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Decision

Matter of: Coastal International Security, Inc.

File: B-411756, B-411756.2

Date: October 19, 2015

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DIGEST

1. Protest is sustained where a latent ambiguity concerning mandatory wage rates in a collective bargaining agreement incorporated into the solicitation prevented the offerors from competing intelligently and on a relatively equal basis, and where this latent ambiguity affected the agency's price realism analysis. Protest is also sustained where the agency failed to reasonably evaluate the awardee's technical proposal.
 2. Protest is denied where the agency's exchanges with the awardee, as part of the responsibility evaluation, did not constitute discussions.
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DECISION

Coastal International Security, Inc., of Upper Marlboro, Maryland, protests the award of a contract to SecuriGuard Incorporated (SGI), of McLean, Virginia, under request for proposals No. HSHQEC-15-R-00003 (RFP), by the Department of Homeland Security (DHS), Federal Protective Service, for the provision of armed security services in the Federal Triangle complex in Washington, D.C. The protester argues that the agency unreasonably evaluated the offerors' proposed prices and the awardee's technical proposal, and that these errors in turn rendered the award decision unreasonable.

We sustain the protest.

BACKGROUND

DHS issued the RFP on March 2, 2015, seeking proposals for a fixed-price labor-hour contract for armed protective services at four Washington, D.C. locations. Agency Report (AR), Tab 12, Business Clearance Memorandum, at 1-3. The solicitation anticipated the award of an indefinite-delivery, indefinite-quantity contract, with a base period of 1 year, four 1-year options, and one 6-month option. RFP at 3-38. Offerors were informed that the agency intended to make award to the offeror whose proposal provided the best value to the agency, considering both price and non-price factors. Id. at 380. The RFP's three non-price evaluation factors were, in descending level of importance: (1) relevant past performance, (2) security management, and (3) socioeconomic factor. RFP at 370. For purposes of award, the non-price factors were, when combined, significantly more important than price. Id. at 371. There were five possible adjectival ratings for the non-price factors: highly acceptable, acceptable, unacceptable-A (high performance risk, which may be mitigated), unacceptable-B (high performance risk, which makes satisfactory performance unlikely), and neutral (which applied only to the past performance factor). AR, Tab 11, Technical Evaluation Report, at 6-7.

The RFP stated that the proposed price "shall be inclusive of all the Contractor's direct costs, indirect costs and profit and shall include all costs associated with providing the services described in the Statement of Work, the Post Exhibits and the Contractor's technical proposal." RFP at 379. Correspondingly, the agency warned offerors that "[t]he Government shall not be responsible for compensating the Contractor for any costs tied to solicitation requirements but not factored into the proposed prices, either by the Contractor's intention or by mistake." Id. at 380. With regard to labor costs, the RFP explained that the collective bargaining agreements (CBAs) attached to the solicitation would be incorporated into the contract and cautioned offerors that "only those provisions recognized as allowable wages or fringe benefits under the terms of the Service Contract Act, as incorporated into the contract under [Federal Acquisition Regulation (FAR)] Clause 52.222-43, will be subject to adjustment when applicable." Id. at 34-35. The solicitation also advised that the agency could conduct a price realism evaluation to "measur[e] the Contractor's understanding of the solicitation requirements" and "assess[] the performance risk inherent in the Contractor's price." Id. at 379.

DHS received 14 proposals by the closing date of April 30. AR at 3. Among the group of 14 proposals, SGI's price was second-lowest at 0.45 percent higher than the low offer, and Coastal's price was ninth lowest, 8.94 percent higher than the low offer. AR, Tab 12, Business Clearance Memorandum, at 5. The contracting officer (CO) reviewed the offerors' proposed prices and determined that the agency would evaluate the technical proposals of the nine lowest-priced offers, including those of SGI and Coastal. Id.

Coastal and SGI were evaluated as having the two highest-ranked technical proposals. Id. at 14. The agency’s final evaluation was as follows:

	Coastal	SGI
Relevant Past Performance	Highly Acceptable	Highly Acceptable
Security Management	Highly Acceptable	Highly Acceptable
Socioeconomic Factor	Acceptable	Highly Acceptable
Price	\$205,700,978.80	\$189,659,731.35

AR, Tab 13, Source Selection Decision Document, at 4-5.

The source selection authority (SSA) reviewed SGI’s and Coastal’s proposals and found that Coastal’s was superior under the past performance and security management factors, despite their equivalent adjectival ratings. Id.; see also AR, Tab 14, Addendum to Source Selection Decision Document, at 1. The SSA found that SGI’s proposal was comparatively stronger under the socioeconomic factor, which was the least important of the three non-price factors. AR, Tab 13, Source Selection Decision Document, at 5. Overall, the SSA concluded that Coastal’s proposal was “technically superior” as compared to SGI’s. Id.; Tab 14, Addendum to Source Selection Decision Document, at 1-2. In making the best-value tradeoff decision, the SSA concluded that “even though [the] technical factors, when combined, were considered significantly more important than price[,] Coastal’s technical advantages did not justify the \$16,041,247.45 price premium.” AR, Tab 14, Addendum to Source Selection Decision Document, at 1.

On June 30, DHS made award to SGI. AR at 6. Coastal received a debriefing on July 2, and this protest followed. Id.

DISCUSSION

Coastal contends that SGI’s proposed wage rates do not comply with the CBA, as incorporated into the RFP, or the Service Contract Act. The protester argues that because DHS failed to recognize this noncompliance, the agency’s price realism analysis was flawed. Next, the protester challenges the agency’s evaluation of the awardee’s security management plan. Coastal also alleges that DHS improperly held discussions with the awardee, but did not do so with the protester. Finally, the

protester challenges the best-value tradeoff decision based on these alleged errors. For the reasons below, we sustain the protest.¹

Ambiguity in Wages Required by the Collective Bargaining Agreement

Coastal argues that DHS misinterpreted the collective bargaining agreements that established minimum proposed wage rates, and that this error resulted in a flawed price analysis and an erroneous determination that SGI's proposal was compliant with the RFP. Protester's Comments & Supp. Protest (Aug. 3, 2015) at 3.

Solicitations must contain sufficient information to enable offerors to compete intelligently and on a relatively equal basis. See Government & Military Certification Sys. Inc., B-411261, June 26, 2015, 2015 CPD ¶ 192 at 5; Tennier Indus., Inc., B-299624, July 12, 2007, 2007 CPD ¶ 129 at 2. In this regard, an ambiguity exists where two or more reasonable interpretations of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. An obvious, gross, or glaring error in the solicitation is a patent ambiguity; a latent ambiguity is more subtle. Id. Where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable, and the appropriate course of action is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement. Id.

¹ Although we do not address every argument raised by the protester, we have reviewed each issue and find that with the exception of those noted here, none provides a basis to sustain the protest. For example, Coastal argues that DHS improperly established a competitive range consisting of the lowest-priced proposals and that the protester was harmed because its price appeared comparatively higher than it would have been had other higher-priced offerors been included in the competitive range. Protester's Comments & Supp. Protest (Aug. 3, 2015) at 13-14. Coastal argues that the establishment of a competitive range improperly increased the importance of price in the evaluation, when the RFP otherwise set price as the least important factor. Id. We find that this protest ground is an untimely challenge to the terms of the solicitation. Our Bid Protest rules require that protesters challenge the terms of a solicitation prior to the date set for submission of proposals. 4 C.F.R. § 21.2(a)(1). The RFP advised offerors that the agency will "first review the total evaluated price of all proposals received," and those whose pricing is "most competitive" may be "reviewed prior to . . . other technical proposals." RFP at 371. The RFP further advised that "[b]ased on the initial review of these technical proposals, the government may not evaluate the technical proposals of other offerors." Id. If Coastal had an objection to this approach, it was required to file a protest prior to the time for receipt of initial proposals.

Here, the CBA,² which was incorporated into the solicitation, provided the following information concerning guard wage rates:

Effective July 31, 2014, the Employer agrees to pay employees covered by this agreement at the following rates per hour:

- The Armed Security Guard Wage rate shall be:
 - \$27.75 to \$28.25 effective August 1, 2014
 - TBD effective August 1, 2015
 - TBD effective August 1, 2016

- The Console Officer wage rate shall be:
 - \$28.15 to \$28.66 effective August 1, 2014
 - TBD effective August 1, 2015
 - TBD effective August 1, 2016

RFP at 274. The agency advised offerors that to the extent offerors had questions regarding the CBA, the agency would not interpret the CBA's provisions.³

SGL proposed to pay armed security officers and console officers hourly rates of \$27.75 and \$28.15, respectively, through the life of the contract. AR, Tab 4, SGL Proposal, at 130-131. Despite asserting that “[t]he most current wage rates in the applicable [t]wo CBAs were used in preparing our price proposal [and these] wage rates are effective August 1, 2015,” SGL included the following caveat in its price proposal:

² There were two CBAs incorporated into the solicitation: one for guards and console officers (CBA-2014-6829), and the other for sergeants, lieutenants and captains (CBA-2014-6829). RFP at 246, 279. Only the CBA covering the guards and console officers is at issue here.

³ Amendment 0003 to the RFP provided as follows:

With regard to questions concerning the CBAs, the Government will not interpret provisions of these documents for potential offerors (e.g., supervisory positions[,] etc.). Please refer to the applicable [FAR] and Code of Federal Regulations as they relate to the Service Contract Act. Service Contract Act price adjustments pursuant to FAR 52.222-43 will be conducted on the anniversary date of the contract (i.e., October 1, 2015, October 1, 2016, etc.).

RFP Amend. 0003, at 2.

[The CBA for guards] lists a range for wages, but does not provide a criteria for determining a wage within the range. In the absence of any guidance, we used the lowest rate in the range for our wages. If new wages are negotiated prior to contract award, a request for equitable adjustment will be needed for compliance.

AR, Tab 4, SGI Proposal, at 85. See also id. at 100 (“Appendix A, Wages Section, identifies a range for wages, but does not explain how this range is to be implemented. Without any guidance available, [SGI] has elected to use the low end of the range as our wage for this proposal.”).⁴ In its protest, Coastal explained that the CBA did not establish a wage range, and that in fact:

The language “\$27.75 to \$28.25 effective August 1, 2014” means that prior to that date the applicable wage rate was \$27.25 and that rate was effective until August 1, 2014. The \$28.25 hourly rate went into effect on August 1, 2014, which is stated in the CBA as “\$28.25 effective August 1, 2014.[”]

Decl. of Coastal Vice President (Aug. 3, 2015), at 1.⁵

DHS does not specifically dispute the protester’s representation that the August 2014-August 2015 CBA wage rates were a single rate. Instead, the agency states that in its evaluation of offerors’ proposals, it interpreted the CBA as providing a range of acceptable wage rates that became effective on August 1, 2014. Decl. of CO (Aug. 12, 2015), at 1; see also AR, Tab 26, Email of Contract Specialist (Apr. 30, 2015), at 1 (“The CBA includes a range for [protective security officers] of \$27.25-\$28.25.”). The agency argues that because the ambiguous CBA was incorporated into the RFP, this gave rise to a patent ambiguity that Coastal was required to challenge prior to the date set for receipt of proposals. Supp. AR, at 23-24.

We find that the protester’s and the agency’s interpretations of the CBA are both reasonable, and as a result, conclude that the solicitation contained an ambiguity regarding the wage rates that prevented offerors from competing intelligently and on a relatively equal basis. Coastal, as the incumbent and party to the CBA, states

⁴ According to the CBA’s terms, the applicable wage rates for the August 1, 2015-July 31, 2016 period were listed as “TBD,” or to be determined. RFP at 274. No party has informed us as to what rate has been agreed or whether it applies to the entirety of the August 1, 2015-July 31, 2016 period.

⁵ Consistent with its interpretation, Coastal proposed a rate of \$[DELETED] for the base period, increasing by \$[DELETED] to \$[DELETED] per year over the life of the contract. AR, Tab 5, Coastal Proposal, Attach. 6, at 33.

that it knew the prevailing wage rate and thereby had no basis to conclude that the CBA was ambiguous.⁶ We agree that, under these circumstances, the protester did not have a reason to question the interpretation of the CBA, as incorporated into the solicitation. On the other hand, we agree with the agency that the plain language of the CBA, quoted above, could be read to suggest that the wage rates for August 2014 to August 2015 could be a range. For this reason, we conclude that the solicitation was latently ambiguous, in that Coastal had no reason to know that DHS would interpret the CBA as providing for a range of acceptable wages.

Although we conclude that the CBA provisions were latently ambiguous, DHS's interpretation that the CBA allows a range of acceptable wages creates a potential conflict as to compliance with the requirements of the Service Contract Act. In this regard, the Service Contract Act prohibits a successor contractor from paying covered employees "less than the wages and fringe benefits . . . to which such service employees would have been entitled if they were employed under the predecessor contract[.]" 41 U.S.C. § 353(c).⁷ Although DHS claimed that the CBA allowed for a range of hourly wages, it did not determine when the CBA required that any employee be paid a wage higher than the bottom of the supposed range, whether due to seniority of the incumbent employee or any other factor.

⁶ Indeed, if any party had a basis to file a solicitation challenging the terms of the solicitation, it was SGI, which did not challenge the terms of the solicitation prior to the closing date, but nevertheless highlighted the confusion in its proposal. AR, Tab 4, SGI Proposal, at 85. As discussed above, however, the agency had foreclosed all questions related to the CBA. RFP Amend. 0003, at 2.

⁷ This provision provides:

No contractor or subcontractor under a contract, which succeeds a contract subject to this chapter and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: Provided, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

41 U.S.C. § 353(c).

Nevertheless, DHS found that the awardee's proposal would comply with the CBA even if all personnel were paid at the bottom of the wage range, a conclusion at odds with the agency's own interpretation of the CBA and the Service Contract Act. See AR, Tab 12, Business Clearance Memorandum, at 51 (SGI's proposed wage rates were "in accordance with the applicable collective bargaining agreements."). Consequently, it appears that DHS's evaluation of SGI's proposal, which was based on the wage rate at the bottom of the supposed range, failed to consider whether SGI's proposed labor rates were below the wages currently paid to CBA-covered employees.

In sum, we conclude that the solicitation was ambiguous as to the mandatory wage rates to be paid under the CBA. We further conclude that the RFP did not contain sufficient information to enable offerors to compete intelligently and on a relatively equal basis because it contained a latent ambiguity. We next address the effect of this ambiguity on DHS's evaluation of the realism of the offerors' proposed prices.⁸

Effect of CBA Rates on Price Realism

Coastal alleges that DHS's interpretation of the RFP regarding the applicable wage rates in the CBA resulted in a flawed price realism analysis. Protester's Comments & Supp. Protest (Aug. 3, 2015) at 6. For the reasons discussed below, we agree.

⁸ The protester argues that the awardee's proposal showed that it would not comply with the CBA, and thus should have been rejected as unacceptable. Protester's Comments & Supp. Protest (Aug. 3, 2015) at 3. DHS contends that, regardless of whether SGI proposed wages below those in the CBA, SGI's proposal was not unacceptable because the awardee will be required to pay the CBA wages, even if its quoted price results in a loss. Supp. AR, at 27, citing Ameriko, Inc., B-266034.2, Mar. 18, 1996, 96-1 CPD ¶ 176. We agree that the agency did not err by finding SGI to be technically acceptable because SGI's proposal did not specifically state it would not comply with its obligations to pay wages required under the CBA. See Group GPS Multimedia, B-310716, Jan. 22, 2008, 2008 CPD ¶ 34 at 4 ("On a fixed-price contract, as here, under which the awardee is required to pay the actual [Service Contract Act] wages and benefits out of whatever price it offers, and where the proposal contains no indication that the company will not meet its statutory obligations in this regard, labor rates or benefits that are less than the [Service Contract Act]-required rates or benefits may constitute a below-cost offer but one which is legally unobjectionable."). Despite the allowability of a below-cost proposal, as discussed below, an offeror's proposal of labor rates that would be below the offeror's actual cost of complying with the CBA could affect the agency's evaluation of price to the extent, as here, that the solicitation provided for a price realism evaluation.

Where a solicitation anticipates an award based on fixed-price, fully-burdened labor rates, an agency may provide for the use of a price realism analysis for the limited purpose of measuring a vendor's understanding of the requirements or to assess the risk inherent in a vendor's quotation. See Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17.

DHS explains that here, “[a] price realism review was conducted to determine whether the proposed price element breakdowns (1) reflect a clear understanding of the solicitation requirements, (2) the significant proposed price elements are realistic for the work to be performed, and (3) are consistent with the management approach described in the contractor’s technical proposal.” AR, Tab 12, Business Clearance Memorandum, at 47. As part of its price realism analysis, the agency examined offerors’ profit margins in order to “avoid the risk of poor performance from a contractor who is forced to provide services at little or no profit in combination with not realistically pricing the costs of contract performance.” Id. at 48. As part of its realism analysis, the agency directly compared Coastal’s and SGI’s proposed labor rates, fringe benefits, other direct costs, G&A and profit, finding that these elements (totaling approximately \$[DELETED] million) constituted “the majority of the [price] variance” between the two firms. Id. at 51. Based on this comparison, DHS concluded that SGI’s price was realistic. Id.

Because we found above that the solicitation contained a latent ambiguity regarding the minimum wage required under the CBA, we correspondingly find that the price realism analysis--which rests on the flawed price proposals--was not consistent with the terms of the solicitation because the relevant portions of the solicitation remain ambiguous. Specifically, we conclude that the agency’s price realism analysis is not reasonable because, to the extent the agency relied on SGI’s anticipated profit to demonstrate that its overall price was realistic, this analysis failed to account for the latent ambiguity in the CBA regarding the wages SGI would be required to pay.

Although the agency has considerable latitude in its realism analysis, it must be reasonable. Here, in addition to using a price realism analysis to determine whether offerors understood the contract requirements, the agency analyzed profit as a part of realism, explicitly linking low profit margins and performance risk, reasonably presuming that a contractor “forced to provide services at little or no profit” would be a greater risk because there would be no potential for profiting from those efforts. AR, Tab 12, Business Clearance Memorandum, at 48. SGI proposed an average

profit of [DELETED] percent,⁹ or \$[DELETED], over the life of the contract. Id.; AR, Tab 4, SGI Proposal, at 111.

Since the current (August 2014-August 2015) CBA base rates are \$0.50 per hour higher than SGI's proposed rates of \$27.75 and \$28.15,¹⁰ the overtime rates, payable at 1.5 times the base rate, are therefore \$0.75 higher. SGI proposed [DELETED] base guard hours and [DELETED] overtime hours over the life of the contract. AR, Tab 4, SGI Proposal, at 108. The Service Contract Act requires SGI to pay wages no lower than the CBA-mandated rates--resulting in an increase in SGI's costs by at least \$[DELETED] over the life of the contract. 41 U.S.C. § 353(c).¹¹ As a result, after subtracting the impact of the actual CBA rate from SGI's proposed profit, SGI's profit over the life of the 5 and 1/2 year contract is reduced from \$[DELETED] to approximately \$[DELETED].¹² Thus, whereas the agency concluded that the awardee's anticipated profit margin of approximately [DELETED] percent demonstrated that its proposed price was realistic, after paying the CBA wage rate, the awardee's profit margin would be reduced to approximately [DELETED] percent.

⁹ Coastal proposed [DELETED] percent profit. AR, Tab 12, Business Clearance Memorandum, at 48.

¹⁰ The base rate for armed guards is \$0.50 higher, and the base rates for console officers is \$0.51 higher, than SGI's proposed rates; for the purposes of this analysis we use \$0.50 for both rates to simplify the calculations.

¹¹ [DELETED] hours x \$0.50 = \$[DELETED]; [DELETED] hours x \$0.75 = \$[DELETED]; \$[DELETED] + \$[DELETED] = \$[DELETED]. We note that this calculation understates the effect of the difference, because taxes and other costs associated with a higher wage are not included. SGI states that, had it used wage rates of \$28.25 and \$28.66, its total proposed price, including profit and other elements, would have been \$[DELETED] higher, for a total of proposed price of \$[DELETED]. Intervenor's Comments (Aug. 3, 2015), Exh. A, Decl. of SGI Director of Price Analysis, at 1.

¹² The facts here also call into question the agency's responsibility determination. As part of its pre-award responsibility determination, DHS raised concerns about whether SGI is [DELETED]. AR, Tab 10, DHS Ltr. To SGI (June 18, 2015), at 5 ("[DELETED]"). Although we generally do not review an agency's affirmative determination of an offeror's responsibility, we will review allegations that "in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information . . ." 4 C.F.R. § 21.5(c). We therefore recommend that the agency consider the discussion above in any revised responsibility determinations.

As discussed above, DHS's price realism analysis assessed whether offerors' proposed prices would "force [them] to provide services at little or no profit," as this posed a "risk of poor performance." AR, Tab 12, Business Clearance Memorandum, at 48. As the record here shows, however, the agency's analysis failed to capture the risk that, at the actual CBA wage rates, the awardee would be providing services at little or no profit. For this reason, we find that the agency's failure to provide a reasonably clear solicitation also rendered the agency's price realism evaluation unreasonable and sustain this protest ground.

Notwithstanding this flaw in the price realism analysis, DHS contends that there could be no prejudice to Coastal, even if SGI's proposed price were based on wage rates below those required by the CBA. See Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8 (competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest). See also Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). In this regard, the agency contends that if new or revised CBA wage rates are negotiated after submission of offers, and if the Service Contract Act requires the new or revised CBA to be incorporated into the contract, then "the contractor is entitled to an equitable adjustment to reflect its increased costs in complying with the new CBA." AR, Tab 27, Decl. of CO (Aug. 12, 2015), at 1.

As discussed in detail below concerning the agency's tradeoff decision, we think that DHS's argument here does not show that there was a non-prejudicial error. To the extent the agency contends that an equitable adjustment to SGI's proposed costs could remedy any concerns regarding the realism of its proposed prices, this argument does not address the agency's reliance on the offerors' proposed prices in the tradeoff decision. In short, the agency cannot have it both ways: either the price realism evaluation was flawed for the reasons discussed above, or the agency's reliance on the prospect of a future equitable adjustment to the awardee's price demonstrates that the tradeoff decision did not accurately reflect the differences between the offerors' relative cost to the government.

Security Management Factor Evaluation

Coastal disputes DHS's assessment of a strength to SGI for its ability to increase its operational capacity by [DELETED] percent, which Coastal claims is not achievable. Protester's Comments & Supp. Protest (Aug. 3, 2015) at 22.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to assess whether the agency's evaluation was

reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. ARBEIT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. Strategic Res., Inc., B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4.

As part of the security management factor, the RFP required offerors to demonstrate their approach to staffing, and in particular how they planned to staff requests for temporary additional services on short notice. RFP at 375. SGI's proposal states as follows:

SGI has operational capacity to rapidly expand our workforce by [DELETED]% by [DELETED].

AR, Tab 4, SGI Proposal, at 52. The agency assigned SGI a strength for proposing the ability to expand guard hours by [DELETED] percent "because it will allow for continuous post coverage and will also ensure coverage to support Temporary Additional Services (TAS), which is a large portion of this requirement." AR, Tab 11, Technical Evaluation Report, at 36.

SGI proposed substantially fewer hours than Coastal.¹³ As the awardee explained in response to the protest, this difference in proposed hours is due to SGI's approach of using [DELETED]. Intervenor's Supp. Comments (Aug. 24, 2015) at 11 ("[T]he differences in hours [between SGI and Coastal] are largely explained by [DELETED].").¹⁴ The protester contends that, assuming the awardee is already relying on [DELETED], SGI's proposal does not appear to address how the awardee will be able to expand its work hours by [DELETED] percent by [DELETED]. Despite this apparent discrepancy, the agency does not appear to have evaluated whether SGI's proposed capacity for a [DELETED] percent increase in hours is reasonable or realistic in light of its baseline staffing approach. See AR, Tab 11, Technical Evaluation Report, at 36. We therefore conclude that the agency's assignment of a strength to SGI's proposal for its ability to increase guard hours, without examining whether this assertion was inconsistent with the awardee's proposed technical solution, was not reasonable. Moreover, the agency

¹³ In the base year, SGI proposed [DELETED] regular hours and [DELETED] overtime hours, as compared to Coastal, which proposed [DELETED] regular guard hours and [DELETED] overtime hours. AR, Tab 4, SGI Proposal, at 83; Tab 5, Coastal Proposal, at 93.

¹⁴ According to SGI, its "use of [DELETED] results in approximately [DELETED] fewer hours [in the base year] for [DELETED] as compared to [DELETED], and approximately [DELETED] fewer hours of [DELETED] than would be incurred with [DELETED]." Intervenor's Supp. Comments (Aug. 24, 2015) at 11.

does not appear to have considered whether the awardee's reliance on [DELETED] poses any risks regarding its ability to meet the solicitation's requirements for temporary additional services--thereby meriting a possible weakness. On this basis, we sustain the protest.

Whether Agency Improperly Engaged In Discussions With the Awardee Only

Coastal claims that DHS engaged in improper discussions with only SGI, during which the awardee was able to amend otherwise non-compliant portions of its proposal, while Coastal was not given the same opportunity. Protester's Comments and Supp. Protest (Aug. 3, 2015) at 15-16. We find no merit to this argument.

The RFP required offerors to include a small business subcontracting plan in their proposals that detailed the total dollars and percentages to be subcontracted to each small business category. RFP at 341. After evaluation of proposals, but prior to award, the agency informed SGI that its subcontracting plan lacked details regarding subcontracting goals as percentages and dollar amounts. AR, Tab 10, DHS Ltr. to SGI (June 18, 2015), at 5. The agency specifically requested that SGI provide "a revised subcontracting plan in compliance with FAR 19.704(a)(1) and FAR 19.704(a)(2)." Id. After several revisions, SGI submitted a satisfactory plan. Id. at 2.

When an agency conducts discussions with one offeror, it must conduct discussions with all other offerors in the competitive range, FAR § 15.306(d)(1), and those discussions must be meaningful; that is, the discussions must identify deficiencies and significant weaknesses in each offeror's proposal. FAR § 15.306(d)(3); Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3 at 13-14. An agency's exchanges with an offeror regarding matters of responsibility, however, do not constitute discussions, provided such dialogue does not seek, or result in, modifications to the offeror's proposal for purposes of technical acceptability. McKissack+Delcan JV II, B-401973.2, B-401973.4, Jan. 13, 2010, 2010 CPD ¶ 28 at 6-8. The acceptability of an apparently successful offeror's small business subcontracting plan is a matter of responsibility, unless the RFP otherwise provides for a qualitative and comparative evaluation of that plan. Turner-Southland-Dean, JV, B-407998, May 20, 2013, 2013 CPD ¶ 133 n.12, citing MANCON, B-405663, Feb. 9, 2012, 2012 CPD ¶ 68 at 4.

Here, although an offeror's subcontracting plan is listed as part of the required documents, the RFP provides that it is "subject to negotiations" and "must be approved by the Contracting Officer prior to award." RFP Amend. 00008, at 5. There is no evidence that the subcontracting plan was a required element of the agency's comparative technical evaluation. On this record, we find that here the subcontracting plan forms part of the agency's responsibility determination, and as such, the agency did not improperly engage in discussions with the awardee after

submission of proposals by allowing it to revise its small business subcontracting plan. This protest ground is denied.

Best-Value Tradeoff Determination

Finally, Coastal argues that based on the evaluation errors discussed above, the agency's source selection decision is flawed as well. Protester's Comments & Supp. Protest (Aug. 3, 2015) at 26. We agree and sustain the protest on this basis.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value setting; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. PricewaterhouseCoopers LLP, B-409537, B-409537.2, June 4, 2014, 2014 CPD ¶ 255 at 12. In a best-value procurement, it is the function of the source selection authority to perform a tradeoff between cost and non-cost factors, that is, to determine whether one proposal's superiority under the non-cost factor is worth a higher cost. Even where, as here, cost is stated to be of less importance than the non-cost factors, an agency must meaningfully consider cost to the government in making its selection decision. See e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. See also Glotech, Inc., B-406761, B-406761.2, Aug. 21, 2012, 2012 CPD ¶ 248 at 7. Additionally, agencies must consider price or cost to the government in evaluating competitive proposals. 41 U.S.C. § 2305(a)(3)(A)(ii). While it is up to the agency to decide upon some appropriate, reasonable method for proposal evaluation, an agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. CW Gov't Travel, Inc.--Recon. et al., B-295530.2 et al., July 25, 2005, 2005 CPD ¶ 139 at 4.

As discussed above, DHS's best-value tradeoff decision concluded that "the associated benefits associated with Coastal's record of relevant past performance does not support the significantly higher price." AR, Tab 13, Source Selection Decision Document, at 5. This 8.46 percent price difference was due in part to differences between the offerors' proposed labor rates. AR, Tab 14, Source Selection Decision Document, at 1; Tab 12, Business Clearance Memorandum, at 50 ("[SGI] proposed \$[DELETED] lower than Coastal in labor rates").¹⁵ As

¹⁵ As discussed above, SGI's response to the protest states that, had it been required to use the higher wage rates in its proposal, its total price would have increased by \$[DELETED], thus reducing the price premium associated with Coastal's higher technically-rated proposal from 8.46 percent to [DELETED] percent. See Intervenor's Comments (Aug. 3, 2015), Exh. A, Decl. of SGI Director of Price Analysis, at 1.

discussed above, however, the solicitation incorporated the CBA, which contained a latent ambiguity as to the applicable wage rates for the armed guard and console officer positions. As a result, the two offerors here used entirely different CBA wage rates for their proposals--Coastal, because it was aware of the rate paid due to its performance as the incumbent contractor, and SGI, because it was uncertain of the rate based on the ambiguity in the solicitation. AR, Tab 4, SGI Proposal, at 85.

As also discussed above, DHS argues that an equitable adjustment to SGI's proposed costs could remedy any concerns regarding the realism of SGI's proposed costs. We conclude, however, that one of two errors affects the reasonableness of the award. If SGI's costs of performance will be higher based on the requirement to pay higher wage rates under the CBA, then the agency's evaluation of the realism of SGI's price was flawed. Alternatively, if the agency assumes that SGI's performance concerns will be mitigated by receipt of an equitable adjustment, then the agency's best-value tradeoff failed to reasonably consider the actual differences in cost to the government as between the offerors' proposed prices. See CW Gov't Travel, Inc.--Recon. et al., *supra*. In sum, the agency's price realism evaluation, and, in turn, its best-value determination rests on its erroneous finding that SGI "has priced out this [FPS] requirement in accordance with the applicable collective bargaining agreements." AR, Tab 12, Business Clearance Memorandum, at 51.

In addition, without more support, the assignment of a strength to the awardee's proposal under the security management factor for its proposed capacity to increase staffing through use of [DELETED] appears unreasonable in light of the awardee's proposed staffing approach, which already relies on the use of [DELETED]. In sum, we conclude that the errors in the evaluation here render the award decision unreasonable.

CONCLUSION AND RECOMMENATION

In sum, we sustain Coastal's protests regarding the DHS's price analysis, finding that the solicitation contained a latent ambiguity, and, as a consequence, the offerors were not able to compete intelligently and on a relatively equal basis. Because of this finding, we also sustain the protest regarding the agency's price realism analysis. Finally, we sustain the protest with regard to the agency's security management evaluation of SGI's proposal. We also conclude that Coastal was prejudiced by these errors because its proposal was found to be technically superior to the awardee's, and thus the protester has a substantial chance for award after a best-value tradeoff if the errors concerning the evaluation of SGI's proposed price and technical proposal are corrected.

Because we conclude that the solicitation contains a latent ambiguity regarding the applicable CBA wage rates, we recommend that the agency clarify the applicable wage rates and allow offerors to re-submit their price proposals. We also

recommend that the agency reevaluate the security management factor for SGI's proposal. We further recommend that the agency perform a new best-value tradeoff and, if the awardee is other than SGI, terminate the award to SGI and make a new award.

Finally, we recommend that the agency reimburse Coastal its costs associated with filing and pursuing these protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at § 21.8(f).

The protests are sustained.

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