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Decision

Matter of: Valor Healthcare, Inc.

File: B-412960; B-412960.2

Date: July 15, 2016

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DIGEST

1. Protest that the agency failed to evaluate the realism of the awardee's pricing is sustained where the record does not show that the agency conducted a price realism analysis comparing the awardee's pricing with its proposed technical approach, as required by the solicitation.
2. Protest that the agency unreasonably evaluated the protester's proposal is denied where the record reflects that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations.

DECISION

Valor Healthcare, Inc., of Addison, Texas, protests the award of a contract to Sterling Medical Associates, of Cincinnati, Ohio, by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA244-14-R-0109 for community-based, outpatient clinic services in Beaver County, Pennsylvania. Valor alleges that the agency failed to evaluate the realism of Sterling's pricing in accordance with the solicitation. Valor also alleges that the agency's evaluation of its own proposal was unreasonable in various respects.

We sustain the protest in part and deny it in part.

BACKGROUND

The solicitation, issued on November 12, 2013, and amended five times, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract with a base period of one year and four one-year options. RFP at 5-7, 111, 156.¹ The solicitation sought primary care and mental health services for an estimated 4,600 veterans at a contractor-furnished, community-based, outpatient clinic located in Beaver County, Pennsylvania. Id. at 8. Valor is the incumbent contractor for the requirement. Protest at 5.

The solicitation provided that the award would be made on a best-value tradeoff basis, considering the following four factors, listed in descending order of importance: technical approach, past performance, veteran preference, and price. RFP at 136. The technical approach factor included the following three equally-weighted subfactors: technical capability; coordination and continuity of care; and geographic location, physical address, and facility. Id.

The solicitation set forth evaluation criteria for all of the factors and subfactors.² RFP at 129-36. As relevant here, the price factor evaluation criteria included price realism, and the price realism evaluation was explained as follows:

Realism is evaluated by assessing the compatibility of proposed costs with proposal scope and effort. For cost (Price) to be realistic, it must reflect what it would cost the offeror to perform the effort if the offeror operates with reasonable economy and efficiency. Proposals unrealistically high or low in price, when compared to the Government estimate, and market conditions evidenced by other competitive proposals received, may be indicative of an inherent lack of understanding of the solicitation requirements and may result in proposal rejection without discussion.

Id. at 136 (bold in original; underlining added). As also relevant, the solicitation required offerors to submit a price breakdown spreadsheet. Id. at 120, 127. The spreadsheet was to show the costs of various elements of the offerors' pricing, including labor. See id. at 127. The solicitation provided the following explanation

¹ As discussed below, more than a year into the procurement process, the agency revised the solicitation "in its entirety." Agency Report (AR), Tab 3, Source Selection Decision Document (SSDD), at 3. The agency issued the revised version under solicitation amendment No. A00004. Only the revised version is discussed here, and all solicitation citations refer to the pages of amendment No. A00004.

² For the nonprice factors, the solicitation included definitions for adjectival ratings of excellent, good, fair, poor, and unsatisfactory. RFP at 129.

regarding the agency's use of the price breakdown information: "If the price cannot be determined fair and reasonable, then cost analysis will be performed on the . . . cost elements to determine cost reasonableness and/or realism." RFP at 127.

In December, 2013, the agency received proposals from two offerors--Valor and Sterling. AR, Tab 3, SSDD, at 2. Following an evaluation, Sterling's proposal was selected for award. Id. In September 2014, however, a contract review board discovered that substantial revisions to the solicitation were required, and it therefore declined to approve the award to Sterling. Id. at 1-3. The agency then revised the solicitation "in its entirety." Id. at 3. On October 22, 2015, the agency issued a solicitation amendment attaching a "conformed" version of the revised solicitation. Id. This solicitation amendment also requested revised proposals from Valor and Sterling. Id. at 3; RFP at 1. Both firms submitted revised proposals. AR, Tab 3, SSDD, at 3.

A source selection evaluation board (SSEB) evaluated the revised proposals and assessed strengths and weaknesses under the technical and past performance factors. AR, Tab 3, SSDD, at 4-5, 7-12. The SSEB also assigned adjectival ratings under the nonprice factors and subfactors. Id. at 6, 14. The ratings and evaluated prices for Valor's and Sterling's proposals are shown in the table below.³

	<u>VALOR</u>	<u>STERLING</u>
Technical Approach	Good	Excellent
Technical Capability	Good	Excellent
Coordination and Continuity of Care	Good	Excellent
Geographic Location, Physical Address, and Facility	Good	Good
Past Performance	Good	Good
Veteran Preference	Good	Good
Price	\$20,112,549.69	\$17,546,997.60

Id. at 6, 15.

After the SSEB completed its evaluation, an SSDD was prepared. AR, Tab 3, SSDD. The SSDD included a discussion and comparison of the two proposals' technical merits. Id. at 7-14. With regard to price, the SSDD stated as follows:

³ Valor submitted two proposals; the agency referred to the second proposal as Valor's "alternate proposal." AR, Tab 3, SSDD, at 3. The alternate proposal was not considered competitive, id. at 6, and is not at issue in the protest; accordingly, it is not further discussed.

Both Offerors' pricing is considered competitive, when compared to other VA [community-based, outpatient clinic] locations recently awarded within [Veterans Integrated Service Networks 4], which adhere to the same policies and guidelines pertinent to the current requirement. Nothing in Sterling's pricing proposal indicates a cause for concern.

* * * * *

The competitive pricing received in response to this RFP was further substantiated in a pricing breakdown, submitted by each Offeror along with their proposals. The Contract Specialist reviewed the breakdowns for concerns or outliers, and confirms that all pricing is reasonable, when compared to other contracts for the same or similar services, within the same geographic/demographic area. The pricing of both Offerors is, therefore, determined to be fair and reasonable.

AR, Tab 3, SSDD, at 14-15. Thus, while the SSDD discussed the competitiveness of the pricing (i.e., price reasonableness), as well as price "concerns and outliers," it did not address the realism of the proposed pricing⁴ and, more specifically, it did not reflect any "assess[ment] [of] the compatibility of proposed costs with proposal scope and effort," as required by the solicitation.⁵

⁴ Price reasonableness and price realism are distinct concepts. The purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. See Iron Vine Sec., LLC, B-409015, Jan. 22, 2014, 2014 CPD ¶ 193 at 6 n.5; Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014, CPD ¶ 74 at 4. Conversely, a price realism review is to determine whether the prices are too low, such that there may be a risk of poor performance. See Iron Vine Sec., LLC, supra; Solers Inc., supra.

⁵ We note that while the SSDD showed Sterling's pricing to be approximately \$[DELETED] higher than the agency's independent government cost estimate (IGCE), the SSDD also included a detailed discussion of why the IGCE was essentially inapplicable to this procurement. AR, Tab 3, SSDD, at 15. In particular, the SSDD stated that the services being procured here "cost[] significantly more" than the services in the IGCE and that the IGCE reflected "a lack of thorough understanding . . . as to what should be accounted for." Id. We further note that while the SSDD included a statement that Sterling's proposal reflected an understanding of the requirements, id. at 13, 16, this statement was unconnected with pricing, and nowhere did the SSDD reflect that the agency had considered whether Sterling's pricing was realistic in relation to the firm's technical approach.

The contracting officer, who also served as the source selection authority, reviewed the SSEB's evaluation findings. AR, Tab 3, SSDD, at 16. Based on this review, the contracting officer determined that Sterling's higher-technically-ranked, lower-priced proposal represented the best value to the government. Id. The award then was made to Sterling. After receiving a written debriefing, Valor filed a protest with our Office.

DISCUSSION

Valor alleges that the agency failed to evaluate the realism of Sterling's pricing in accordance with the specific terms of the solicitation. Valor also alleges that the agency's evaluation of Valor's proposal was unreasonable in various respects. For the reasons discussed below, we sustain the claim regarding price realism, and we deny the other claims.

Price Realism

Valor alleges that the award was improper because the agency failed to evaluate the realism of Sterling's pricing. In this regard, Valor points out that the solicitation specifically provided that the agency would evaluate the realism of offerors' pricing by "assessing the compatibility of [an offeror's] proposed costs with proposal scope and effort." Protest at 7 (quoting RFP at 136). Valor argues that the record includes nothing to show that this assessment occurred, noting that the only consideration of pricing that appears in the record concerns price reasonableness, rather than realism. Comments at 6-10, 13, 21-22. We agree.

Valor further maintains that if the agency had evaluated Sterling's pricing for realism as required by the solicitation, the firm's pricing would have been found unrealistic and/or a risk would have been assessed to the firm's technical approach. Comments at 14, 25-27. In this regard, Valor contends that labor makes up the "majority" of the cost of performance and that the price breakdown spreadsheets show Sterling's labor costs to be [DELETED] below Valor's.⁶ Protest at 15; Comments at 14. Finally, Valor contends that, according to the agency itself, the "majority" of Sterling's proposed staff currently serves under Valor's incumbent contract. Comments at 14 (quoting Contracting Officer's Statement at 2). Given

⁶ These contentions are supported by the record. Specifically, the price breakdown spreadsheets show that labor makes up approximately [DELETED] percent of Valor's total evaluated price and approximately [DELETED] percent of Sterling's total evaluated price. See AR, Tab 6, Valor Price Proposal, at 46; Tab 10, Agency/Sterling Correspondence, at 3. The spreadsheets further show Sterling's labor costs to be [DELETED] below Valor's labor costs (approximately \$[DELETED] for Sterling versus approximately \$[DELETED] for Valor). See AR, Tab 6, Valor Price Proposal, at 46; Tab 10, Agency/Sterling Correspondence, at 3.

these circumstances, Valor argues that the agency improperly failed to consider the risk that Sterling would be unable to “recruit the necessary talent and staff to perform at the level [Sterling] proposes.” Comments at 26. Had the agency considered this issue, Valor maintains, it would have deemed Sterling’s pricing unrealistic and/or downgraded its assessment of the firm’s technical approach. See id. at 5, 21, 27.

Where, as here, a solicitation anticipates award of a contract with fixed prices, there is no requirement that an agency conduct a price realism analysis. See Iron Vine Sec., LLC, supra, at 5; Gen. Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9. An agency may, however, at its discretion, provide for the use of a price realism analysis in a solicitation for the award of a fixed-price contract to assess the risk inherent in an offeror’s proposal. ed prices, there is no requirement that an agency conduct a price realism analysis. See Iron Vine Sec., LLC, supra; Gen. Dynamics One Source, LLC; Unisys Corp., supra. Our review of an agency’s price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. See Iron Vine Sec., LLC, supra; Gen. Dynamics One Source, LLC; Unisys Corp., supra. Where an agency fails to document its price realism evaluation, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. See Gen. Dynamics One Source, LLC; Unisys Corp., supra, at 13-14, 17; Solers Inc., supra, at 7-9.

In response to Valor’s claim, the contracting officer states why he believes Sterling’s pricing is realistic--but identifies no contemporaneous documentation supporting this conclusion. For example, he states that Sterling’s “cost elements” were reviewed and that this information, together with information in the firm’s technical proposal, provided “no reason to question . . . the realism . . . of Sterling’s pricing.” Contracting Officer’s Statement at 2.⁷ He further states that there was no reason to question the realism of Sterling’s pricing because the firm operates other VA clinics in the region. Id.

The contracting officer also offers two pricing comparisons purporting to show that Sterling’s pricing was realistic; both were prepared in response to the protest. In the first, the contracting officer claims that a comparison of Valor’s and Sterling’s clinic facility rental costs reflects that Sterling “operate[s] at a higher level of economy and efficiency than Valor,” which, according to the contracting officer, shows Sterling’s lower pricing to be realistic. Contracting Officer’s Statement at 2. The second comparison is a table showing Sterling’s pricing as well as the pricing of other

⁷ In this proceeding, the contracting officer submitted an initial statement, a supplemental statement, and a second supplemental statement. These statements appear in the record as AR Tabs 1, 11, and 14, respectively.

regional VA community-based, outpatient clinics. Contracting Officer's Supp. Statement at 2. The contracting officer states that the spread of prices shows Sterling's pricing to be realistic. Id.

For the reasons discussed below, we find that neither the contemporaneous record, nor the contracting officer's post hoc assertions, provides a basis for our Office to conclude that the agency evaluated the realism of Sterling's pricing in a way that was consistent with the terms of the solicitation. As an initial matter, we note that the only document in the contemporaneous record that reflects the evaluation of pricing is the SSDD--i.e., there is no separate price evaluation report. Further, and as discussed above, the SSDD includes no discussion of price realism--instead, it discusses only price reasonableness. The solicitation here, however, expressly provided that the agency would perform a price realism evaluation by "assessing the compatibility of [an offeror's] proposed costs with proposal scope and effort." RFP at 136.

Regarding the contracting officer's responses to Valor's claims, we find that none of these responses reflect a reasonable price realism evaluation under the terms of the solicitation. For example, the contracting officer's analysis of Valor's and Sterling's facility rental costs does not address the realism of the firms' labor costs, which as shown above, was a majority of the offerors' cost of performance. Further, the record shows the firms' rental costs to be a small fraction of their cost of performance (approximately [DELETED] percent for Sterling and approximately [DELETED] percent for Valor). See AR, Tab 6, Valor Price Proposal at 46; Tab 10, Agency/Sterling Correspondence, at 3. Regarding the comparison of pricing at other clinics to the pricing here, the contracting officer himself states that the effort at the other clinics differs from the effort here by a range of 27 to 43 percent. Contracting Officer's Supp. Statement at 2. He also states that his source selection decision did not rely on the table showing the comparison. Id.

Moreover, the record shows that there is at least one area of Sterling's proposal that raises an obvious price realism concern. Specifically, the record shows that the agency understands "the majority" of Sterling's proposed staffing candidates to be serving under Valor's incumbent contract. See Contracting Officer's Statement at 2. Yet, Sterling's price breakdown spreadsheet shows Sterling's labor costs to be [DELETED] below Valor's (the difference is nearly \$[DELETED]). See AR, Tab 6, Valor Price Proposal at 46; Tab 10, Agency/Sterling Correspondence, at 3. Neither the contemporaneous record, nor the agency's post-protest arguments, addresses the basis for finding Sterling's pricing realistic even though the firm apparently proposed to use a "majority" of the same staff as Valor, but at a [DELETED] lower cost. Since the solicitation specifically provided that the agency's price realism evaluation would include an assessment of the compatibility of an offeror's pricing to its proposed technical approach, we find that the agency's failure to consider this issue was unreasonable.

In sum, agencies are not required to perform realism evaluations in fixed-price contract settings. However, where a solicitation provides for the evaluation of price realism, the agency must conduct such an evaluation in a manner that is reasonable and consistent with the parameters established in the solicitation. In this case, the solicitation expressly provided for a price realism evaluation, and specifically called for an assessment of the compatibility of an offeror's pricing with the scope and effort of the proposed technical approach. RFP at 136. Nonetheless, the contemporaneous evaluation record contains nothing documenting an assessment of the compatibility of Sterling's proposed pricing--including the labor element--with the scope and effort of the firm's technical approach. Although the agency has offered various post hoc assertions on the matter, it has failed to establish that it performed an adequate price realism evaluation under the terms of the solicitation. Accordingly, we sustain Valor's protest regarding the evaluation of price realism.

Prejudice is an element of every viable protest. See Piquette & Howard Elec. Serv., Inc., B-408435.3, Dec. 16, 2013, 2014 CPD ¶ 8 at 10; Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14. Here, the record shows that the agency did not perform or document a reasonable price realism analysis on Sterling's proposal, as required by the solicitation. There is no basis for our Office to know what the source selection might have been had this flaw not occurred. In such circumstances, we resolve doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Supreme Foodservice GmbH, supra; Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. We therefore conclude that there is a reasonable possibility that Valor was prejudiced by the agency's actions. We recommend that the agency reopen the procurement and perform, and document, a price realism analysis on Sterling's proposal that is reasonable and consistent with the terms of the solicitation.⁸

Other Issues

Valor alleges that the agency's evaluation of its proposal under the past performance and technical factors was unreasonable in various respects. We have considered all of Valor's arguments, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest. Below, for the sake illustration, we discuss the firm's leading allegation in this area.

⁸ Valor's price realism claim also includes arguments that the agency failed to consider errors in Sterling's price breakdown spreadsheet. Comments at 10-12; Supp. Comments at 2-4. While the record shows that the spreadsheet contained errors, it is not clear how, if at all, the errors affected the agency's evaluation. Nevertheless, we recommend that the agency, in its reevaluation, take the errors into account, as appropriate.

As shown above, Valor's proposal was assigned a rating of good under the past performance factor. AR, Tab 3, SSDD, at 8. By way of additional background, the record shows that the SSEB assessed five strengths and no weaknesses or deficiencies to Valor's proposal under this factor. Id. Valor argues that because its proposal was assessed numerous strengths and no weaknesses or deficiencies under this factor, it was unreasonable for the agency to assign the rating of good instead of excellent. Comments at 27-29.

In reviewing a protest against an agency's evaluation of proposals, our Office will not substitute our (or the protester's) judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In this regard, the evaluation of an offeror's proposal is a matter within an agency's broad discretion, since the agency is responsible for defining its needs and the best method for accommodating them. Id. A protester's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

The strengths assigned to Valor's proposal under the past performance factor were as follows:

[DELETED]

AR, Tab 3, SSDD, at 8. The solicitation's definitions for the ratings of excellent and good were as follows:

EXCELLENT - Comprehensive and complete in all details. Exceeds requirements and objectives. Proposal contains strengths that will significantly benefit the Government and outweigh minimal, if any, weaknesses.

GOOD - Substantial response in clearly definable detail. Meets all critical requirements. Weaknesses are readily correctable and not significant. Proposal contains strengths that may benefit the Government.

RFP at 129.

The record reflects that after the SSEB evaluated the offerors' revised proposals, its members met to discuss individual proposal strengths and weaknesses. AR, Tab 3, SSDD, at 5. The record further reflects that from this discussion, consensus ratings were agreed upon and assigned. Id. In response to Valor's claim, the contracting

officer states that the SSEB reached its consensus rating for Valor's proposal under the past performance as follows:

[The SSEB] determined that the strengths associated with Valor's Past Performance did not necessarily "exceed" requirements and objectives[,] and would not be considered to "significantly" benefit the Government. Rather, it was determined that their Past Performance indicated that Valor would likely "meet" all critical requirements[,] and that the strengths associated with their Past Performance "may" benefit the Government.

Contracting Officer's Statement at 3.

Based on the record here, we see no basis to question the agency's judgment. The solicitation's adjectival rating definitions gave the agency a degree of latitude in assigning ratings. After reviewing the specific strengths assigned to Valor's proposal, we fail to see how the agency's determination that the proposal warranted a rating of good, rather than excellent, was inconsistent with the solicitation's definition for the rating of good. While Valor disagrees with the agency's determination, its disagreement does not furnish a basis on which to sustain this ground of protest.

RECOMMENDATION

We recommend that the agency perform and document a price realism analysis on Sterling's proposal that is reasonable and consistent with the terms of the solicitation, and then make a new source selection decision. If, after this process, the agency determines that Sterling is no longer in line for award, we recommend that the agency cancel Sterling's award and make an award to Valor, if otherwise proper. Finally, we recommend that the agency reimburse Valor's costs of filing and pursuing the protest, including reasonable attorneys' fees. Valor should file its

claims directly with the agency, detailing the time spent and costs incurred, within 60 days of receiving our decision. 4 C.F.R. § 21.8(d) (2016).

The protest is sustained in part and denied in part.⁹

Susan A. Poling
General Counsel

⁹ We note that as an additional ground of protest, Valor alleges that the award was improper because the record does not show that the agency timely received Sterling's price breakdown spreadsheet. Comments at 30-31; Supp. Comments at 5-10. The record shows that approximately two months after the due date for revised proposals, the contracting officer requested that Sterling provide a copy of its price breakdown spreadsheet, and Sterling did so. AR, Tab 10, Agency/Sterling Correspondence, at 1-3. The record is unclear, however, as to whether Sterling's previously submitted revised proposal included the price breakdown spreadsheet, as required by the solicitation. Accordingly, we recommend that the agency determine whether Sterling's price breakdown spreadsheet was timely received with the firm's revised proposal, and take this determination into account, as appropriate, when implementing the above discussed corrective action.