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Decision

Matter of: Northrop Grumman Systems Corporation

File: B-410990.3

Date: October 5, 2015

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DIGEST

Protest of an agency's decision to take corrective action by reopening discussions with competitive range offerors and permitting them to fully revise their proposals, after the original awardee's price and evaluation ratings were disclosed, is denied where the agency reasonably concluded that reopening discussions was necessary to correct flaws in the agency's cost/price, technical, and past performance evaluations.

DECISION

Northrop Grumman Systems Corporation (Northrop Grumman) of Herndon, Virginia, protests the corrective action being taken by the Department of Defense, Defense Information System Agency (DISA), in connection with earlier protests of a task order issued to Northrop Grumman under request for proposals (RFP) No. E200603 for software development and integration services. Northrop Grumman contends that the corrective action, which included reopening discussions with offerors in the competitive range, is unreasonable and competitively prejudices Northrop Grumman, because its award price and evaluation ratings were disclosed after award.

We deny the protest.

BACKGROUND

The RFP was issued on July 23, 2014, to 26 firms holding ENCORE II indefinite-delivery, indefinite-quantity (IDIQ) contracts, and sought support for DISA's Global

Combat Support System-Joint Software Development and Integration Services. Agency Report (AR) at 2; Tab 6, Price Negotiation Mem., at 3; RFP amend. 7, at 1.¹ The RFP provided for the issuance of a hybrid task order (for a 3-month transition period, a base year, and 3 option years) on a best-value basis considering the following evaluation factors in descending order of importance: technical/management approach, present/past performance, and cost/price.² RFP amend. 7, at 1-3, 6. The non-cost evaluation factors, when combined were significantly more important than the cost/price factor. Id. at 6. The solicitation provided detailed instructions for submitting separate technical/management approach, present/past performance, and cost/price proposals, including sanitized and unsanitized copies of cost/price proposals. Id. at 3-9.

As relevant here, with regard to the technical/management approach factor, offerors were to propose and provide resumes for nine key personnel.³ Id. at 4; attach. 13, Key Personnel. The RFP stated that technical/management approach proposals would be evaluated, among other things, on whether the key personnel proposed meet position requirements and are capable of performing the tasks under the solicitation's performance work statement (PWS). See RFP amend. 7, at 4.

With regard to the present/past performance factor, offerors were to identify up to four current or past (performed within the past 3 years) efforts, or projects, and submit past performance questionnaires for each. See id. at 5-6; attach. 5, Past Performance Reference Sheet; attach 7, Past Performance Questionnaires. The RFP stated that the projects would be evaluated and assigned adjectival ratings for relevance and quality, and that relevance would be evaluated by comparing the project to the technical and cost/price evaluation factors. RFP amend. 7, at 5. The RFP also stated that present/past performance proposals would be assigned an overall performance confidence assessment rating. Id.; see attach. 8, Evaluation Rating Tables.

¹ The RFP was amended 11 times. Amendment 7 was the final, conformed version of the solicitation issued before the initial award decision. Subsequent amendments were issued during the agency's corrective action phase following protests of the award.

² The technical/management approach factor included six subfactors, also listed here in descending order of importance: information engineering, information assurance, external application integration, management approach, supply chain risk management, and transition plan. RFP amend. 7, at 3-5.

³ The key personnel positions included a program manager, deputy program manager, task order project manager, and various team leads. RFP amend. 7, at 4. Offerors could also propose additional key personnel. Id.

With regard to the cost/price factor, offerors, including proposed subcontractors, were to propose fixed prices (FFP) or cost-plus-fixed-fees (CPFF) under contract line items (CLINs) for eight task areas required under the PWS.⁴ Id. at 7-9; attach. 9, Cost/Price Spreadsheet (Schedule); attach 1, PWS, at 4. For each performance year and PWS task/CLIN, offerors were to propose a labor category mix, hours, and rates, as well as fringe, overhead, materials, general and administrative, and other costs.⁵ See RFP amend. 7, at 7-9; attach 9, Schedule. The RFP stated that cost/price proposals would be evaluated for completeness, reasonableness, unbalanced pricing, and realism. RFP amend. 7, at 7-8. Offerors were informed that a realism analysis would be performed on all CLINs, but that probable cost adjustments may only be made to CPFF and cost CLINs, and that total evaluated price would include all cost/prices for the transition period and each performance year. Id. Offerors were also advised that cost/price proposals could be rejected for being unrealistically low, unreasonably high, or unbalanced. Id.

Evaluation & Initial Award

On September 2, 2014, DISA received four proposals, including from Northrop Grumman (the incumbent), Solers, Inc., of Arlington, Virginia, and Pragmatics, Inc., of Reston, Virginia. AR at 3; Tab 6, Final Pre-Award Price Negotiation Mem., at 3. The agency established a competitive range among all four offerors, conducted discussions, and requested and evaluated final proposal revisions (FPR).⁶ AR, Tab 6, Final Pre-Award Price Negotiation Mem., at 3-7. Non-price proposals were evaluated by separate technical and past performance evaluation teams (TET and PET, respectively). See id. at 3. Cost/price proposals were evaluated by an

⁴ The FFP CLINs were: program management (CLIN 0001; task 1); maintenance (CLIN 0005; task 5); training (CLIN 0006; optional task 6); transition plan (CLIN 0007; optional task 7); and security and lab management (CLIN 0008; optional task 8). RFP amend. 7, attach. 9, Schedule; PWS at 4. The CPFF CLINs were: information engineering (CLIN 0002; task 2); information assurance (CLIN 0003; task 3); and external application integration (CLIN 0004; task 4). RFP amend. 7, attach. 9, Schedule; PWS at 4. The schedule also included two cost reimbursable CLINs: travel (CLIN 0009), which included a plug number for all offerors to use, and other direct costs (ODC) (CLIN 0010). See RFP amend. 7, at 9; attach. 9, Schedule.

⁵ For the 3-month transition period, offerors were to propose a fixed price for labor and propose costs for ODCs, and a plug number for travel costs was also provided. RFP amend. 7, at 1, 8; attach. 9, Schedule.

⁶ The fourth offeror was later found unacceptable under the transition plan technical subfactor and thus ineligible for award. AR, Tab 6, Final Pre-Award Price Negotiation Mem., at 8-9.

agency price analyst, with assistance from the TET. See id. at 6-7; Tab 5, Cost/Price Report.

As relevant here, the agency found that the offerors' final cost/price proposals were complete and reasonable, and that the offerors could realistically perform the effort at their proposed costs/prices. AR, Tab 6, Final Pre-Award Price Negotiation Mem., at 7. No probable cost adjustments were made to their final proposals. Id. DISA's contracting officer conducted a cost/technical tradeoff among the FPRs submitted by Northrop Grumman, Solers, and Pragmatics, and determined that Northrop Grumman's proposal provided the best value to the government. Id. at 8-19.

On December 24, DISA issued the task order to Northrop Grumman and notified the unsuccessful offerors. AR at 3. Pragmatics and Solers were provided written debriefings that disclosed Northrop Grumman's technical/management approach and present/past performance ratings and included summary discussions of the agency's cost/technical tradeoff between the awardee and the respective unsuccessful offeror. AR, Tab 7-8, Debriefings.

Solers and Pragmatics filed protests with our Office on January 5 and January 12, 2015, respectively, challenging DISA's cost evaluation, best-value determination, and selection decision.⁷ Solers also challenged the agency's technical and past performance evaluations. Northrop Grumman intervened in both protests.

Corrective Action

On January 21, DISA advised the parties that it would take corrective action in response to the protests. The agency stated that it would reevaluate Northrop Grumman's, Pragmatics's and Solers's FPRs; conduct additional discussions and request and evaluate further FPRs, if necessary; and make a new source selection decision. We subsequently dismissed Solers's and Pragmatics's protests as academic. Solers, Inc., B-410990, Jan. 22, 2015; Pragmatics, Inc., B-410990.2, Jan. 22, 2015 (non-digested dismissals).

During the corrective action process, DISA determined that there were flaws in its pre-corrective action cost realism analysis that required further discussions and proposal revisions. See AR at 4; Supp. AR at 3, 7. As discussed below, DISA contends that the cost realism analysis and source selection decision were inadequately documented and contained conclusory statements that failed to explain

⁷ The value of the task order at issue exceeds \$10 million. Accordingly, the procurement was within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

the evaluators' rationale for finding that the three offerors' vastly different proposals were realistic.

Discussions

On April 1, DISA re-opened discussions with Northrop Grumman, Pragmatics, and Solers, and provided evaluation notices informing each offeror of additional uncertainties and/or deficiencies assessed in the proposals. Supp. AR at 3-4; see AR, Tabs 16-18, 1st Corrective Action Evaluation Notices (ENs). Northrop Grumman and Solers were informed that their sanitized cost/price proposals failed to include a number of [DELETED], which created discrepancies with their respective technical/management approach proposals. AR, Tab 16, Northrop Grumman 1st ENs, at 4; Tab 18, Solers 1st ENs, at 13-14. Pragmatics was informed that its technical/management approach proposal, as well as its sanitized cost/price proposal, did not include a number of [DELETED], and that its present/past performance proposal did not address the [DELETED]. AR, Tab 17, Pragmatics 1st EN, at 3-6. Solers was also advised that its past performance proposal did not address the [DELETED]. AR, Tab 18, Solers 1st EN, at 5-7. The offerors were asked to submit responses to the evaluation notices with corresponding proposal revisions. See AR, Tabs 16-18, 1st ENs, at 1-2.

On that same date (April 1), DISA issued RFP amendment 8, which required, among other things, that sanitized cost/price proposals clearly identify the roles, responsibilities and job functions for each labor category proposed under each CLIN. Supp. AR at 3-4; RFP amend. 8, at 8-9. Amendment 8 also required offerors to correlate any non-ENCORE II IDIQ labor category proposed to a corresponding IDIQ labor category, or, alternatively, provide additional details (such as education, experience, certification requirements, etc.) for each non-IDIQ labor category so that DISA could perform a complete cost realism analysis. RFP amend. 8, at 9.

On April 7, DISA issued RFP amendment 9, which revised the projected performance period dates. RFP amend. 9, at 1. According to the agency, it anticipated that the change in the performance period dates would impact cost/price proposals.⁸ AR at 6.

On April 15, DISA received responses to its first post-corrective action evaluation notices and continued its cost realism analysis with the additional information

⁸ DISA amended the RFP again on April 14 to correct a discrepancy in the period of performance. RFP amend. 10, at 1, 8. DISA further amended the RFP on June 23 to revise the projected performance period dates. RFP amend. 11, at 1. The performance period itself (3-month transition period, base year, and 3 option years) has not been revised. See id.; RFP amend. 7, at 1.

submitted with the offerors' responses. Id.; see AR, Tabs 24-26, Responses to 1st ENs; Tab 27, Corrective Action Cost/Price Report. After reevaluation, Pragmatics's proposal was found [DELETED] because it proposed [DELETED]. AR at 11. Solers's proposal was found [DELETED] because it proposed [DELETED]. Id. at 11-12. Northrop Grumman's proposal was determined realistic. Id. at 6.

On June 23, DISA requested FPRs from all three offerors and permitted them to revise any aspect of their proposals. AR, Tabs 29-31, Requests for FPRs. On that same date, DISA also provided additional evaluation notices to Pragmatics and Solers identifying the aspects of their proposals that the TET found [DELETED], as discussed above. AR at 6-7; see Tabs 30-31, Request for FPRs, 2nd ENs. Northrop Grumman was not provided additional evaluation notices because, as noted above, its proposal was found realistic.

On June 26, Northrop Grumman filed the instant protest.

DISCUSSION

Northrop Grumman protests DISA's decision to reopen discussions and permit Pragmatics and Solers to fully revise their proposals. The protester contends that these actions competitively harm Northrop Grumman, because its award price and evaluation ratings were disclosed.⁹ Northrop Grumman asserts that DISA's pre-corrective action cost realism analysis was substantively correct, and that the alleged error that DISA was trying to correct was, at most, a perceived failure to document the analysis as explicitly as agency counsel would have liked.¹⁰ Northrop

⁹ In Northrop Grumman's view, DISA has essentially provided a "roadmap" for Pragmatics or Solers to win the new award, and the protester cites changes to their respective labor mixes to suggest that they are attempting to undercut Northrop Grumman's price. Supp. Comments at 2. Northrop Grumman also points out that it was not provided with Pragmatics's or Solers's prices and evaluation ratings.

¹⁰ DISA had evaluated pre-award final cost/price proposals using the following analysis techniques, among others: (1) proposed direct labor and indirect rates were compared to current government approved rates and market rates for identical labor categories from the Department of Labor's Bureau of Labor Statistics (BLS) and three independent salary data sources (Indeed.com, Glassdoor.com, and PayScale.com); (2) proposed labor rates were compared to offerors' IDIQ rates; (3) the TET conducted a technical review of offerors' labor mix, hours, and rates; (4) proposed indirect rates were compared, where available, to current provisional billing and forward pricing rates based on recent Defense Contract Management Agency comparisons to incurred cost submissions; and (5) offerors' rate structures
(continued...)

Grumman asserts that DISA has not otherwise identified any substantive, prejudicial errors in the cost realism analysis or initial award that required reopening discussions. In this regard, the protester maintains that DISA's corrective action was unreasonable and disproportionate to the alleged error, and yields no benefits to the procurement process that would outweigh the competitive harm to Northrop Grumman.

DISA readily acknowledges that the disclosure of Northrop Grumman's winning price puts the protester at a competitive disadvantage, but the agency argues that it reasonably determined that reopening discussions was necessary to correct deficiencies in its cost/price evaluation and to ensure that the new award decision would be based on a fair best-value determination. As discussed above, DISA contends that its pre-corrective action cost realism analysis and source selection decision were inadequately documented and contained conclusory statements that failed to explain the evaluators' rationale for finding that such vastly different proposals were realistic.¹¹ In this regard, DISA maintains that in taking corrective action, the agency could not determine that its cost evaluators' conclusions and DISA's earlier best-value determination were reasonable, and that the other competitive range offerors were not prejudiced. DISA argues that a more accurate and comprehensive realism analysis could have a significant impact on the agency's best-value tradeoff decision.¹²

Northrop Grumman responds that DISA had more tailored options to address the alleged evaluation error, such as seeking clarifications, limiting discussions, or restricting Pragmatics and Solers from revising their proposed labor mixes, FTEs, or technical/management approach proposals. Northrop Grumman claims that the evaluation notices that were provided to Pragmatics and Solers had nothing to do with the alleged error, i.e., further documenting DISA's earlier cost realism analyses. The protester also points out that simply because offerors propose different technical approaches does not necessarily mean that their proposals are unrealistic. Moreover, to the extent that DISA had new concerns during reevaluation about the offerors' proposed labor categories, key personnel, or past performance projects, Northrop Grumman complains that the agency should have addressed such concerns during its pre-award discussions.

(...continued)

for various cost elements were analyzed and, where available, confirmed by the Defense Contract Audit Agency. See AR, Tab 5, Cost/Price Report, at 1-8, 11-13.

¹¹ According to DISA, the labor categories, hours, and mixes proposed by Northrop Grumman, Pragmatics, and Solers varied greatly.

¹² DISA states that the contracting officer and TET were provided further guidance and legal counsel on conducting and properly documenting their new cost realism analysis. See AR at 4-5; Tabs 12-13, Cost Realism Guidance Emails.

DISA disputes the protester's assertion that the information needed to perform a proper cost realism analysis could be obtained through clarifications or limited discussions with the offerors. Rather, DISA argues that in order to correct key personnel discrepancies and unrealistic aspects of their cost/price proposals, offerors would have to make corresponding revisions to their technical/management approach proposals. In this respect, DISA asserts that its cost evaluators could not perform a proper realism analysis or recommend cost adjustments without knowing what each proposed labor category would be performing under each CLIN. DISA also maintains that its discussions had to be meaningful and permit the offerors to address new technical deficiencies that were uncovered as part of the agency's reevaluation.¹³ In any event, DISA contends that it properly examined whether its earlier non-price evaluations required further corrective action, because Solers specifically protested the agency's technical and past performance evaluations.

Based on our review of the record and the parties' arguments, we find that any competitive harm to Northrop Grumman by the disclosure of its award price, is outweighed by DISA's reasonable concern that its earlier best-value determination was tainted by a flawed cost/price evaluation that prejudiced other competitive range offerors. Contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. The Matthews Group, Inc. t/a TMG Constr. Corp., B-408003.2, B-408004.2, June 17, 2013, 2013 CPD ¶ 148 at 5; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 8. As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Evergreen Helicopters of Alaska, Inc., B-409327.3, Apr. 14, 2014, 2014 CPD ¶ 128 at 8. The decision whether to reopen discussions is largely a matter left to the agency's discretion. King Farm Assocs., LLC; One Largo Metro LLC; Metroview Dev. Holdings, LLC, B-404896.10 et al., Dec. 5, 2011, 2012 CPD ¶ 6 at 11.

We have repeatedly observed that the possibility that the contract may not have been awarded based on the most advantageous proposal has a more harmful effect on the integrity of the competitive procurement system than does the possibility that the original awardee, whose price has been properly disclosed, will be at a disadvantage in the reopened competition. The Matthews Group, Inc. t/a TMG Constr. Corp., supra at 6, citing Jackson Contractor Group, Inc., B-402348.2, May 10, 2010, 2010 CPD ¶ 154 at 3; Partnership for Response and Recovery, B-298443.4, Dec. 18, 2006, 2007 CPD ¶ 3 at 3-4; PCA Aerospace, Inc., B-293042.3, Feb. 17, 2004, 2004 CPD ¶ 65 at 4. Where the corrective action taken by an agency

¹³ Northrop disputes DISA's argument that it had to give all offerors unrestricted license to revise their proposals, and in any event asserts that this was a problem of DISA's own creation.

is otherwise unobjectionable, a request for revised price proposals is not improper merely because the awardee's price has been exposed. McKean Def. Group--Info. Tech., LLC, B-401702.2, Jan. 11, 2010, 2010 CPD ¶ 257 at 3. While we have recognized a limited exception to that rule where the record establishes that there was no impropriety in the original evaluation and award, or that an actual impropriety did not result in any prejudice to offerors, id., as explained below, DISA has presented both a flaw in its cost/price evaluation requiring corrective action, and a reasonable basis for reopening the competition.

With regard to the error in the agency's cost realism analysis, the record supports DISA's assertion that the analysis was insufficient and conclusory. DISA's concern--that the evaluators failed to explain their rationale for finding the vastly different proposals realistic--provided a reasonable basis for the agency to question its best-value determination. See PCA Aerospace, Inc., supra (dramatic price differentials may reasonably be interpreted to suggest that offerors had dissimilar understandings of the requirements and agencies are not required to ignore the reasonable possibility that the disparate prices received do not accurately reflect the competitive marketplace, and that the award based on those prices may not reflect the most advantageous proposal). Moreover, the record demonstrates that the agency's cost evaluators overlooked the omission of a number of [DELETED] by all three offerors, including Northrop Grumman.

We also find that DISA reasonably determined that it should reopen discussions and permit the competitive range offerors to submit fully revised FPRs. In our view, DISA was not required to tailor the scope of its corrective action to clarifications or limited discussions. Generally, offerors in response to an agency request that discussions be opened or reopened may revise any aspect of their proposals they see fit--including portions of their proposals which were not the subject of discussions. Partnership for Response and Recovery, supra (agency reasonably believed that limiting price revisions was unworkable because of the difficulty of linking pricing changes to particular discussion questions and in view of the changes in the period of performance that were necessitated by the prior protest).¹⁴ Moreover, as part of its corrective action, an agency can, as here, amend the RFP to add requirements that will require the submission of revised proposals and is not required to limit proposal revisions to only address these changes. Norvar Health Servs.--Protest and Recon., B-286253.2 et al., Dec. 8, 2000, 2000 CPD ¶ 204 at 4-6.

¹⁴ However, in appropriate circumstances where the agency has established a reasonable basis for doing so, our Office has not objected to an agency's decision to limit discussions under a negotiated procurement in implementing corrective action in response to a protest. See Rel-Tek Sys. & Design, Inc.--Modification of Remedy, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 3.

As described above, during its reevaluation, DISA discovered that the offerors' (including the protester's) FPRs contained deficiencies and discrepancies in their technical, past performance, and/or cost/price volumes. Where an agency identifies new weaknesses in a proposal during a reevaluation of that proposal in an acquisition where discussions have previously occurred, the agency is required to discuss the new weaknesses with the offeror. Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 10. The key fact in these cases is, as here, that the concerns at issue relate to the proposals as they were prior to discussions. Id. Moreover, the disclosure of the earlier awardee's contract price alone does not provide a compelling basis for the failure to provide for meaningful discussions. American K-9 Detection Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 9. The possibility that an award may not have been based on the most advantageous proposal because, for example, discussions are not meaningful, has a more harmful effect on the integrity of the competitive procurement system than the fear of an auction; generally the statutory requirements for competition take priority over any possible concern regarding auction techniques. Id.; see Partnership for Response and Recovery, supra.

In short, this is a matter in which the agency has considerable discretion and, absent a showing that this discretion is being abused, we will not substitute our views for DISA's on how the agency should undertake corrective action. McKean Def. Group--Info. Tech., LLC, supra (protest challenging agency's corrective action, which included opening discussions with all offerors in the competitive range, is denied where the agency reasonably concluded that in addition to correcting the flawed cost realism evaluation, discussions should be opened with the offerors, rather than proceeding with award on the initial proposals); see ZAFER Constr. Co., B-401871.4, Feb. 1, 2010, 2010 CPD ¶ 66 at 3 (protest challenging agency's corrective action, which included allowing all offerors whose proposals were in the competitive range to submit a revised proposal, is denied where the agency reasonably concluded that offerors should be given the opportunity to submit completely revised proposals because the time lapse since proposals were first submitted suggests that the original price proposals may no longer accurately reflect the cost of the project).¹⁵

The protest is denied.

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General Counsel

¹⁵ As noted above, the RFP has been amended twice to change the projected performance dates, and DISA anticipates that the change will impact cost/price proposals.