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Decision

Matter of: Quadrant Training Solutions, JV

File: B-422339

Date: May 7, 2024

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DIGEST

Protest that agency unreasonably failed to consider the performance risk of the awardee's low price is dismissed for failure to state a valid basis of protest where the fixed-price solicitation did not contemplate a price realism evaluation.

DECISION

Quadrant Training Solutions, JV, a small business of Oviedo, Florida, protests the issuance of a task order to Aviation Training Consulting, LLC, a small business of Saint Altus, Oklahoma, under fair opportunity proposal request (FOPR) No. FA8621-23-R-6276, issued by the Department of the Air Force for aircrew instruction and courseware development services. The protester argues that the agency unreasonably failed to consider the risk inherent in the awardee's low price during the evaluation of proposals and in the best-value tradeoff analysis.

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

BACKGROUND

On December 14, 2022, the agency issued the solicitation as a small business set-aside to firms holding the agency's training system acquisition III multiple-award, indefinite-delivery, indefinite-quantity contracts. Contracting Officer's Statement (COS)

at 3; Agency Report (AR), Tab 6, FOPR Letter at 1.¹ The FOPR sought proposals for a training solution that provides courseware, instruction, and training aids to professional military aviators at Kirkland Air Force Base, Davis-Monthan Air Force Base, Joint Base Andrews, and Moody Air Force Base. COS at 2; see *generally*, AR, Tab 31, FOPR Revision 3, Performance Work Statement (PWS). The solicitation contemplated issuance of a fixed-price task order for a 4-month transition period, one base year, four 1-year option periods, and one 6-month extension of service option period. AR, Tab 6, FOPR Letter at 2.

The task order competition was conducted using the fair opportunity ordering procedures at Federal Acquisition Regulation (FAR) section 16.505(b)(1). AR, Tab 28, Initial FOPR, Evaluation Factors at 135. The FOPR advised that award would be made to the offeror whose proposal represented the best value to the government considering the following three factors: (1) technical experience; (2) technical capability; and (3) price. *Id.* Proposals would first be evaluated under the technical experience factor on a pass/fail basis, where only those proposals rated acceptable would be further evaluated under the remaining factors. *Id.* at 135, 137. Under the technical capability factor, the agency would assess a combined technical/risk rating based on an evaluation under three subfactors: (1) training management; (2) aircrew instruction; and (3) courseware development.² *Id.* at 137-138. The solicitation then contemplated a tradeoff between the technical capability and price factors, where technical capability would be significantly more important than price. *Id.* at 135.

For technical capability, offerors were instructed to submit the “processes for courseware development, student instruction, and student service operations demonstrating [their] understanding of and ability to perform contract requirements.” AR, Tab 32, FOPR Revision 4, Instructions to Offerors at 14. The solicitation advised that the agency would consider specific areas under each technical capability subfactor and “assign a strength for any of the . . . areas when the offeror demonstrates an approach/process that will result in a benefit to the Government.” AR, Tab 28, Initial FOPR, Evaluation Factors at 139. Offerors were also required to “identify any risk (if any) associated with the proposed processes for all subfactors and the mitigations the offeror intends to implement to reduce/eliminate these risks.” AR, Tab 32, FOPR Revision 4, Instructions to Offerors at 14. In this regard, the solicitation advised that “[o]nly those proposals determined to be technically acceptable with low or moderate risk . . . [would] be considered for award.” AR, Tab 28, Initial FOPR, Evaluation Factors at 137-138. In assessing risk, the agency would evaluate the “probability of [any weakness] negatively affecting performance,” based on the offeror-identified risks and

¹ The solicitation was revised four times. COS at 6. References to the solicitation are to the most recently revised versions of applicable parts as confirmed by the agency. See Resp. to Req. for Final Versions of FOPR Documents at 1.

² The technical capability factor and each of its three subfactors would be assigned a rating of outstanding, good, acceptable, or unacceptable. AR, Tab 28, Initial FOPR, Evaluation Factors at 138.

proposed mitigations, as well as any agency-identified risks. *Id.* at 138. The solicitation further informed offerors that the agency “must be assured that each offeror has the ability to perform--and will perform--the requirements of the . . . Performance Work Statement” for a proposal to be found technically acceptable. *Id.* at 137.

For price, the solicitation advised that each offeror’s price proposal would be evaluated for completeness, reasonableness, and unbalanced pricing. AR, Tab 32, FOPR Revision 4, Instructions to Offerors at 17; AR, Tab 28, Initial FOPR, Evaluation Factors at 140. As relevant here, the solicitation informed offerors that a “[p]rice realism analysis will not be performed.” AR, Tab 9, FOPR Instructions to Offerors at 14. The solicitation also advised that price reasonableness would be established using adequate price competition or any of the techniques in FAR section 15.404. AR, Tab 10, FOPR Evaluation Factors at 8.

The agency received five timely proposals, including proposals from Quadrant and Aviation. COS at 6-7. Following the evaluation, the agency assigned the following ratings to Quadrant’s and Aviation’s proposals:

| | QUADRANT | AVIATION |
|-------------------------------|----------------------|----------------------|
| Technical Experience | Acceptable | Acceptable |
| Technical Capability | Acceptable | Acceptable |
| Training Management | Acceptable | Acceptable |
| Aircrew Instruction | Acceptable | Acceptable |
| Courseware Development | Acceptable | Acceptable |
| Price | \$280,273,092 | \$159,418,715 |

AR, Tab 13, Fair Opportunity Decision Document (FODD) at 25.

In the best-value tradeoff analysis, the source selection authority (SSA) noted that three proposals, including those of Quadrant and Aviation, were evaluated as acceptable under the technical capability factor based on an assessment of having no strengths and no worse than moderate risk. *Id.* The SSA then determined that, “[s]ince [Quadrant] did not present a higher rated technical approach that would warrant a tradeoff,” the higher priced Quadrant was not recommended for award. *Id.* Despite identifying some strengths in the other offerors’ proposals, the SSA found that “[n]one of the offerors have demonstrated strengths that merited the necessary price tradeoff.” *Id.* at 26. Based on this assessment, the SSA concluded that the “price premium involved in selecting a higher-rated, higher-priced proposal is not justified in light of the acceptable level of technical competence available at a lower price” and made award to Aviation. *Id.* After receiving a debriefing, Quadrant filed this protest.³ COS at 8.

³ The value of the task order is in excess of \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under Department of Defense multiple award IDIQ contracts. 10 U.S.C. § 3406(f); see 4 C.F.R. § 21.5(l).

DISCUSSION

Quadrant's numerous challenges to the agency's evaluation of the awardee's proposal boil down to the allegation that the agency improperly failed to consider the risks posed by the awardee's low price. The protester first contends that the agency's technical evaluation failed to appropriately consider the risk of the awardee's inability to perform at the awarded price. Protest at 6-7. The protester also asserts that, considering the significant differences among the proposed prices, it was unreasonable for the agency to find the awardee's low price to be reasonable. Protest at 7. Finally, the protester contends that the agency's best-value analysis was flawed because it failed to compare the technical merits of proposals and failed to consider the risk of the awardee's low price. Protest at 7-8. For the reasons discussed below, we find the protester's allegations to be legally insufficient or otherwise lacking in merit.⁴

Evaluation of Technical Risk

Quadrant first argues that the agency should have found the awardee's proposal technically unacceptable because the solicitation required the agency to "be assured that each offeror has the ability to perform--and will perform--the requirements" to be found technically acceptable. Protest at 7; Comments at 4-6, *citing* AR, Tab 28, Initial FOPR, Evaluation Factors at 138. In this regard, the protester asserts that the awardee's low price is attributable to insufficient staffing and inadequate wages for the proposed staffing, such that it should have been apparent to the agency that the awardee "cannot perform at the awarded price." Protest at 6; Comments at 3-5. The protester argues that the agency should therefore have found the awardee's proposal to be technically unacceptable. *Id.*

The agency responds that the solicitation did not require the agency to consider price in its technical evaluation or risk assessment. MOL at 12-15. The agency also argues that the protester's contention that the agency was required to consider the awardee's ability to perform at the awarded price amounts to an untimely challenge to the terms of

⁴ Although our decision does not address every argument made by the protester, we have fully considered each of them and find that none provide a basis to sustain the protest. For example, the protester initially argued that its proposal should have been assessed a rating higher than acceptable under the technical capability factor because the proposal presented an exceptionally low risk, even though it was not assessed a strength. Protest at 6. The protester also asserted that the agency improperly engaged in "technical leveling" by failing to assign strengths to any offeror's technical proposal. *Id.* The agency substantively responded to these allegations in its report, see Memorandum of Law (MOL) at 10-12, but the protester did not address the agency's response in its comments. See *generally*, Comments. Quadrant's failure to comment on the agency's response renders those arguments abandoned and we will not consider them further. *Booz Allen Hamilton, Inc.*, B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 5 n.9.

the solicitation. *Id.* The agency notes that the solicitation did not provide for the evaluation of staffing levels and expressly informed offerors that a price realism analysis would not be performed. *Id.* We agree.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *IR Technologies*, B-414430 *et al.*, June 6, 2017, 2017 CPD ¶ 162 at 7; *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Where a protest fails to set forth sufficient factual and legal grounds for protest, we will dismiss the protest. 4 C.F.R. § 21.1(i); see *IR Technologies*, *supra* at 6-7.

The solicitation here provided for the evaluation of technical capability and price as separate evaluation factors. AR, Tab 28, Initial FOPR, Evaluation Factors at 137. Under technical capability, offerors were instructed to describe their processes for meeting specific requirements under each subfactor and to identify any risks associated with those processes along with proposed mitigations. AR, Tab 32, FOPR Revision 4, Instructions to Offerors at 14. Proposals were to be evaluated on whether the offeror “provided a sound process for meeting” the requirements set out in applicable PWS sections. AR, Tab 28, Initial FOPR, Evaluation Factors at 139. While the solicitation provided for “combined technical/risk” ratings for the technical capability factor, the risk assessment under that factor was limited to the evaluation of offerors’ technical capability proposals, including offerors’ self-identified risks and proposed mitigations, as well as any risks identified by the agency. *Id.* at 138. In this regard, the solicitation advised that the agency would assess a technical proposal as having low, moderate, or high risk based on whether the proposal “contain[s] weakness(es) which may present a [low, modest, or high] probability of negatively affecting performance.” *Id.*

As an initial matter, there is no basis for the protester’s argument that it was unreasonable for the agency not to consider staffing or wage levels in its technical risk assessment. See Protest at 6; Comments at 3-5. The protester does not point to any solicitation requirement for such an evaluation, and instead concedes that the solicitation does not specifically require such an evaluation. See Comments at 5 (“staffing was not a separately called out evaluation criterion”). We note that the solicitation did not require offerors to provide proposed staffing or wages or indicate that the agency would evaluate staffing or wages. See *id.*; AR, Tab 28, Initial FOPR, Evaluation Factors at 139. The protester nevertheless contends that it was unreasonable for the agency to ignore the awardee’s “patently insufficient staffing,” as evidenced by Aviation’s low price, because the low staffing had a “high probability of negatively affecting performance.” Comments at 5. However, because the solicitation did not contemplate the evaluation of proposed staffing, this argument fails to state a factually or legally sufficient basis of protest.

Moreover, the protester's argument that technical risk exists because the awardee's proposed price is too low to perform the required work essentially raises a challenge to the realism of the awardee's price. See *Facility Servs. Mgmt.*, B-420102.3, Mar. 29, 2022, 2022 CPD ¶ 93 at 6; see also *NJVC, LLC*, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8 (consideration of whether an offeror's fixed price is so low that it creates a risk that the firm cannot perform its proposed technical solution at the price offered is a price realism analysis).

Because below-cost prices are not inherently improper, offerors competing for award of a fixed-price contract must be given reasonable notice that their business decision to submit a low-priced proposal will be viewed negatively by the government in assessing the risk associated with its proposal. *Triad Int'l Maint. Corp.*, B-408374, Sep. 5, 2013, 2013 CPD ¶ 208 at 11. In other words, offerors must be reasonably informed that a price realism analysis will occur, and, in circumstances where price realism is not explicitly called for in the solicitation, offerors must be reasonably informed that negative consequences may result from proposing low prices. See, e.g., *Dyncorp Int'l LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9 (where an agency seeks to reject an unrealistically low-priced proposal, the solicitation must state that proposals can be rejected for offering low prices). Thus, the relevant inquiry is whether the solicitation notified offerors that a price realism analysis would be conducted. Absent such a solicitation provision, agencies are neither required, nor permitted, to evaluate price realism in awarding a fixed-price contract. *Facility Servs. Mgmt.*, *supra* at 7.

Here, not only did the solicitation not contain any provision contemplating a price realism evaluation--*i.e.*, a statement that a proposal could be rejected or assessed technical risk for offering low prices--but it also expressly stated that a "[p]rice realism analysis will not be performed." AR, Tab 9, FOPR Instructions to Offerors at 14. Indeed, the protester concedes that the solicitation did not require the agency to conduct a price realism analysis. Comments at 1, 4 ("the RFP did not specify price realism"; "[Quadrant] agrees that the Agency is not obliged to conduct a price realism analysis when the RFP does not specify that analysis."). Accordingly, the protester's argument that the agency acted unreasonably, by not assessing a technical risk for the awardee's low price, fails to state a valid basis of protest and is therefore dismissed.⁵

⁵ Furthermore, where there is no relevant evaluation criterion pertaining to price realism, a determination that an offeror's price on a fixed-price order or contract is too low generally concerns the offeror's responsibility, *i.e.*, the offeror's ability and capacity to successfully perform the order or contract at its offered price. See *Facility Servs. Mgmt.*, *supra* at 6; see *Louis Berger Power, LLC*, B-416059, May 24, 2018, 2018 CPD ¶ 196 at 8. Our Office generally does not review an agency's affirmative responsibility determination, absent allegations not at issue in this protest. 4 C.F.R. § 21.5(c). Thus, Quadrant's claims that the awardee submitted an unrealistically low price--or even that the proposed price is below the cost of performance--fails to allege a cognizable ground for protest. 4 C.F.R. §§ 21.1(c)(4) and (f); *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

To the extent the protester argues that the solicitation should have provided for the evaluation of sufficient staffing or price realism, see Protest at 7; Comments at 5-6, it is untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests and our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. Bid Protest Regulations, 4 C.F.R. § 1.2(a)(1); see *Chugach Logistics-Facility Servs. JV, LLC*, B-421351, Mar. 21, 2023, 2023 CPD ¶ 80 at 8. To be timely, Quadrant was required to challenge these terms of the solicitation before the initial closing date for proposals.

The protester also alleges that the agency unreasonably determined Aviation's price to be reasonable when a comparison of proposed prices indicated a large gap among the competing proposals. Protest at 7. The protester points out that Aviation's evaluated price was \$159,418,715, over \$120,000,000 lower than Quadrant's evaluated price of \$280,273,092. *Id.* An agency's concern in making a price reasonableness determination, however, focuses on whether the offered prices are too high, rather than too low. *CACI-WGI, Inc.*, B-408520.2, Dec. 16, 2013, 2013 CPD ¶ 293 at 8. Accordingly, here, the solicitation's price reasonableness provision merely required the agency to evaluate proposals to ensure that the proposed prices were not higher than necessary to perform the solicited work. The protester's argument that the agency unreasonably found Aviation's price to be reasonable, therefore, likewise fails to state a legally sufficient ground of protest.

Best-Value Tradeoff Decision

Finally, the protester challenges the agency's best-value tradeoff decision, arguing that the agency improperly failed to conduct the required price-technical tradeoff and unreasonably failed to consider the risk of nonperformance arising from the awardee's low price. Protest at 7-8; Comments at 1-2, 6. In this regard, the protester contends that "even if the technical ratings themselves remained equivalent, the actual known risk of inadequate staffing should have been considered and weighed in the best value trade-off process." Comments at 6.

Where, as here, a solicitation provides for the issuance of a task order on a best-value tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth its higher price. *RiverTech, LLC*, B-420246, Dec. 21, 2021, 2021 CPD ¶ 393 at 5. Between two technically equal proposals, price may properly become the determining factor; a documented tradeoff determination is not required where the agency selects the lowest-priced proposal among proposals the agency has reasonably determined to be technically equal based on a documented qualitative assessment of proposals. *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 11; see also *General Dynamics Info. Tech., Inc.*, B-417616.2 *et al.*, Mar. 31, 2020, 2020 CPD ¶ 132 at 20-21. Additionally, there is no need for extensive documentation of every consideration factored into a tradeoff decision; rather, the documentation need only be sufficient to establish that the agency was aware of the

relative merits and costs of the competing proposals and that the source selection was reasonably based. *Ironclad Tech. Servs., LLC*, B-419976.2, May 2, 2022, 2022 CPD ¶ 104 at 5.

As noted, the solicitation here contemplated a tradeoff between the technical capability and price factors, where technical capability would be significantly more important than price. AR, Tab 28, Initial FOPR, Evaluation Factors at 135. In this regard, the solicitation provided as follows:

A tradeoff may be utilized and result in an award to a higher rated, higher priced offeror, among technically acceptable proposals where the decision is consistent with the Evaluation Factors, and the [decision authority] reasonably determines that the technical approach of the higher priced offer outweighs the price difference.

Id.

The record shows that the agency evaluated Quadrant's and Aviation's technical capability proposals and found that they both met the requirements with no identifiable strengths and no worse than moderate risk. See *generally*, AR, Tab 17, Technical Capability Subfactor 1 Evaluation Report; Tab 18, Technical Capability Subfactor 2 Evaluation Report; Tab 19, Technical Capability Subfactor 3 Evaluation Report. Based on this assessment, the technical evaluators assigned the proposals of Quadrant and Aviation the same rating of acceptable under the technical capability factor and each of its subfactors. *Id.* The record also shows that the SSA considered the documented technical evaluation, including the technical evaluators' consideration of the proposal aspects proposed by the two offerors as strengths (which were not adopted as strengths by the evaluators).⁶ AR, Tab 13, FODD at 9-12, 19-22. After concluding that Quadrant "did not present a higher rated technical approach that would warrant a tradeoff," the SSA selected Aviation's proposal with its lower price. *Id.* at 25.

On this record, we find no basis to object to the agency's tradeoff decision. Although Quadrant alleges that the agency did not conduct the "tradeoff [that] is required even in the event of equivalent adjectival ratings among all offerors," Comments at 2, the record showed that the SSA reviewed the underlying evaluation results, considered the qualitative value of the offerors' proposals, and reasonably determined them to be

⁶ As noted, the solicitation advised that the agency would consider specific areas under each technical capability subfactor and assign a strength for the area "when the offeror demonstrates an approach/process that will result in a benefit to the Government." AR, Tab 28, Initial FOPR, Evaluation Factors at 139. While both Aviation and Quadrant proposed several aspects of their proposals as deserving of strengths, the technical evaluators considered these aspects of their proposals and determined that none of them merited assignment of strengths. See *generally*, AR, Tab 17, Technical Capability Subfactor 1 Evaluation Report; Tab 18, Technical Capability Subfactor 2 Evaluation Report; Tab 19, Technical Capability Subfactor 3 Evaluation Report.

technically equal. The SSA recognized aspects of each offeror's proposal that met the requirements, as well as specific aspects of each proposal for which the evaluators declined to assess strengths, and essentially concluded that the two proposals were equal in that neither presented a technical approach that would warrant a price/technical tradeoff. AR, Tab 13, FODD at 9-12, 19-22, 25. While the record does not demonstrate that the agency conducted a line-by-line comparison of each and every aspect of the proposals, such an examination is not required. FAR 16.505(b)(7); *Ironclad Tech. Servs., supra*. In sum, because the agency selected Aviation's technically equal and lower priced proposal for award, no tradeoff was necessary. *General Dynamics Info. Tech., Inc., supra*. We therefore find no basis to sustain this protest ground.⁷

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez
General Counsel

⁷ As for the protester's assertion that the agency's tradeoff analysis unreasonably failed to consider the risk of the awardee's low price, we find that this allegation lacks a sufficient factual or legal basis for the same reasons as discussed above. In this regard, the solicitation did not provide for the evaluation of staffing or price realism and, absent these provisions, such an evaluation was not required. We note that the section of the solicitation describing the contemplated best-value tradeoff decision likewise did not provide for an independent assessment of staffing levels or price realism. See AR, Tab 28, Initial FOPR, Evaluation Factors at 135-136. Consequently, the protester's assertion that the agency's tradeoff analysis should have considered the risk of potentially inadequate staffing arising from the awardee's low price fails to state a factually and legally sufficient basis of protest, and therefore is dismissed.