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Decision

Matter of: Hickory Ground Solutions, LLC

File: B-410404; B-410404.2

Date: December 19, 2014

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Sarah L. Carroll, Esq., Defense Information Systems Agency, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated the protester's technical proposal is denied where the evaluation was reasonable and in accordance with the solicitation's evaluation criteria.
2. Protest that agency treated offerors unequally is denied where differences in evaluation were reasonable and supported by the record.
3. Protest challenging agency's price realism analysis of awardee's proposal is denied where the protester has not demonstrated that the agency's analysis was unreasonable.

DECISION

Hickory Ground Solutions, LLC (Hickory), of Heathsville, Virginia, protests the award of a contract to LinTech Global Inc. (LinTech), of Farmington Hills, Michigan, under request for proposals (RFP) No. HC1028-14-R-0024, issued by the Defense Information Systems Agency (DISA) for ongoing maintenance and operational support to the Office of Defense Procurement and Acquisition Policy (DPAP) for its Business Intelligence and Procurement Toolkit (Toolkit) capabilities. The protester challenges the agency's evaluation of the protester's technical proposal and the agency's price realism analysis, and alleges that its proposal and the awardee's proposal were evaluated unequally.

We deny the protest.

BACKGROUND

The RFP, issued on May 28, 2014 as a competitive 8(a) set-aside, contemplated the award of a performance-based, fixed-price contract to provide support for Business Intelligence and Procurement Toolkit applications for a base year and two one-year options. RFP at 10, 32; Agency Report (AR), Tab 3, RFP Question and Answer (Q&A), at 3. The current effort is focused on providing a centralized procurement business intelligence tool to monitor ongoing compliance with procurement regulations and policies, and providing a web application that centralizes the availability of and access to procurement information.¹ RFP at 32. Hickory was the incumbent on the predecessor contract. Legal Memorandum/Contracting Officer's Statement (LM/COS) at 4. The support services being procured include training tools and the development and maintenance of software and associated documentation. Id.

Offerors were informed that award would be made on a best-value basis, considering the following three factors, in descending order of importance: (1) technical/management, (2) past performance, and (3) cost/price. Id. at 41. The technical/management factor included two subfactors, also listed in descending order of importance: technical and management.² RFP at 41. Non-price factors, when combined, were significantly more important than price. Id. at 42.

Offerors were advised not to rephrase or restate requirements in their proposals, but to provide a convincing rationale to address how the offeror intended to meet the requirements. Id. at 32. The RFP also stated that offerors should assume that the government had no prior knowledge of the offeror's facilities and experience, and that evaluation would be based on information presented in the offeror's proposal. Id. at 32. The RFP cautioned that offerors were required to meet all solicitation requirements, including those identified as evaluation factors and subfactors, and stated that a failure to comply with the terms of the RFP might result in the offeror being ineligible for award. Id. at 47-48.

¹ The Business Intelligence capability provides users access to standard reports and data compiled from federal and departmental repositories via application program interfaces. RFP at 31. The Toolkit hosts instructions, training, and a collection of files that define procurement applications and application program interfaces to manage, enable, and share procurement information across the Department of Defense. Id. at 31.

² The technical subfactor included four elements for evaluation, described in detailed narrative, that are not relevant to the decision, and, therefore, not set forth here. For purposes of discussion, the elements are referred to as 1a, 1b, 1c and 1d.

For each technical/management subfactor, offerors were required to address their proposed approach to meeting or exceeding the minimum performance or capability requirements, as well as any risks in the proposed approach in terms of technical/performance, cost and/or schedule. Id. at 35. For the technical/management volume, the RFP again reminded offerors to provide the actual methodology that would be used to satisfy each factor and subfactor. Id.

As relevant here, the management subfactor required offerors to address their management and staffing approach, specifically, how the proposed staff, experience, and labor mix would be able to execute the tasks in the performance work statement (PWS) effectively and maintain the capabilities over the life of the contract. Id. at 42. The RFP advised that the qualifications of specific proposed personnel, and of personnel proposed or represented by generic resumes, would also be evaluated and would establish the minimum requirements the offeror intended to meet for the labor categories proposed. AR, Tab 3, RFP Q&A, at 1. The RFP had no requirement to propose a specific number of full time equivalents (FTEs) or key personnel, other than a full-time project lead. Id. at 1, 2. Proposed personnel were required to have knowledge and familiarity with the hardware and software projects required to complete the effort. RFP at 13-14.

The RFP advised that the technical/management subfactors would be evaluated using a color/adjectival rating and assigned a risk rating which would be rolled up to a factor rating.³ Id. at 43. The color/ratings for the technical/management factor and subfactors were: blue/outstanding; purple/good; green/acceptable; yellow/marginal; and red/unacceptable. Id. As relevant here, the red/unacceptable rating was defined as a proposal that does not meet requirements, contains one or more deficiencies, and is unawardable. Id.

As related to price, proposals were to be evaluated to determine whether the cost/price was reasonable, realistic, and complete, using one or more of the techniques defined in FAR § 15.404. Id. at 47. Offerors were required to provide their price proposals in a price template, which would include fully burdened rates and direct labor hours for each labor category, travel costs (using uniform prices, or “plug numbers” provided by the RFP), and data other than certified cost or pricing data. Id. at 37; RFP Attach. 6. Price was to be evaluated based on the total price proposed for the base period and all option periods. RFP at 37. Offerors were also advised that a proposal could be rejected for unbalanced pricing. Id.

³ The RFP advised that risk would be rated as low, moderate, and high. Id. at 43.

Five offerors, including Hickory and LinTech, submitted proposals.⁴ LM/COS at 12. The Source Selection Evaluation Board (SSEB) evaluated proposals under the technical/management and past performance factors, while the contract specialist and cost/price analyst evaluated price. LM/COS at 12. The Contracting Officer served as the Source Selection Authority (SSA). AR, Tab 1, Streamlined Source Selection Plan, at 1.

DISA evaluated the protester's and awardee's proposals as follows:

	Hickory	LinTech
Technical/Management		
Technical Subfactor		
Element 1a	Green/Acceptable Low Risk	Green/Acceptable Low Risk
Element 1b	Red/Unacceptable High Risk	Green/Acceptable Low Risk
Element 1c	Green/Acceptable Low Risk	Green/Acceptable Low Risk
Element 1d	Yellow/Marginal Moderate Risk	Green/Acceptable Low Risk
Management Subfactor	Red/Unacceptable High Risk	Green/Acceptable Low Risk
Past Performance	Limited Confidence	Satisfactory Confidence
Evaluated Price/Cost	\$6,683,498	\$4,140,602

AR, Tab 6, Price Evaluation Report (PER), at 1; Tab 10, Source Selection Document (SSD) at 4, 8-9.

Technical Evaluation

As shown above, Hickory's technical/management proposal was rated red/unacceptable under one of the elements under the technical subfactor and under the management subfactor, based on three deficiencies identified by the SSEB. AR, Tab 9, SSEB Selection Recommendation, at 13-15. It was given a high risk rating under the management subfactor and was assessed as not meeting the PWS requirements. Id. The SSEB's primary reason for finding Hickory's proposal unacceptable under the management subfactor was that Hickory's staffing approach failed to explain how it would maintain a qualified workforce over the life of the contract. Id. at 14-15. In this regard, while Hickory identified the qualifications of its current team members, it did not identify the qualifications

⁴ The proposals of the other unsuccessful offerors, and the agency's evaluation thereof, are not relevant to Hickory's protest and are not further discussed.

standards, such as technical experience or knowledge, it would use for future team members. Id.

LinTech's technical/management proposal was rated green/acceptable with low risk. Id. at 3-5. The SSEB assigned LinTech a green/acceptable rating for the management subfactor, finding that it provided a comprehensive explanation of its staffing approach and proposed qualifications/staffing plan. Id. at 5. As relevant here, LinTech's proposal stated, "As an Oracle Gold Partner, LinTech maintains a database of over 1,000 Oracle certified personnel to rapidly recruit and onboard qualified personnel. This provides the DPAP [Office of Defense Procurement and Acquisition Policy] with a deep bench of candidates throughout contract performance and affords us the ability to bring in expertise for changing requirements as required." AR, Tab 5, LinTech Proposal, Volume 2, at 13.

Price Evaluation

The cost/price analyst evaluated Hickory's price proposal and concluded that it was complete and reasonable, except that Hickory submitted prices for travel costs that were higher than the "plug numbers" identified by the RFP. AR, Tab 6, Price Evaluation Report (PER), at 4. The analyst also reviewed questionnaires completed by the technical evaluators that identified certain deficiencies and unmet requirements in Hickory's technical proposal. As a result, she concluded that Hickory's price was not realistic. Id. Hickory's price, which was the second-highest price received, was, however, found to be reasonable. Id. at 1, 4.

The cost/price analyst evaluated LinTech's price proposal for realism and concluded that the number of labor hours, categories, and mix proposed by LinTech were in line with the government estimate and that LinTech's price was realistic. Id. at 5. In addition, as it had done with Hickory's proposal, the price evaluation team solicited and considered realism questionnaires completed by the technical evaluators, which indicted LinTech's technical approach was consistent with its price proposal. Id.; See AR, Tab 22, LinTech Realism Questionnaire.

With respect to price reasonableness, the analyst first compared LinTech's price to the prices from all other offerors; LinTech's was third-lowest. AR, Tab 6, PER, at 1, 5. In addition, the analyst compared LinTech's fully burdened rates to the average, minimum, and maximum labor rates for the same labor categories on the Encore II contract; the agency explains that Encore II is a multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contract for information technology services, administered by DISA, that establishes maximum ceiling rates for specific labor categories for each Encore II awardee. Id. at 5; See LM/COS at 13 n.2; Supp. LM/COS at 11. Although LinTech's proposed rates were less than the average for the Encore II contract, the analyst found the rates to be reasonable. AR, Tab 6, PER, at 5.

After all price proposals were evaluated, the cost/price analyst concluded that only the proposal submitted by LinTech was complete, realistic, reasonable, and technically acceptable. Id.

The Source Selection

The SSEB reviewed the technical and price evaluations, and concluded that LinTech's proposal was strongest under both the technical/management and past performance factors, in addition to offering the lowest price that was complete, realistic, and reasonable. AR, Tab 9, SSEB Selection Recommendation, at 27-30. Accordingly, the SSEB recommended that award be made to LinTech. Id. at 29. Based on the SSEB's evaluation and the SSA's integrated assessment of all the factors, including price, the SSA concluded that the proposal submitted by LinTech represented the overall best value. AR, Tab 10, SSD, at 18.

On September 9, Hickory was notified of the award decision. AR, Tab 11, Notice of Award. Hickory timely requested and received a written debriefing, and this protest followed on September 17.

DISCUSSION

Hickory challenges DISA's evaluation of the protester's technical proposal and the agency's price realism analysis of LinTech's proposal. We have considered all of Hickory's contentions, and find that none of them are meritorious. We discuss Hickory's principal allegations below.

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. CEdge Software Consultants, LLC, B-409380, Apr. 1, 2014, 2014 CPD ¶ 107 at 4. 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. Kaseman, LLC, B-407797, B-407797.2, Feb. 22, 2013, 2013 CPD ¶ 65 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Tyonek Worldwide Servs., Inc; DigiFlight, Inc., B-409326 et al., Mar. 11, 2014, 2014 CPD ¶ 97 at 8.

Hickory argues that the agency improperly assigned a deficiency under the management subfactor based on Hickory's failure to describe how it would staff the requirement in the future. The protester argues that the RFP did not include such a requirement, and that, moreover, the staff Hickory offered were qualified and deserving of a higher rating. Protest at 13.

First, Hickory's assertion that the RFP did not require a staffing approach for the future is factually incorrect. The RFP here expressly required offerors to describe how their management and staffing approach would maintain effective performance "over the life of the contract." RFP at 42.

Moreover, there is no dispute about the acceptability of the staff Hickory proposed. The deficiency was assessed based on the protester's failure to demonstrate how its management and staffing approach would maintain capabilities over the life of the contract. RFP at 42. The record shows that Hickory's management and staffing approach focused on the roles and qualifications of individuals currently assigned to the project, without addressing how it would manage staff turnover in the future. AR, Tab 4, Hickory Proposal, Volume 2, at 9-11, App. A, Hickory Resumes, at A-1 to A-24. For example, Hickory outlined the roles for its current project lead and program manager, provided the [deleted] resumes of its current staff, and stated that "our entire team remains in place to support current and future requirements." Id. The agency found that Hickory's approach warranted a deficiency because it failed to indicate how it would identify future team members with the necessary qualifications if and when current team members depart. AR, Tab 10, SSD, at 9. Based on our review of the record, the agency's conclusion that Hickory's proposal failed to propose an approach to maintain capabilities over the life of the contract was reasonable.

The protester also alleges that the agency evaluated proposals unequally under the management subfactor. Hickory argues that neither the protester nor the awardee interpreted the RFP to require proposals to provide a process for replacing personnel over time, but the agency identified this as a deficiency only in Hickory's proposal and not in LinTech's. Supp. Protest at 9.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Walsh Construction Co. II, LLC, B-410015, et al., Sept. 25, 2014, 2014 CPD ¶ 291 at 5. However, where a protest alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offeror's proposals. APlus Technologies, Inc., B-408551.3, Dec. 23, 2013, 2014 CPD ¶ 12 at 7.

Here, as DISA points out, the offerors' staffing approaches were not the same. Supp. LM/COS at 19-20. LinTech's proposal addressed staffing over the life of the contract, by stating:

As an Oracle Gold Partner, LinTech maintains a database of over 1,000 Oracle certified personnel to rapidly recruit and onboard qualified personnel. This provides DPAP with a deep bench of

candidates throughout contract performance and affords us the ability to bring in expertise for changing requirements as required.

AR, Tab 5, LinTech Proposal, Volume 2, at 13. We agree that, on this record, the awardee's proposal addressed future staffing for the requirement, and the protester's did not. This basis for protest is denied.

Because we find unobjectionable the agency's assessment of this deficiency in Hickory's proposal, and because the RFP provided that an unacceptable rating would make an offer unawardable, we need not consider the remaining bases on which the protester challenged the agency's evaluation of Hickory's proposal.

Hickory also argues that the agency failed to perform an adequate price realism analysis of LinTech's low proposed price.⁵ In this regard, the protester generally alleges that the agency should have found that LinTech's lower price indicated that LinTech did not understand the agency's requirements, and that this should have been reflected as a performance risk in the evaluation of LinTech's proposal. Protest at 16. We have examined each of Hickory's arguments related to price realism and find no basis to sustain the protest.

Where the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. An agency may, however, provide for a price realism analysis in its solicitation to measure an offeror's understanding of the requirements, or to assess risk. East Silk Route Logistics, LLC, B-408308.22, Aug. 18, 2014, 2014 CPD ¶ 242 at 3. The nature and extent of an agency's price realism analysis are matters within the sound exercise of the agency's discretion. Star Contract Servs., LLC, B-409424, Apr. 23, 2014, 2014 CPD ¶ 133 at 6.

The record reflects that the agency performed a comprehensive price realism analysis, examining multiple elements of each offeror's proposal. As noted above, the solicitation advised offerors that proposed prices would be evaluated for realism,

⁵ Given our conclusion, above, that Hickory's proposal was reasonably found unacceptable, a protester in Hickory's position would ordinarily lack the requisite interest to challenge other aspects of the evaluation. However, since LinTech's proposal was the only one found acceptable, if the protest here were to be sustained, LinTech would also be ineligible for award and the agency would be faced with resoliciting the requirement. Since Hickory would be eligible to compete under such a resolicitation, Hickory is an interested party for purposes of challenging the evaluation of LinTech's proposal. See Allied Tech. Group Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 10 n.12.

using “one or more of the techniques set forth in FAR § 15.404.” RFP at 47. That section of the FAR lists various techniques, including “[c]omparison of proposed prices received in response to the solicitation” and “[c]omparison of proposed prices with independent Government cost estimates.” FAR §§15.404-1(b)(2)(i), and (v). The agency not only compared the prices received to each other and to the agency’s cost estimate, but also conducted a comprehensive review of LinTech’s level of effort and hours, and its fully-burdened labor rates. See AR, Tab 6, PER at 1, 5; Tab 9, SSEB Selection Recommendation, at 25. Based on its consideration of this information, the agency concluded that the documentation provided by LinTech substantiated its price. Given the agency’s consideration of the detailed elements underlying LinTech’s comparatively low price, and the protester’s failure to explain any way in which the agency’s evaluation of this information was flawed, we have no basis to question the reasonableness of the agency’s price realism evaluation.⁶ See Mil-Mar Century Corp., B-407644 et al., Jan. 17, 2013, 2013 CPD ¶ 39 at 10-11 (price realism evaluation of awardee’s significantly lower price was reasonably based on consideration of underlying cost elements, which formed basis of awardee’s low price).

The protest is denied.

Susan A. Poling
General Counsel

⁶ The protester argues, for example, that the agency should not have used rates under the Encore II contract to evaluate LinTech’s labor rates here. Comments at 18-20. We find no merit to these arguments, as the protester has not shown how this comparison was improper or inconsistent with the requirements of the RFP or FAR § 15.404-1.