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Decision

Matter of: Arcadis U.S., Inc.

File: B-412828

Date: June 16, 2016

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Thomas J. Ingram, Esq., Department of the Army, for the agency.

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DIGEST

1. Protest challenging the evaluation of proposals is sustained where the evaluation was unreasonable and inadequately documented.
 2. Protest that source selection decision was unreasonable is sustained where the best-value determination was based on an unreasonable and inadequately documented evaluation, and did not include consideration of the protester's lowest-priced proposal in the tradeoff analysis.
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DECISION

Arcadis U.S., Inc., of Highlands Ranch, Colorado, protests the issuance of a task order to OBG/Baker Federal Solutions Joint Venture, of Moon Township, Pennsylvania, under an unnumbered request for proposals (RFP) issued by the Department of the Army, Corps of Engineers, for remedial action and surface support assistance at the Gilt Edge Mine Superfund Site near Lead, South Dakota.¹ Arcadis challenges the evaluation of its proposal, the evaluation of the awardee's proposal, and the agency's best-value determination.

¹ Because the value of the task order is over \$10 million, our Office has jurisdiction to review this protest. 10 U.S.C. § 2304c(e)(1)(B).

We sustain the protest.

BACKGROUND

The RFP was issued on November 9, 2015, to firms holding contracts under a contract vehicle called the “Multiple Environmental Government Acquisition, Unrestricted Pre-Placed Remedial Action Contracts, Multiple-Award Task Order Contract.” Contracting Officer’s (CO’s) Statement at 1. The RFP contemplated the issuance of a fixed-price task order for remediation activities at Operable Unit 1 of the Gilt Edge Mine Superfund Site, including sludge removal, sludge dewatering, sludge transfer, and blasting and plugging of underground mine workings. Agency Report (AR) at 1. The task order was to be issued on a best-value basis, considering technical approach, previous experience and project team, and price.² AR, Tab 16, RFP Evaluation Criteria, at 2-3. The RFP established that the technical approach factor was more important than the previous experience and project team factor, and that the two non-price factors, when combined, were more important than price. Id. at 2.

The RFP provided that proposals would be evaluated to determine the extent to which each offeror demonstrated a clear understanding of the requirements of the RFP. Id. at 1. In this regard, the RFP established that, in order to receive consideration for award, a proposal must meet the requirements established by the RFP and the base contract, and contain adequate detail to assure the evaluators that the offeror has an understanding of the requirements. Id. Finally, the RFP required offerors to submit proposals that completely addressed all evaluation factors and specifically identified how each requirement would be satisfied.

² Possible ratings for the non-price factors ranged from outstanding to unacceptable. AR, Tab 16, RFP Evaluation Criteria, at 7. As relevant here, a marginal rating was defined as:

Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.

Id. at 7. An acceptable rating was defined as:

Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.

Id. The terms “strength” and “weakness” were not defined in the solicitation.

Regarding the technical approach factor, the RFP required an explanation of proposed technical approaches for accomplishing the goals identified in the statement of objectives (SOO). Id. at 2. The RFP also required technical approaches to include, at a minimum, strategies for sludge removal, sludge dewatering, sludge transfer, blasting, and plugging of underground mine workings, as well as a schedule supporting the proposed technical approach, outlining activities and milestones. Id.

With regard to the previous experience and project team factor, the RFP required proposals to include a detailed discussion of directly relevant experience and capabilities to execute the specific tasks outlined in the SOO. Id. at 3. The RFP also required proposals to identify the offerors' project team, and to cite the team's qualifications and experience working on projects with requirements directly relevant to the requirements here. Id.

The agency received five proposals in response to the RFP, including proposals submitted by the protester and the awardee. CO's Statement at 2. The Source Selection Evaluation Board (SSEB) evaluated proposals and requested clarifications from four offerors, including Arcadis and OBG/Baker. Id. After the offerors provided clarification responses, the SSEB reviewed the responses and provided its findings in an SSEB report that was signed on February 22, 2016. Id. The results of the SSEB's evaluation were as follows:

Offeror	Technical Factor	Previous Experience and Project Team Factor	Price
Arcadis	Marginal	Acceptable	\$(DELETED)
OBG/Baker	Acceptable	Acceptable	\$(DELETED)
Offeror A	Marginal	Acceptable	\$(DELETED)
Offeror B	Acceptable	Acceptable	\$(DELETED)
Offeror C	Acceptable	Acceptable	\$(DELETED)

AR, Tab 11, Source Selection Decision Document (SSDD), at 9.³

³ The number of strengths, weaknesses, and significant weaknesses assigned to the offerors' technical proposals by the SSEB was as follows: (1) Arcadis (marginal)--seven strengths, twelve weaknesses, and one significant weakness; (2) OBG/Baker (acceptable)--nineteen strengths, one neutral finding, and fifteen weaknesses; (3) Offeror A (marginal)--seven strengths, eleven weaknesses, and six significant weaknesses; (4) Offeror B (acceptable)--five strengths and eleven weaknesses; (5) Offeror C (acceptable)--eleven strengths, one neutral finding, eleven weaknesses, and four significant weaknesses (plus one "Note" listed as an apparent weakness, but not titled as such). See AR, Tab 6, SSEB Report.

The Source Selection Authority (SSA) reviewed the SSEB report, participated in discussions with the SSEB chairperson, and conducted an independent review of the information provided before deciding to issue the task order to OBG/Baker. SSDD at 31. In making the selection, the SSA conducted a best-value tradeoff analysis, during which Arcadis, the lowest-priced offeror, and Offeror A were eliminated from further consideration based on their marginal ratings. Id. Ultimately, the SSA selected OBG/Baker as the offeror with the lowest-priced proposal with a rating of technically acceptable. Id. The agency issued the task order to OBG/Baker on March 3, and provided a written debriefing to Arcadis on the same day. This protest followed.

DISCUSSION

Arcadis challenges the agency's evaluation of proposals and contends that the source selection decision was unreasonable. Arcadis challenges the evaluation of its proposal under both the technical approach factor and the past experience/project team factor. Arcadis also challenges the agency's evaluation of the awardee's proposal under the previous experience and project team factor. Finally, Arcadis contends that the best-value determination is flawed. As discussed below, we sustain the protest with regard to the agency's evaluation of Arcadis' proposal under the technical approach factor, and the agency's evaluation of OBG/Baker's proposal under the previous experience/project team factor. Additionally, we conclude that the best-value determination lacked a reasonable basis.⁴

Technical Approach Factor

As previously noted, the SSEB assigned seven strengths, twelve weaknesses, and one significant weakness to Arcadis' proposal. AR, Tab 6, SSEB Report, at 5-7. The protester raises a variety of challenges to the findings of weakness (including the significant weakness), and argues that it should have received a higher technical approach rating.

In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion.⁵

⁴ While we do not address each of the protester's arguments in this decision, we have considered them all and conclude that, aside from the arguments addressed here, none provide a basis to sustain the protest.

⁵ As discussed above, this procurement was conducted as a competition between contractors holding multiple-award task order contracts and, as such, was subject to the provisions of Federal Acquisition Regulation (FAR) part 16, not FAR part 15. Nonetheless, in reviewing protests challenging FAR part 16 procurements, our Office will review the agency's interpretation of the solicitation provisions, and its

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URS Federal Services, Inc., B-412580, B-412580.2, March 31, 2016, 2016 CPD ¶ 116 at 10. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Id. Here, as discussed below, we find that five of the weaknesses assessed against the Arcadis proposal during the evaluation lacked a reasonable basis. Additionally, the agency concedes that a sixth weakness was adequately addressed during the clarification process and ultimately should not have been identified as a weakness in the SSDD.⁶ As a result, we find that the agency's evaluation of this proposal as marginal under the technical approach factor was unreasonable.

As set forth in greater detail below, several of the weaknesses assigned to Arcadis' proposal under the technical approach factor were based, in part, on concerns about the cost implications of the approach. According to the protester, the agency's focus on cost in its evaluation of technical approach was unreasonable because the cost of the features was included in Arcadis' fixed-price proposal and, thus, posed no independent cost risk to the government. In response, the agency argues that it was reasonable for the agency to identify apparent inefficiencies with a cost impact and to consider such inefficiencies to be weaknesses. We find that the agency's focus on cost in the context of making assessments under the technical approach factor--particularly where the approach is otherwise viewed as offering a benefit to the government--was not reasonable.⁷

For example, one of the weaknesses assigned to the protester's proposal related to Arcadis' plan to [DELETED] in order to [DELETED]. AR, Tab 1, Arcadis Technical Proposal, at 21. Arcadis also proposed to [DELETED] in accordance with the requirements of the RFP. Id.; AR, Tab 2, Arcadis Price Proposal, at 5. Based on this plan, the SSEB assigned the following weakness to the proposal:

The plan for [DELETED] may improve schedule but at a significant cost to the [g]overnment since the [DELETED].

(...continued)

evaluation of proposals, to determine whether the agency's evaluation was reasonable. See STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 12-13.

⁶ The weakness concerned the [DELETED].

⁷ The issuance of a fixed-price task order places maximum risk and full responsibility for costs on the contractor. See Northrop Grumman Tech. Servs., Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 5.

AR, Tab 6, SSEB Report, at 6. In the source selection decision document, the SSA again characterizes the proposed approach as inadequate given that “the [g]overnment will incur a significant cost to [DELETED] as indicated in the requirements.” AR, Tab 11, SSDD, at 13.

The record reflects that the agency identified no technical shortcomings in Arcadis’ proposed approach, and nothing in the record supports a finding that the plan proposed by Arcadis would not adequately meet the solicitation requirements; indeed, the SSEB recognized that the plan had the potential to improve schedule. Additionally, because the costs for [DELETED] were included in Arcadis’ proposed fixed price, there was no risk that [DELETED] would result in additional cost to the agency. Where, as here, the agency has identified no technical shortcomings in the protester’s proposed approach, and there is no risk that the approach will result in additional cost to the agency given the fixed-price nature of the contemplated order, we fail to see a reasonable basis for the weakness in question.

A second weakness assigned by the evaluators related to Arcadis’ proposal to [DELETED]. AR, Tab 1, Arcadis Technical Proposal, at 21. Here, once again, the SSEB assigned a technical weakness, without clearly articulating a technical shortcoming, to a feature that seems to go beyond what is required by the solicitation.

According to the agency, there was no need to [DELETED] because this [DELETED], and because [DELETED] requirements set forth elsewhere in the solicitation do not apply here. CO’s Statement at 11. Nonetheless, the evaluators assigned a weakness for this feature of Arcadis’ approach on the basis that [DELETED] is unnecessary and will add to cost and complexity.” AR, Tab 6, SSEB Report, at 6.

There is no explanation in the record as to how the [DELETED] failed to meet the requirements established by the RFP. To the extent the evaluators believed that this feature of Arcadis’ proposal demonstrated a lack of understanding of the requirements, this concern is not documented in the contemporaneous record. Regarding the evaluators’ concern about cost, once again, the cost for this feature was included in Arcadis’ proposed fixed price and could not reasonably have formed a basis for the assignment of a technical weakness. Because the evaluators failed to adequately document any technical shortcoming related to this feature of Arcadis’ proposal, and because the cost for this feature was included in Arcadis’ proposed price, we also fail to see a reasonable basis for this weakness.

The agency assigned a third weakness to Arcadis’ proposal. This weakness also relates to Arcadis’ proposed plan for [DELETED] and provides:

[DELETED]. Unnecessary cost and complexity.

AR, Tab 6, SSEB Report, at 6.

Once again, while the evaluators may view the cost incurred for this activity as unnecessary, that view does not provide a reasonable basis for finding a weakness in the protester's technical approach where the approach exceeds the solicitation requirements. In addition, there is no dispute that the Arcadis proposal offered the [DELETED] of any of the competitors. Further, to the extent the evaluators believe the complexity of the system constitutes a technical shortcoming, the record contains no explanation as to why complexity in this instance is problematic.

While cost is not mentioned in the contemporaneous materials wherein the agency identifies a fourth weakness in the Arcadis proposal, the agency nonetheless introduced similar cost concerns in its response to the protest. Specifically, at the time of the evaluation, the agency explained:

[DELETED].

AR, Tab 6, SSEB Report, at 6; AR, Tab 1, Arcadis' Technical Proposal, at 52.

The protester argues that this assessment of a weakness indicates that the SSEB failed to read Arcadis' entire proposal. Specifically, Arcadis directs us to a portion of its technical proposal that clearly addresses this concern, which states that:

[DELETED].

AR, Tab 1, Arcadis' Technical Proposal, at 26. Arcadis' proposal also describes Arcadis' plan for [DELETED]. Id.

In response, the agency argues that the assignment of the weakness was reasonable because "[t]he [DELETED], with the accompanying [DELETED], is not described as having any advantage." AR at 7. The agency also reiterates the argument that it was reasonable for it to assign a weakness here because Arcadis' approach will have an impact on costs. Id. As discussed above, absent some sort of explanation as to why the proposed approach fails to meet the requirements of the solicitation, the assignment of a weakness was not reasonable. In addition, and again, Arcadis submitted a fixed-price proposal here, which appears to ameliorate any cost risk for the government. We also note that the arguments raised by the agency in response to the protest are not reflected in the contemporaneous record. Based on the record, we find that this weakness also lacks a reasonable basis.

A fifth weakness assigned to Arcadis' proposal provides yet another example of a technical weakness based, at least in part, on a concern about cost. The weakness assigned to Arcadis' proposal was as follows:

No explanation is included of the technical or cost advantages of [DELETED].

AR, Tab 6, SSEB Report, at 7.

Here, the stated concern is not that the approach will increase costs; rather, the concern is that the protester did not include any explanation of the cost or technical advantages associated with its approach. The protester did provide an explanation of its methodology in its proposal, however, noting the importance of the approach for [DELETED] reasons, among other things. AR, Tab 1, Arcadis' Technical Proposal, at 27-28. The fact that Arcadis did not provide the agency with a greater description of benefits to be gained by its proposed approach does not indicate that its approach constituted a technical shortcoming such that the assignment of a weakness was reasonable. To the extent the evaluators had a reasonable basis to find that Arcadis' approach was inefficient or inadequate to meet the solicitation requirements, that finding was not adequately documented and is not reflected in the contemporaneous record.

In addition to the errors in the evaluation identified above, we find that the agency's assignment of an adjectival rating for technical approach does not comply with the RFP and is not adequately documented. The RFP established that a marginal rating would be assigned to a proposal that has one or more weaknesses that are not offset by strengths. RFP at 7. In this regard, Arcadis received one significant weakness, twelve weaknesses, and seven strengths, and was assigned an overall rating of marginal. AR, Tab 11, SSDD, at 10-13. Despite the fact that the solicitation anticipated balancing of strengths against weaknesses, the SSA's narrative discussion of Arcadis' proposal only addressed the weaknesses, and included no discussion any of the seven strengths identified in the proposal. Id. at 13.

In sum, we find that the record fails to demonstrate a reasonable basis for at least five of the weaknesses assigned to the protester's proposal, and indicates that a sixth weakness, which was addressed during the clarification process, should not have been identified as a weakness in the SSDD. Additionally, the record does not contain adequate documentation regarding the assignment of a marginal rating to Arcadis' technical proposal.⁸ Accordingly, we sustain Arcadis' protest of the evaluation of its proposal under the technical approach factor.

⁸ Regarding the "significant weakness" identified in the protester's proposal, which pertained to the [DELETED], we do not agree with the protester's contention that the finding was wholly unjustified. Nonetheless, the record fails to provide a reasonable explanation as to why this particular weakness was characterized as "significant." In addition, the record here shows that a significant weakness was not a bar to receiving a rating of acceptable. See AR, Tab 6, SSEB Report at 14

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Previous Experience and Project Team Factor

Arcadis also challenges the acceptable rating assigned to the awardee under the previous experience and project team factor.⁹ In this regard, the protester argues that the awardee lacks directly relevant experience and capabilities required by the solicitation. As relevant here, the solicitation required proposals to include “a detailed discussion of the offeror’s directly relevant experience and capabilities to execute the specific tasks outlined in the SOO.” AR, Tab 16, RFP Evaluation Criteria, at 3.

The SSEB assigned an acceptable rating to OBG/Baker’s proposal under the factor, after identifying six strengths and five weaknesses. Two of the weaknesses, in particular, addressed [DELETED]. The weaknesses are as follows:

[DELETED].

[DELETED].

AR, Tab 6, SSEB Report, at 24.

These findings appear to indicate that the awardee lacks the type of experience contemplated by the RFP. Nonetheless, OBG/Baker received an acceptable rating. The only explanation provided by the SSEB is the conclusory statement that “[t]he strengths and weaknesses for this factor will have little or no impact on contract performance.” *Id.* at 25. Because the agency has failed to adequately explain or document its conclusion that OBG/Baker’s lack of relevant experience would not impact performance, we are unable conclude that the evaluation and rating of OBG/Baker’s proposal under the experience/project team factor was reasonable.

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(Offeror C received an acceptable rating under the technical factor despite four significant weaknesses). As a result, Arcadis need not show that the significant weakness was unreasonable in order to pursue its argument that it should have received a technical rating higher than marginal.

⁹ Arcadis also challenged two weaknesses assigned to its proposal under this factor. We have considered the protester’s arguments, and have concluded that they do not provide an additional basis to sustain this protest.

Best-Value Determination

Lastly, Arcadis challenges the agency's best-value determination, arguing that the SSA's selection decision is flawed because it is based on a flawed evaluation.¹⁰ Protester's Comments at 22. We agree with the protester and find that, based on the errors we have identified in the agency's evaluation of proposals, we are unable to conclude that the agency's best-value determination was reasonable. Additionally, we sustain the protest because the record does not demonstrate that the agency performed an adequate price/technical tradeoff or considered Arcadis' lowest price in the evaluation.

In a best-value procurement, such as the one here, it is the function of the source selection authority to perform a tradeoff between price and non-price factors to determine whether one proposal's superiority under the non-price factors is worth a higher price. System Engineering International, Inc., B-402754, July 20, 2010, 2010 CPD ¶ 167 at 4. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its selection decision. Id. at 5. Specifically, before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable proposal, the award decision must be adequately documented and supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explain why its technical superiority warrants paying a price premium. Id.

Here, the contemporaneous record lacks documentation of an adequate tradeoff analysis and consideration of Arcadis' lower-priced, but not unacceptable, proposal.¹¹ In this regard, the agency performed a price/technical tradeoff between only the two lowest-priced proposals with acceptable ratings. AR, Tab 11, SSDD at 31. Specifically, the agency did not consider either of the marginal-rated proposals in its tradeoff analysis, even though Arcadis proposed a lower price than the awardee. Although Arcadis' proposal received a marginal rating, the agency did not find the proposal unacceptable, which would have precluded it from issuance of the task order. As such, it should have been included in the tradeoff analysis. System Engineering International, Inc., supra.

¹⁰ As discussed above, the agency failed to demonstrate a reasonable basis for several of the weaknesses assigned to Arcadis' proposal, and did not adequately document its rationale for assigning a marginal rating to Arcadis' proposal under the technical approach factor.

¹¹ The RFP established that proposals assigned an unacceptable rating would not be eligible for issuance of the task order. RFP at 7. The RFP did not indicate, however, that the agency was precluded from issuing the task order to an offeror, like the protester, whose proposal was assigned a marginal rating. Id.

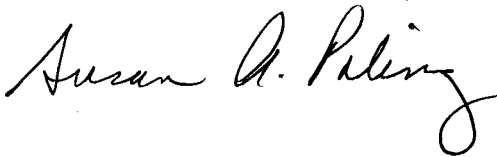
In sum, the record reflects that the agency's ultimate cost/technical tradeoff decision was inadequately documented, premised, at least in part, on an unreasonable evaluation, and failed to consider Arcadis' lowest-priced proposal. Correction of the identified errors could reasonably improve Arcadis' evaluation rating under the technical approach factor, and could also result in a lower rating for the awardee under the previous experience and project team factor. Accordingly, we cannot conclude that the SSA would have reached the same source selection decision had the errors in the evaluation not occurred, or that Arcadis was not prejudiced. A reasonable possibility of prejudice is a sufficient basis for sustaining a protest. J.R. Conkey & Assocs., Inc. dba Solar Power Integrators, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 11. We therefor sustain Arcadis' challenge to the agency's best-value tradeoff decision.

RECOMMENDATION

We recommend that the agency reevaluate proposals in a manner that is consistent with the RFP and with this decision. If deemed necessary, the agency should conduct further clarifications or conduct discussions and obtain revised proposals. The agency should adequately document its reevaluation and upon completion of the reevaluation, perform and document a new price/technical tradeoff analysis, including the rationale for any tradeoffs made. If OBG/Baker's proposal is not found to represent the best value to the government, the agency should terminate the task order and issue a new task order to the offeror representing the best value to the government.

We also recommend that Arcadis be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.



Susan A. Poling
General Counsel