record, it is reasonable to conclude that the SSA effectively found DMS' and Linxx's past performance to be essentially equal. As DMS has not shown us any aspect of its own proposal that might have been weighed differently by the SSA had a direct comparison between DMS and Linxx occurred, we are not persuaded that a direct comparison would have produced a different result.

discussed above. The agency renewed its request in its agency report. Legal Memorandum at 20-21. Having addressed DMS' relevant arguments on the merits, we now grant the agency's request to dismiss the remainder of the protest.

An offeror is an interested party if it is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. J. Squared Inc., d/b/a University Loft Co., B-408388, Aug. 27, 2013, 2013 CPD ¶ 201 at 3; Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2014). A protester is not an interested party if it would not be next-in-line for award if we were to sustain its protest. Resource Title Agency, Inc., B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9. As discussed above, the Navy determined that Offeror A's proposal was a better value than DMS' proposal. Thus, even if we were to sustain DMS' protest challenging the award to Linxx, Offeror A, and not DMS, would be next in line for award. Consequently, DMS is not an interested party to pursue the remainder of its protest, such as its arguments that the agency failed to consider the proposal risk resulting from Linxx's low price and the firm's challenge to the agency's evaluation of Linxx's past performance.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel