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Decision

Matter of: Cherokee Nation Technology Solutions, LLC

File: B-411140

Date: May 22, 2015

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Steven J. Koprince, Esq., and Amanda M. Wilwert, Esq., Koprince Law LLC, for AGEISS, Inc., the intervenor.

Christine Piper, Esq., Department of the Air Force, for the agency.

K. Nicole Willems, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the technical and past performance factors is denied where the agency evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging agency's selection of a lower-rated, lower-priced proposal for award is denied where the record shows that the agency evaluation was consistent with the solicitation's best value award criteria.
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DECISION

Cherokee Nation Technology Solutions, Inc., a small business located in Catoosa, Oklahoma, protests the issuance of a task order to AGEISS, Inc., located in Evergreen, Colorado, under request for proposals (RFP) No.

FA8903-13-R-9999-R062, issued by the Department of the Air Force, for advisory and assistance services. Cherokee, the incumbent contractor, challenges the agency's evaluation of its proposal under the technical and past performance factors, as well as the agency's best value tradeoff decision.

We deny the protest.

BACKGROUND

The RFP, issued on December 11, 2014, sought programmatic, financial, and specialized technical support for the Air Force's environmental restoration and military munitions response programs at Joint Base San Antonio in Lackland, Texas, under the Global Engineering, Integration, and Technical Assistance 2011 (GEITA11) contract. The RFP contemplated the issuance of a fixed-price task order with a 12-month base period of performance and two 12-month options. The solicitation established a best-value selection process considering, in descending order of importance, technical, past performance, and price factors.¹ RFP at 2.

The technical factor was comprised of the following two subfactors (in order of importance): (1) technical capability/understanding of the requirement; and (2) personnel/team qualifications. Id. at 3. In connection with the first technical subfactor, the RFP instructed offerors to submit an explicit technical plan describing the offeror's proposed concept of operations as well as methods and processes to perform the task order objectives and to satisfy all the requirements in the performance work statement (PWS). Id. at 4. The RFP also established a list of specific requirements for the technical plan. Id.

With regard to the second technical subfactor, the RFP advised offerors to submit a comprehensive plan that demonstrated knowledge and capabilities with the environmental restoration program, the military munitions response program, the program requirements development (PRD) process, and performance based remediation, or the ability to obtain the resources needed to perform the task order prior to the start of performance. Id. at 5. Offerors were also required to document the relevant qualifications of proposed management, technical onsite, and reach-back personnel supporting the PWS requirements under the second technical subfactor. Id.

The RFP provided for two distinct but related assessments under each technical subfactor: (1) a technical rating; and (2) a technical risk rating. Id. at 3. The technical rating was to reflect the quality of the offeror's proposed solution for meeting the requirements; possible ratings ranged from outstanding to

¹ The RFP defined best value as "the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement." RFP at 2. The RFP allowed for award to a higher-rated, higher-priced offeror if the contracting officer determined that the technical and/or overall business approach and/or past performance of the higher-priced offeror outweighed the price difference. Id.

unacceptable.² Id. The technical risk rating was to reflect the risk associated with the technical approach in meeting the requirement based on the weaknesses identified; the potential for schedule disruption, increased costs, or degradation of performance; the need for increased government oversight; or the likelihood of unsuccessful performance. Id. at 4. Proposals were to be rated as low, moderate, or high risk under each of the technical subfactors. Id.

Regarding the past performance evaluation factor, the RFP required offerors to submit a maximum of three project summaries that described the experience of the offeror as it related to the procurement. RFP at 5. The RFP provided for the assignment of a performance confidence rating for each project, which was to be based on the recency and relevancy of the project, and the quality of the offeror's performance. Id. at 7-8. To qualify as recent, the RFP required that a project be ongoing or have been performed during the five years prior to the issuance of the solicitation. Id. Project relevancy was to be assessed based on how closely the services performed related to the scope, magnitude, and complexity of the RFP's requirements.³ Id. Performance quality was to be assessed based on all available performance information for the projects.⁴ Id. Based on the above assessments, the agency was to assign an integrated performance confidence rating representing an overall evaluation of contractor performance for all the projects submitted by the offeror. Id. at 8. The RFP provided that more recent and relevant experience would have a greater impact on the performance confidence assessment than less recent or relevant effort. Id.

² As is relevant here, an outstanding proposal is a proposal that "meets requirements and indicates an exceptional approach and understanding of the requirements. The proposal contains multiple strengths and no deficiencies" (emphasis in original). RFP at 3. A good proposal is a proposal that "meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains at least one (1) strength and no deficiencies" (emphasis in original). Id. The RFP defines a strength as "[a] significant aspect of an Offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the government during contract performance." RFP at 5.

³ Relevancy ratings ranged from very relevant to not relevant. RFP at 7.

⁴ Performance quality assessment ratings ranged from exceptional to not applicable. Id.

The agency received six proposals, in response to the RFP. Following evaluations, Cherokee and AGEISS were rated as follows:

		Cherokee	AGEISS
Technical			
Technical Capability/ Understanding	Technical Rating	Good	Acceptable
	Risk Rating	Low	Low
Personnel/ Team Qualifications	Technical Rating	Good	Good
	Risk Rating	Low	Low
Past Performance		Satisfactory Confidence	Satisfactory Confidence
Price		\$12,400,457	\$11,404,145

AR at 3; AR, Tab 25, Protest Award Debrief Slides at 18.

The evaluators assigned Cherokee’s proposal a strength under the technical capability/understanding subfactor for demonstrating extensive knowledge and a sound understanding of the PRD process. AR, Tab 17, Technical Evaluation Report at 14-17. In addition, the evaluators assigned the protester’s proposal a strength under the personnel/team qualifications subfactor on the basis that all Cherokee personnel demonstrated extensive knowledge and hands-on experience performing the work identified in the PWS. Id. Regarding Cherokee’s past performance, the agency considered two of the protester’s three projects to be very relevant and of very good quality, and the third project to be relevant and of satisfactory quality. Id. at 17.

After reviewing the evaluators’ findings, the contracting officer (CO) selected AGEISS for the task order. In comparing AGEISS’s proposal to Cherokee’s proposal, she noted that AGEISS was less highly rated than Cherokee under technical subfactor 1; the two proposals were rated essentially equal for technical subfactor 2 and past performance; and AGEISS’s price was \$996,312 less than Cherokee’s. She further noted that while Cherokee’s proposal had been assigned a strength (and, as result, rated good) under the first technical subfactor for demonstrating extensive knowledge and sound understanding of the PRD process, AGEISS’s proposal--despite its rating of acceptable--also demonstrated a clear understanding of, and experience with, the PRD process. AR, Tab 23, CO Decision Document at 24. The CO concluded that while price was the least important evaluation factor, the benefits associated with Cherokee’s higher-rated proposal were not sufficient to justify paying Cherokee’s higher price. Id.

The CO notified the unsuccessful offerors of the agency's decision to issue the task order to AGEISS on January 30, 2015, and Cherokee received a debriefing on February 9. CO's Statement at 15. This protest followed on February 13.⁵

DISCUSSION

Cherokee contends that it was unreasonable and inconsistent with the RFP for the agency to assign its proposal only a single strength (pertaining to its overall approach) under each technical subfactor. Cherokee also challenges the agency's evaluation of its past performance, arguing that the agency gave too much weight to its least relevant project. Finally, Cherokee argues that the agency did not conduct a proper best-value tradeoff and instead issued the task order on a lowest-price, technically-acceptable basis.⁶ As discussed below, we find the protester's complaints to be without merit.

Technical Factor

Cherokee argues that the agency should have assigned multiple strengths to its proposal under each of the technical subfactors, as opposed to assigning one overarching strength under each subfactor. Comments on AR at 8. According to Cherokee, the agency's approach precluded offerors from receiving the multiple strengths needed for an outstanding rating. Id. at 9. The agency contends that it was not required to assign a strength for each individual aspect of Cherokee's proposal and asserts that its approach was consistent with the RFP.⁷ AR at 6.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. CEdge Software Consultants LLC, B-408203, July 19, 2013, 2013 CPD ¶ 177 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the

⁵ The estimated value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery/indefinite-quantity (IDIQ) contracts. 10 U.S.C. 2304c(e)(1)(B).

⁶ In its initial protest, Cherokee also challenged the agency's evaluation of the awardee's proposal. Our Office dismissed that challenge, in a partial dismissal issued on March 23, after concluding that the protester's allegations were based on speculation.

⁷ To the extent the protester is challenging the evaluation criteria set forth in the RFP, it is an untimely challenge to the terms of the solicitation that should have been filed prior to the time for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Id.

As noted above, the agency assigned Cherokee's proposal a single strength under the first technical subfactor for the protester's demonstrated extensive knowledge and hands-on experience with the PRD process. AR, Tab 17, Technical Evaluation Report at 15. The evaluators also assigned Cherokee's proposal a single strength under the second technical subfactor based on their finding that all personnel proposed by Cherokee demonstrated extensive knowledge and hands-on experience to perform the work identified in the PWS. Id. at 16. Cherokee asserts that its proposal should have been assigned multiple strengths for the multiple positive aspects of its proposal mentioned in the evaluation record. Comments on AR at 8.

The record reflects that the agency conducted a thorough evaluation of Cherokee's proposal and documented its findings in a detailed narrative. The narrative for both technical subfactors mentions certain specific aspects of Cherokee's proposal that, according to the protester, should have merited additional strengths. AR, Tab 17, Technical Evaluation Report at 15-16. We disagree. While discrete aspects of Cherokee's proposal were acknowledged in the evaluation, those positive features are reasonably seen as components of the overall strengths assigned.⁸ We have no basis to conclude that the agency acted unreasonably in deciding that each component did not independently qualify as a separate strength. Moreover, the mere fact that the protester's proposal was assigned only a single strength under each subfactor fails to show that the agency's evaluation was unreasonable.

Also, it is clear from the CO's award decision that she was on notice of the evaluators' findings pertaining to positive aspects of the protester's proposal at the time she made her selection decision. For example, the CO noted that Cherokee demonstrated "all-encompassing knowledge" and experience with Air Force environmental restoration program systems identified in the PWS, and that, as the incumbent, Cherokee would require no transition, training, or down time for badging. AR, Tab 23, CO Decision Document, at 5. When proposals are compared for purposes of a best value tradeoff decision, the number of

⁸ For example, under the first subfactor, the evaluators acknowledged that CNTS already had staff in place with established off-site space for PRD support. AR, Tab 17, Technical Evaluation Report at 14. Likewise, under the second subfactor, the evaluators noted that the proposed task order manager had "vast experience" with managing large task orders within the Air Force environmental restoration program. Id. at 26.

identified strengths is not dispositive; rather, it is the qualitative information underlying the ratings that the source selection authority should consider in assessing whether and to what extent meaningful differences exist between proposals. Walton Constr.--a CORE Co., LLC, B-407621, B-407621.2, Jan. 10, 2013, 2013 CPD ¶ 29 at 6. Since the record shows that the CO in fact considered the various underlying positive aspects of Cherokee's proposal, we have no basis to question the reasonableness of the evaluation.

Past Performance

Cherokee also contends that its proposal merited a substantial confidence rating, the highest possible past performance rating, rather than the satisfactory confidence rating assigned by the agency.⁹ Comments on AR at 10-13. Specifically, Cherokee argues that it received a lower rating because the agency gave too much weight to its third project, which was considered less relevant and of a lower performance quality than its other two projects.¹⁰ Id. The agency argues that the proper weight was accorded to each of Cherokee's projects, and adds that even the higher-rated projects submitted by Cherokee did not demonstrate exceptional past performance that would warrant the highest confidence rating. CO's Statement at 20; AR at 16.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; see MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably-based evaluation ratings, and an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7

⁹ The RFP established that a substantial confidence rating is warranted if, based on the offeror's recent/relevant performance record, the government has a high expectation that the offeror will successfully perform the required effort. RFP at 6. A satisfactory confidence rating, however, is warranted if, based on the offeror's recent/relevant performance record, the government only has a reasonable expectation that the offeror will successfully perform the required effort. Id.

¹⁰ The third project received the lowest relevancy and quality ratings of the three projects, and had the lowest dollar value. AR at 14. The first project was valued at \$13,915,919. Id. The second project was valued at \$7,613,066.28. Id. The third project was valued at \$3,376,997. Id.

The record here fails to support the protester's contention that the agency gave undue weight to Cherokee's third project. The CO explained that in arriving at the rating of satisfactory confidence, she weighed the two very relevant projects more heavily than the third relevant project, but did not completely discount the relevant project. According to the CO, the satisfactory confidence rating "was based upon the fact that in performing very relevant past projects [Cherokee] had very good performance, but not exceptional." CO's Statement at 20. While the protester maintains that its very good performance on the very relevant contracts should necessarily have resulted in a high expectation of successful performance (and thus a substantial confidence rating), it has not demonstrated that it was unreasonable for the CO to have only a reasonable (as opposed to a high) expectation of successful performance. See Glen/Mar Construction, Inc., B-410023, Oct. 10, 2014, 2014 CPD ¶ 302 at 6 (protester disagreed with the agency's performance confidence rating but failed to demonstrate that the agency's performance expectations and resulting rating were unreasonable, based on the representative performance examples provided in the protester's proposal).

Best Value Tradeoff

Finally, Cherokee asserts that the agency's best value decision was improper. Cherokee contends that the agency failed to conduct and document a comparative analysis of the proposals, and that the selection of AGEISS's lower-rated, lower-priced proposal was not consistent with the solicitation's evaluation scheme providing that the non-price factors were more important than price. Comments on AR at 13. The agency argues that the selection of AGEISS's lower-rated, lower-priced proposal was proper where the agency reasonably documented the basis for its conclusion that the cost premium involved in selecting the protester's higher-rated, higher-priced proposal was not justified. AR at 17-19.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical trade-offs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Halfaker and Associates, LLC, B-407919, B-407919.2, April 10, 2013, 2013 CPD ¶ 98 at 12. Even where, as here, technical merit is significantly more important than cost, an agency may properly select a lower-cost, lower-rated proposal if it reasonably decides that the cost premium involved in selecting a higher-rated, higher-cost proposal is not justified. Id.

The record here does not support Cherokee's contention that the CO's comparison of the proposals was inadequate, or that the award decision was inconsistent with the solicitation's award scheme. The selection decision demonstrates that the CO thoroughly reviewed the technical evaluation report before reaching her award decision. In her selection decision, the CO recognized that the RFP established

price as the least important of the evaluation factors. AR, Tab 23, CO Decision Document at 24. The CO also acknowledged that Cherokee's proposal had an advantage under the first technical subfactor based on the protester's extensive knowledge and a sound understanding of the PRD process. Id. According to the CO, the benefit associated with Cherokee's technical advantage was not worth the additional \$996,312 cost, given that AGEISS's proposal also demonstrated a clear understanding and experience with the PRD process. Id. Cherokee has not shown that the CO's judgment in this regard was unreasonable.

The protest is denied.

Susan A. Poling
General Counsel