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Decision

Matter of: The Arcanum Group, Inc.

File: B-413682.2; B-413682.3

Date: March 29, 2017

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Leigh Ann Bunetta, Esq., General Services Administration, for the agency.
Peter D. Verchinski, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency conducted improper price realism analysis of awardee's proposal is denied where the record shows that the price realism analysis was reasonable and consistent with the terms of the solicitation.
2. Protest challenging the agency's best-value tradeoff decision is sustained where the source selection authority (SSA) relied, in part, on a finding that awardee had submitted similar projects under the past performance evaluation factor--and, in making this finding, the SSA specifically disagreed with the source selection evaluation board's conclusions--and yet the record does not contain adequate documentation explaining how the SSA reached this conclusion.

DECISION

The Arcanum Group, Inc. (TAG), of Denver, Colorado protests the General Service Administration, Public Buildings Service's (GSA) award of a contract to MIRACORP, Inc., of Mesa, Arizona, under request for proposals (RFP) No. GS-08-P-16-JE-D-7000, for administrative and technical support services for the GSA, Rocky Mountain Region 8. TAG primarily challenges the agency's price realism analysis and source selection decision.

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

BACKGROUND

The RFP, issued on November 18, 2015, provided for the award of a fixed-price contract for on-site administrative and technical support services at various locations in the Rocky Mountain Region for a base year and four 1-year options. The acquisition, conducted under Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items, was set aside for service-disabled veteran-owned small businesses (SDVOSB). Award was to be made on a best-value basis, considering price and the following three technical evaluation factors: management plan, experience of key personnel, and past performance. RFP at 68. The RFP provided that the technical evaluation factors were significantly more important than price. Id.

With regard to price, offerors were to submit fully-burdened labor rates for approximately 33 different positions, comprising a total of 63 people. RFP at 70, attach. F. The fully-burdened rates were to include the base hourly rate; fringe benefits including health and welfare; vacation, holiday, and other leave pay; overheads; general and administrative expenses; and profit. RFP at 70. Offerors were to fill out bid sheets for the base year and each option year, providing this information along with their fully-burdened rates as part of their proposal. The RFP provided that pricing would be evaluated for realism. RFP at 70.

With regard to past performance, the RFP required offerors to submit three references for “similar projects,” defined in the RFP (as amended) as “a contract with a Government Agency (federal, state, local) with staffing requirement for technical and administrative support services personnel, with a staff of at least thirty (30) employees.” RFP, amend. 6.

The agency received 17 proposals, including TAG’s (the incumbent) and MIRACORP’s, by the solicitation’s January 25, 2016 closing date. A source selection evaluation board (SSEB) evaluated the proposals under each evaluation factor by providing narrative strengths, significant weaknesses, and deficiencies.¹ AR, exh. 10, SSEB Report, at 1-26. The SSEB also assigned a point value (using a 10 point scale) to each factor.² With respect to TAG’s proposal, the agency identified various strengths, no significant

¹ Three proposals were eliminated from the competition for failing to meet the solicitation’s “go/no go” criteria relating to SDVOSB certification. Agency Report (AR), exh. 10, SSEB Report, at 2.

² An “outstanding” rating indicated a proposal that significantly exceeds the applicable standard, and received 9-10 points. A “good” rating indicated a proposal that exceeds the applicable “standard to some extent,” and received 7-8 points. A “satisfactory” rating indicated a proposal that meets the applicable standard, and received 4-6 points; a “marginal” rating did not exceed the applicable standard, and received 2-3 points; an “unsatisfactory” rating did not exceed the applicable standard, and received 0-1 points. AR, exh. 10, SSEB Report, at 2.

weaknesses, and no deficiencies under each evaluation factor. The SSEB assigned a score of 8 under each of the three evaluation factors, and the firm received a total score of 8. AR, exh. 10, SSEB Report, at 4-6.

With respect to MIRACORP's proposal, under the management plan evaluation factor, the SSEB identified some strengths, some significant weaknesses, and no deficiencies. The SSEB assigned a point score of 6. Id. at 4, 7. Under the experience of key personnel evaluation factor, the SSEB identified some strengths, some significant weaknesses, and no deficiencies. Id. at 8. The SSEB assigned a point score of 8. Id. at 4. Under the past performance evaluation factor, the SSEB assigned a strength for providing three past performance questionnaires, no deficiencies and, under significant weaknesses, stated

Although the SSEB agreed that the standard for this factor was met,³ it was difficult to determine if the past performance was on similar projects. One project was for Administrative Technicians at a surgical center while the other two were for Administrative Support for a vehicle maintenance and warehousing services.

Id. at 8. The SSEB assigned a point score of 5. The firm received a total, weighted, score of 6.35.⁴ Id. at 4.

The SSEB concluded that TAG's higher technical rating outweighed its higher price, and recommended award to TAG.⁵ After reviewing the SSEB's evaluation, the contracting officer, who was the source selection authority (SSA), disagreed with the SSEB's recommendation. Specifically, the SSA found that TAG's higher rating was not worth the additional cost. The SSA concluded that MIRACORP represented the best value to the agency, and selected the firm for award.

On September 6, 2016, TAG timely protested the agency's selection decision to our Office, arguing that the agency failed to conduct a price realism analysis. In response to the protest, the agency indicated that it would take corrective action by conducting a new evaluation of the offerors' prices, including a price realism analysis. Our Office dismissed TAG's protest as academic on October 7.

³ The "standards" for this evaluation factor were met "when no references are below Satisfactory (4-6) range on 'Similar Project' completed within the last five (5) years." AR, exh. 10, SSEB Report, at 4.

⁴ The agency assigned the evaluation factor management plan a weight of 45 percent; the evaluation factor experience of key personnel a weight of 30 percent; and the evaluation factor past performance a weight of 25 percent. Id. at 4.

⁵ TAG's price was \$35,837,798, compared to MIRACORP's price of \$29,868,406. AR, exh. 11, Source Selection Decision Document (SSDD), at 2.

In conducting its price realism evaluation, the SSEB sought “to determine if the prices that are offered are realistic as compared to the GS [General Schedule] Step 1 equivalent, and can satisfy the terms and conditions of the contract.” AR, exh. 13, SSEB Price Realism Discussion, at 1. The SSEB chose to “spot check” 10 positions to evaluate the proposed wages. In doing so, the SSEB determined the GS step 1 salary for each of the identified positions, and then compared that salary to the range of rates offered by the offerors. For some positions, the agency found that all offerors proposed rates higher than the GS step 1 salary, and for the remaining positions, the agency found that some offerors proposed rates that were high, and some proposed rates that were low. Id. at 2-3. With regard to the three offerors with the highest technical scores (TAG, MIRACORP, and a third offeror), the SSEB found a “price discrepancy” between MIRACORP’s proposed rates and the other two offerors’ rates. Specifically, for three positions, the SSEB found that MIRACORP offered rates lower than the other two offerors. The SSEB concluded that “MIRAC[ORP] does not have a good understanding of the pricing requirements for the solicitation nor do they have a clear understanding of the local market particularly for the higher technical positions.” Id. at 4. The SSEB again recommended award to TAG. Id. at 5.

The SSA reviewed the SSEB’s price evaluation and conducted her own price realism analysis. AR, exh. 14, SSA Addendum Report: Price Realism Evaluation, at 1-9. As part of her analysis, the SSA examined information from a web based market research firm to determine the wages for the 10 positions. The SSA concluded that the wage rates provided by the website were slightly lower than the unburdened wage rates provided by OPM (i.e., the GS scale).⁶ The SSA acknowledged that, for some positions, MIRACORP was not paying the same rates as TAG or the third offeror, but that MIRACORP’s rates were consistent with the market (as evidenced by the rates from the website) and consistent with the OPM rates.

In summarizing her findings in her price realism analysis, the SSA acknowledged that TAG received a higher technical score, but that the score was “outweighed by the significant price difference over the 5-year contract term.” Id. at 5. In reaching this conclusion, the SSA stated that she disagreed with the

SSEB’s consensus rating for Factor 3 [Past Performance] for MIRAC[ORP]. The SSA found that MIRAC[ORP] met the definition of similar on its three past performance projects and the finding of a significant weakness and “5” Consensus rating were not warranted. Accordingly, the gap in technical ratings is not as wide as contained in the SSEB report.

⁶ In comparing rates, the SSA compared the proposed rates to both burdened and unburdened OPM rates, and to the wage rates on the website, which the SSA determined were unburdened. Id. at 4-5.

Id. The SSA further explained why she viewed other weaknesses found by the SSEB not to be significant. Id. She ultimately found that TAG offered no significant benefits that justified its higher price. Id. at 6. The SSA concluded that, “despite the SSEB’s conclusion and recommendation, the SSA determines that MIRACORP, and not TAG, provides the best value to the government.”⁷ Id. at 5.

The agency again made award to MIRACORP, and this protest followed.

DISCUSSION

TAG primarily challenges the agency’s determination that MIRACORP submitted realistic prices, as well as the agency’s best-value decision.⁸ As discussed below, we find that the record supports the agency’s evaluation of MIRACORP’s pricing, and we therefore deny this ground of protest. However, we find that the record does not demonstrate that the agency’s best-value decision was reasonable, and we therefore sustain this ground of protest.

Price Realism

As stated above, the SSA found that MIRACORP’s proposed pricing was realistic, based on findings that the proposed prices were in line with market rates and the GS wage rates. TAG provides numerous challenges to this assessment. For example, TAG argues that the SSEB found TAG’s price to be unrealistic, and that it was improper for the SSA to compare MIRACORP’s rates to market rates rather than the incumbent rates. While we do not discuss every challenge to the agency’s price realism analysis, we find none provides a basis to sustain the protest.

Where, as here, an RFP contemplates the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror’s understanding of the requirements or to assess the risk inherent in an offeror’s proposal or quotation. Raytheon Tech. Servs. Co. LLC, B-406136, B-406136.2, Feb. 15, 2012, 2012 CPD ¶ 99

⁷ This statement is found in the SSA’s price realism analysis. AR, exh. 14, SSA Addendum Report: Price Realism Evaluation, at 5. The agency did not update its source selection decision following its corrective action. See AR, exh. 11, SSDD, at 1-6 (dated Aug. 3, 2016).

⁸ TAG raises additional arguments that we have considered but do not address. We find they provide no basis for us to sustain the protest. For example, TAG asserts that the agency failed to perform a proper trade-off analysis, and instead awarded the contract to MIRACORP on a lowest-priced, technically-acceptable basis. However, the record shows that the SSA conducted a trade-off analysis between the non-price and price evaluation factors, as required by the RFP. AR, exh. 11, SSDD, at 1-6; AR, exh. 14, SSA Addendum Report: Price Realism Evaluation, at 5-6.

at 5. The nature of the analysis required to assess whether an offeror's proposed price is so low as to reflect a lack of competence or understanding is generally a matter within the agency's discretion. See AMEC Earth & Env'tl., Inc., B-404959.2, July 12, 2011, 2011 CPD ¶ 168 at 8; see Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Further, there is no general requirement that an agency base its analysis on a comparison to the incumbent contractor's prices, see Science & Mgmt. Res., Inc., B-291803, Mar. 17, 2003, 2003 CPD ¶ 61 at 3, and 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.

Here, the record shows that the SSA conducted a reasonable price realism analysis of the awardee's proposal. As noted above, the agency compared the awardee's offered wage rates to market rates and the OPM wage rates. Based on that analysis, the SSA concluded that MIRACORP's wages were commensurate with the market rates, and were also in line with the OPM wage rates.⁹ Specifically, the SSA concluded that "[b]ased on the market data and OPM loaded rates, MIRAC[ORP] proposed realistic and reasonable rates, understands the position requirements, and plans on providing the commensurate education and experience level required by the RFP." AR, exh. 14, SSA Addendum Report: Price Realism Evaluation, at 5.

With regard to TAG's specific arguments challenging the agency's price realism analysis, none provides a basis to sustain the protest. While TAG asserts that the SSEB found MIRACORP's price to be unrealistic, and the record shows that the SSEB had "strong concerns" with MIRACORP's proposed pricing for the technical positions, the record does not, in fact, show that the SSEB made an explicit finding that MIRACORP's pricing was unrealistic. AR, exh. 13, SSEB Price Realism Discussion, at 5. In any case, even if the SSEB had found MIRACORP's pricing unrealistic, there is nothing improper with an SSA disagreeing with lower level evaluators, so long as the SSA's basis for her evaluation is reasonable and documented in the contemporaneous record. See KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13-14.

Also, while TAG asserts that it was improper for the agency to compare MIRACORP's rates to market rates rather than the incumbent rates, there is no general requirement that an agency's price realism analysis must include a comparison to the incumbent's prices. See Science & Mgmt. Res., Inc., *supra*; Heartland Tech. Group, LLC, B-412402.2, Sept. 29, 2016, 2016 CPD ¶ 278 at 8 n.13. TAG alleges that the agency's price realism analysis was required to compare MIRACORP's rates to TAG's incumbent rates because MIRACORP's proposed technical approach included retaining incumbent

⁹ Indeed, the SSA concluded that it was TAG's rates that were not in line with the prevailing market, as the firm offered rates higher than the market and the comparable rates paid on the OPM scale. AR, exh. 14, SSA Addendum Report: Price Realism Evaluation, at 4.

personnel. However, MIRACORP's strategy for staffing the contract did not merely rely on hiring incumbent personnel, but included other staffing strategies as well. Heartland Tech. Group, LLC, supra. In any case, the record shows that the SSA specifically compared MIRACORP's rates to TAG's (the incumbent) proposed rates, and found that TAG's rates were higher than the rates contained in the GS pay scale for similar positions and the prevailing market. AR, exh. 14, SSA Addendum Report: Price Realism Evaluation, at 4. Accordingly, TAG's protest of the price realism analysis is denied.

Best-Value Determination

TAG also contends that the SSA's selection decision was inadequately documented and thus unreasonable. In this regard, TAG argues that the SSA found MIRACORP's past performance to consist of similar projects, such that the awardee deserved a higher technical past performance rating, but offered no explanation of the basis of this conclusion.¹⁰ We agree.

As explained above, the SSEB concluded that MIRACORP had a significant weakness under the past performance evaluation factor because "it was difficult to determine if the past performance was on similar projects." AR, exh. 10, SSEB Report, at 8. The evaluators stated that, "One project was for Administrative Technicians at a surgical center while other two were for Administrative Support for a vehicle maintenance and warehousing services." Id.

The SSA, when making her initial tradeoff decision, stated that she "believes [the weaknesses identified by the SSEB] are not significant risks to acceptable performance." AR, exh. 11, SSDD, at 6. However, the SSA's Addendum Report: Price Realism Analysis, drafted as part of the corrective action, stated that she "disagrees with . . . the SSEB's consensus rating for Factor 3 [Past Performance] for

¹⁰ The protester also argues that the SSA offered no explanation for her disagreement with one weakness and one strength identified by the SSEB. Specifically, the SSEB found a significant weakness for MIRACORP's proposal because it provided that the firm's proposed program manager was currently "managing multiple projects in the western region," and thus it was unclear if the program manager would be able to "focus full-time on this contract as required." AR, exh. 10, SSEB Report, at 7. The SSEB also found a strength for TAG's "plan for filling short term vacancies." In both instances, the SSA disagreed with the SSEB, explaining that, with regard to the program manager, MIRACORP's proposal explicitly provided that the firm would provide a full-time program manager, and, with regard to short-term vacancies, that the SSA had personal knowledge that TAG previously had difficulty filling short-term vacancies. Agency Supp. Legal Memorandum, at 4, 11. Given the SSA's explanations for her disagreement, we find nothing improper with the agency's documentation regarding these allegations in its source selection decision.

MIRAC[ORP].”¹¹ AR, exh. 14, at 5. She found “that MIRAC[ORP] met the definition of similar on its three past performance projects and the finding of a significant weakness and “5” Consensus rating were not warranted.” Id. The SSA did not provide any further explanation of how she concluded that MIRACORP met the definition for similar projects on its three past performance projects, such that the finding of the significant weakness and awardee’s past performance point score were not warranted.

TAG argues that there is no support in the record for the SSA’s rationale for changing the awardee’s past performance rating, and the record shows that the SSA relied upon this as a discriminator in her selection decision. We agree.

Where a cost/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 5 (citing Federal Acquisition Regulation § 15.308 in the context of a commercial item acquisition); see Crowder Constr. Co., B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 10. Although source selection officials may reasonably disagree with the ratings and recommendations of lower-level evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the provisions of the solicitation, and adequately documented. See IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 14; see Earl Indus., LLC, B-309996, B-309996.4, Nov. 5, 2007, 2007 CPD ¶ 203 at 7.

Here, the SSEB rated the past performance of MIRACORP as containing a significant weakness. The record reflects that the SSA reviewed the SSEB’s assessment, performed her own assessment, and disagreed with the SSEB’s findings. The SSA found that MIRACORP’s past performance did not warrant the significant weakness, that the firm’s past performance score was also unwarranted, and that the technical difference between the protester’s and awardee’s ratings was not as significant as the SSEB found. The SSA, however, did not explain how she reached her conclusions; rather she simply stated that they met the definition. The SSA relied on this finding as part of her determination that MIRACORP’s proposal provided the best value to the Government. Having failed to adequately document the basis for her conclusion regarding MIRACORP’s past performance, the determination that MIRACORP’s lower-priced, lower-rated proposal was more similar in technical ratings to TAG’s proposal than the SSEB found is not supported by the record. We find the agency’s best-value

¹¹ Based on the record before us, where the SSA makes seemingly conflicting statements regarding the past performance weaknesses of the awardee, it isn’t clear if the SSA believes that MIRACORP’s past performance represents a risk that the SSA finds acceptable, or if the SSA believes that there is no risk associated with MIRACORP’s past performance.

determination to be unreasonable because it relies, in part, on a determination that is inadequately documented.¹²

RECOMMENDATION

We recommend that the SSA reevaluate MIRACORP's proposal under the past performance evaluation factor and document her rationale for her past performance evaluation. We further recommend that, upon the completion of this evaluation, the agency prepare a new source selection decision. We also recommend that the agency reimburse the protester's reasonable costs associated with filing and pursuing its protest, including 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. 4 C.F.R. § 21.8(f).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel

¹² The protester also argues that the awardee's human resources manager fails to satisfy the RFP's requirement for 5 years of experience with "similar projects." While the agency maintains that the awardee's key personnel meet the experience requirement, we note that the record does not appear to support the agency's contention. Thus, in implementing our recommendations, the agency may wish to consider reviewing the reasonableness of its determination that the human resources manager meets the experience requirements of the solicitation.