



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: HP Enterprise Services, LLC

File: B-413888.2; B-413888.3; B-413888.4; B-413888.5

Date: June 21, 2017

Daniel R. Forman, Esq., Sharmistha Das, Esq., and Jonathan M. Baker, Esq., Crowell & Moring LLP, for the protester.

Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., and Sean K. Griffin, Esq., Smith Pachter McWhorter PLC, for the intervenor.

Elise Harris, Esq., and Corey J. Thompson, Esq., Department of Health and Human Services, for the agency.

Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the agency failed to perform a price realism evaluation is denied, where the fixed-price, time-and-materials solicitation did not obligate the agency to perform a price realism evaluation.
 2. Protest challenging the agency's technical evaluation is denied, where the agency had a reasonable basis for its evaluation of the awardee's proposal.
 3. Protest challenging the agency's price evaluation is denied, where the agency reasonably evaluated the awardee's price proposal.
 4. Protest challenging agency's selection of lower-rated, lower-priced proposal for award is denied, where agency reasonably determined that protester's higher technical evaluation did not warrant associated price premium.
-

DECISION

HP Enterprise Services, LLC (HPES), of Herndon, Virginia, protests the award of a task order to Dell Services Federal Government, Inc. (Dell), of Herndon, Virginia, by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) under request for task order proposals (RFTOP) No. 2016-CIMS-OCOO-ITSO-ITI-272, which was issued by the CDC to acquire information technology and support services. The protester contends that the agency failed to perform a

required price realism evaluation and that the agency's price and technical evaluation of the awardee's proposal was flawed.¹ HPES also contends that the best-value determination was unreasonable.

We deny the protest.

BACKGROUND

On May 10, 2016, the CDC issued the RFTOP to all holders of the CDC information management services contracts pursuant to the "fair opportunity" provisions of Federal Acquisition Regulation (FAR) subpart 16.5.² RFTOP at 1136.³ The RFTOP contemplated award of a time-and-materials task order with a 10-month base period, three 1-year option periods, and one 9-month option period. Id. at 1056, 1058.

The solicitation provided for a best-value award based on two evaluation factors of approximately equal weight:⁴ technical and price. Id. at 1142. The agency would award to a higher-rated, higher-priced offeror only where "the perceived benefits of the higher[-]priced proposal [] merit the additional price." Id. Proposals would receive a rating of either acceptable or unacceptable under the technical factor. Id. The technical factor was scored under six separate criteria, on a basis of 100 total points, as follows:

¹ The task order was initially awarded to HPES on August 27, 2016. On October 3, Dell filed a protest with our Office, alleging that the agency used unstated evaluation criteria, conducted a flawed technical evaluation, and relied on an unsound best-value determination. The agency concluded that there were errors in its technical and price evaluations and proposed to correct the errors and make a new award decision. On this record, we dismissed Dell's protest as academic. Dell Servs. Fed. Gov't, B-413888, Nov. 15, 2016 (unpublished decision).

² When conducting a task order competition under FAR § 16.505, agencies are required to provide contract holders a "fair opportunity" to be considered for task order award. FAR § 16.505(b)(1).

³ The agency report (AR) was filed as a single, continuously-paginated document. Many documents, including the RFTOP, do not contain their own internal pagination. Thus, citations to the record are to the pagination provided in the consolidated AR.

⁴ The solicitation identified no weighting between the price and technical factor, and therefore they were considered approximately equal in importance. See Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 6 (in FAR part 15 solicitation, when the RFP is silent as to the relative weight of factors or subfactors, they should be considered approximately equal in weight).

Criteria	Points
Technical Approach	35
Management Plan	20
Staffing Plan	15
Similar Experience	15
Transition/Startup Plan	15
Total Points	100

Id. at 1143.

The solicitation provided 25 labor categories, ranging from computer operator I to technical writer/documentation specialist. Id. at 1057. There were three contract line item numbers (CLINs) for each performance period: application hosting services, surge support for application hosting services, and optional tasks for application hosting services. Id. at 1059.⁵

As relevant to this protest, the solicitation provided the following:

The offeror shall provide qualified technical labor resources in numbers adequate to address the technical and administrative requirements and deliverable schedules outlined in the RFTOP. The description shall also include:

1. A staffing matrix showing type and number of staffing resources readily available for the base effort, including breakdowns by skill sets, security clearances and any related technical IT certifications. The matrix of proposed personnel shall also include their experience, education, skills, and qualifications to do the job and support the breadth of specific technologies used in the Application Hosting Branch. The backgrounds of the personnel will reflect the length and variety of experience and expertise in tasks similar to the tasks required by this project and any relevant training. [. . .]

Id. at 1145.

For the price factor, the RFTOP provided that “[e]ach offeror’s price proposal will be evaluated to determine whether it is complete, reasonable, and consistent with the offeror’s technical approach; whether it reflects a clear understanding of the solicitation requirements; and whether it contains balanced unit pricing.” Id. at 1147-48.

⁵ For each CLIN, offerors were asked to propose both a unit price and a not-to-exceed price cap. AR, RFTOP, at 1059. The offerors’ proposed unit prices and not-to-exceed prices were the same; the offerors therefore proposed prices in the manner of a fixed-price contract. AR, Tab 17B, Dell Price Proposal; Tab 18B, HPES Price proposal.

The agency received four proposals by the June 3 due date. *Id.* at 1054. All four proposals were considered technically acceptable. AR, Tab 14A, Technical Evaluation, Feb. 9, 2017, at 483. HPES and Dell received the highest technical ratings, as follows:

Offeror	Rating Points	Price
HPES	89	\$88,340,250.36
Dell	73	\$62,321,990.04
Offeror 3	71	[redacted in original] ⁶
Offeror 4	68	[redacted in original]

AR, Tab 14A, Technical Evaluation, Feb. 9, 2017, at 483; Tab 11, RFTOP Award Decision, Feb. 23, 2017, at 442.

On February 23, the CDC made award to Dell, and this protest followed.⁷ AR, Tab 8, Unsuccessful Offeror Notification Email, Feb. 23, 2017, at 2.

DISCUSSION

HPES raises numerous challenges to the agency's evaluations and best-value award decision. Among these, the protester alleges that the CDC failed to evaluate proposals for price realism, contends that the agency performed an unreasonable evaluation of Dell's price and technical proposals and argues that the best-value tradeoff determination was flawed.⁸ For the reasons below, the protest is denied.⁹

⁶ The CDC also requested that we dismiss the protest, arguing that HPES was not an interested party because "there are two other lower[-]cost, technically[-] acceptable offerors." Memorandum of Law (MOL) at 30, n.2. However, the CDC provided our Office with a substantially redacted agency report, from which the prices and technical ratings of these offerors' proposals, as well as other information about these offerors, had been redacted. *See, e.g.*, AR, Tab 11, RFTOP Award Decision, at 442. Because the agency's redactions prevented our Office from reviewing information relevant to some of the agency's arguments, those arguments were not considered.

⁷ The value of this task order is in excess of \$10 million. Therefore, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contracts. 41 U.S.C. § 4106(f).

⁸ In its comments, HPES expressly abandoned its protest grounds challenging the agency's evaluation of HPES' proposal under the technical factor, the agency's evaluation of Dell's proposal under the transition plan/start up criterion, and the exclusion of transition costs to be paid to HPES in the price evaluation. HPES Comments, Apr. 24, 2017, n.2.

(continued...)

Price Realism Evaluation

HPES contends that the solicitation required the CDC to complete a price realism analysis, and that the agency failed to do so. HPES Comments at 9. Although acknowledging that “the RFTOP did not use the phrase ‘price realism,’” HPES nevertheless argues that, where the solicitation provides that offerors must explain “[a]ny . . . high or low proposed prices/costs as compared to historical data,” this language amounts to an obligation for the agency to ensure that proposed prices are not too low. *Id.*, citing RFTOP at 1141. The CDC responds that “the RFTOP does not include a price realism requirement as part of the evaluation criteria,” and that, without more, the agency had no obligation to conduct a realism evaluation. Supp. Agency Report at 3. We agree.

Where a solicitation anticipates award of fixed-price or time-and-materials task order with fixed-price fully-burdened labor rates, the price realism of a proposal is not ordinarily considered, since the risk and responsibility for contract costs is on the contractor. See *Ball Aerospace & Techs. Corp.*, B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8 n.7. In this regard, the fact that an offeror’s price is below a government cost estimate, as in the case here, does not require the agency to conclude that the price is unrealistically low, since we have recognized that an agency may find even a below-cost price to be realistic. *Optex Sys., Inc.*, B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6; *Network Innovations, Inc.*, B-408382, B-408382.2, Sept. 4, 2013, 2013 CPD ¶ 220 at 5.

Where there is no evaluation factor providing for consideration of price realism, a determination that an offeror’s price is too low generally concerns the offeror’s responsibility. *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 13; *PAE Gov’t Servs., Inc.*, B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror’s low price reflects a lack of technical understanding or risk, see FAR § 15.404-1(d)(3), offerors must be advised that the agency will conduct such an analysis. See *STG, Inc.*, *supra*, at 13-14 (applying the standard to procurements under FAR subpart 16.505). As our Office has found, in the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and where the solicitation states that a proposal can be rejected for offering low prices. *DynCorp Int’l LLC*, B-407762.3, June 7, 2013, 2013

(...continued)

⁹ While we do not discuss all of HPES allegations, we have considered all of HPES’s claims, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest.

CPD ¶ 160 at 9; STG, Inc., supra, at 14.¹⁰ Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. Id. at 13-14.

Here, the parties agree that the solicitation does not expressly advise offerors of any price realism evaluation. Furthermore, the language cited by the protester is not sufficient to give rise to an obligation to conduct a price realism evaluation. Overall, we find no obligation for the agency to perform a price realism analysis. DynCorp Int'l LLC, supra. Because we conclude that there is no such obligation, we accordingly find no basis to sustain the protest ground that the agency failed in its obligation to evaluate proposals for price realism. This protest ground is denied.

Evaluation of Dell's Technical Proposal

HPES contends that the agency failed to recognize and document numerous weaknesses in Dell's proposal. In this regard, HPES argues that three of the significant strengths awarded to Dell should instead be considered deficiencies. HPES Comments & Supp. Protest, at 29-30. Specifically, CDC evaluators awarded Dell significant strengths for (1) proposing to "[DELETED]"; (2) "propos[ing] a plan to [DELETED]"; and (3) [DELETED]. AR, Tab 14B1, Dell Tech. Consensus, at 491. HPES alleges the

¹⁰ HPES cites to our decision in Analytic Strategies, B-404840, May 5, 2011, 2011 CPD ¶ 99, to argue that a solicitation without explicit reference to a price realism evaluation may nevertheless obligate the agency to perform such evaluation. HPES Supp. Comments, May 11, 2017, at 6. In Analytic Strategies, the agency found that "Analytic Strategies' 'low price was the result of very low labor rates which were determined to be unrealistic for the approach proposed,'" where the protester's blended labor rates fell significantly below the cluster of other offerors' rates. Id. at 2-4. Despite the lack of explicit price realism language in the solicitation, our Office found that "the RFP provided adequate notice to the offerors that low prices could be considered as reflecting on their understanding or risk associated with their proposals." Id. at 3-4. HPES argues that, given similarities between the solicitation language in Analytic Strategies and the RFTOP, we should find that the CDC was required to perform a price realism evaluation in this procurement. HPES Supp. Comments, May 11, 2017, at 6.

In Analytic Strategies, we concluded that offerors were on notice that "low prices could be considered . . .," and thus, that the agency had the option, but not the obligation, to conduct a price realism analysis. Analytic Strategies, supra, at 3-4. Our recent decisions provide clarity on this point, and provide that a fixed-price solicitation must contain either an express price realism provision or a statement warning offerors that a business decision to submit low pricing may form the basis for rejecting the low-priced offeror's proposal if the agency intends to consider the risk of a low-cost proposal. See, e.g., DynCorp, supra, at 8-9 (agency not required to perform price realism where RFP only contemplates that price proposals will be reevaluated for understanding of the solicitation requirements).

record shows that these significant strengths should not have been assessed. HPES Comments & Supp. Protest, at 29-30.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. See Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 10. An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. See American Tech. Sols. Int'l Corp., B-412442, B-412442.2, Feb. 12, 2016, 2016 Comp. Gen. Lexis 47 at 7; Ball Aerospace & Techs. Corp., B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. Id.

CDC responds that "Dell proposed using tools that are already in use at CDC for other functions," and that "[a]dapt[ing] [sic] the same work process for receiving calls across ITSO [internet technology services office] is a good technology solution that was proposed by Dell." Supp. MOL, May 8, 2017, at 6. The agency notes that much of HPES' argument rests on the negative findings drafted by a single evaluator during the initial technical evaluation, and that the same evaluator was one of the three-member consensus panel that later awarded the challenged strengths. Id. See also HPES Comments & Supp. Protest at 30.

The RFTOP provided that proposals were to be rated as acceptable or unacceptable under the technical factor, where a rating of acceptable meant that the proposal demonstrated the "ability [of the offeror] to meet the solicitation requirements." RFTOP at 1143. In addition, proposals would receive a qualitative score out of 100 under five weighted criteria, as described above. Id. The record shows that one evaluator raised several concerns with Dell's proposed consolidation of functions in his individual evaluation. AR, Tab 14C2, First Tech. Member Rating-Dell. However, the same evaluator approved the later consensus evaluation awarding the significant strengths. AR, Tab 14B1, Dell Technical Consensus, at 489.

Importantly, HPES does not argue that Dell's proposal is technically unacceptable, rather only that the significant strengths should not have been assessed because they were not adequately explained. HPES Comments & Supp. Protest at 29. The record demonstrates that the CDC recognized that Dell's proposal often provided general descriptions rather than specific details. AR, Tab 14A, Technical Evaluation, at 483 ("Dell provided ideas about different approaches to increase efficiency . . . [but] Dell did not provide in depth details."). The record also indicates that Dell's lower technical score--despite the considerable number of strengths--was assigned as a result of this

drafting approach. Id. (“The level of detail proposed is reflected in the technical rating and score.”). In sum, HPES has not shown that the significant strengths should not have been awarded under the terms of the solicitation. The agency considered both the benefits in Dell’s proposed approach and the lack of corresponding detail, and we find nothing improper in this analysis. On this basis, this protest ground is denied. American Tech. Sols. Int’l Corp., supra, at 7; Ball Aerospace & Techs. Corp., supra, at 7.

Evaluation of Dell’s Price Proposal

Next, HPES alleges that the agency did not meaningfully evaluate Dell’s price in the context of the tasks to be performed. HPES Comments at 13. In this regard, the protester argues that the agency improperly credited Dell for cost savings that were not adequately supported by its technical proposal. Id. at 10-11. HPES also asserts that the CDC “was required to evaluate whether each offeror’s proposed pricing was sufficient to ensure completion of the work required by the RFTOP.” Protest at 12.

The CDC contends that it did, in fact, examine Dell’s price proposal and reasonably “concluded that this work can be accomplished at the proposed price by Dell.” Supp. AR at 3, citing AR, Tab 11, RFTOP Award Decision, at 416-453. The record reflects that the agency found support for some of the efficiencies and innovations proposed by Dell, such as merging some functions. AR, Tab 11, RFTOP Award Decision, at 450. However, the agency also concluded that in some areas Dell failed to adequately support claimed efficiencies with sufficient detail. Id. Furthermore, the record also shows that the agency evaluated Dell’s proposed pricing in the context of the anticipated work. In this regard, the agency found that Dell’s staffing plan “presented a reasonable mix of labor categories as well as an appropriate number of resources based on the Government estimate presented in the RFTOP.” AR, Tab 12A, Business Evaluation Summary, at 457. Moreover, the agency compared Dell’s labor rates to the independent government cost estimate and, for the base period, to the prior contract ceiling rates. AR, Tab 12D, Price Analysis, at 469-470. The record reflects that the agency evaluated the proposals, documented its analyses, was aware of the various weaknesses in Dell’s proposal, and overall found Dell’s proposal to be technically acceptable with acceptable risk. AR, Tab 11, RFTOP Award Decision, at 447-453. Without more, the protester’s disagreement with the agency’s judgment provides no basis to sustain the protest. Ball Aerospace & Techs. Corp., supra.

Best-Value Determination

HPES also disputes CDC’s best-value determination on the basis that it rests on an unsound foundation of flawed analyses. HPES Comments at 37. The protester also argues that the agency failed to properly consider that Dell’s proposed efficiencies were unlikely to materialize. Id. We find no merit to HPES’ claims.

Where, as here, a procurement provides for issuance of a task order on a best-value tradeoff basis, it is the function of the selection official to perform a price/technical tradeoff, that is, to determine whether one proposal’s technical superiority is worth its

higher price. Alliant Enter. JV, LLC, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. Under this type of solicitation--i.e., one where price and technical factors are of approximately equal weight and a tradeoff may be made between technical and price factors--we will not disturb an award based on a proposal with lower technical merit and a lower price so long as the award is consistent with the evaluation factors and the agency reasonably determined that the technical superiority of the higher-priced proposal does not outweigh the price advantage of the lower-priced proposal. Cf. American Tech. Sols. Int'l Corp., supra, at 15-16 (award to higher-priced, higher-ranked proposal is reasonable where technical advantage offsets higher price); see also Financial & Realty Servs., LLC, B-299605.2, Aug. 9, 2007, 2007 CPD ¶ 161 at 5; Structural Preservation Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7. The agency's rationale for any cost/technical tradeoffs made and the benefits associated with the additional costs must be adequately documented. FAR §§ 16.505(b)(1)(iv)(D), (b)(7)(i); see Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 10. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. FAR § 16.505(b)(7); Lockheed Martin Integrated Sys., Inc., supra. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Id.

Here, the RFTOP anticipated award to the proposal providing the "best value" to the agency, i.e., the proposal that "provides the greatest overall benefit(s)." RFTOP at 1142. Offerors were "advised that the proposal meeting the solicitation requirements with the lowest price may not be selected for an award if award to a higher priced offeror is determined to be more beneficial to the Government." Id. Thus, as a general matter, selection of either a lower-rated, lower-priced proposal or a higher-rated, higher-priced proposal would be reasonable. American Tech. Sols. Int'l Corp., supra. Here, the agency considered that "[t]he critical question was whether the Technical superiority of the HP proposal warranted paying a premium of \$26,018,260.32, or 42 [percent], over the lowest[-]price offer." AR, Tab 11, RFTOP Award Decision, at 451. Considering these factors, as well as "Dell's lower level of staffing," which CDC concluded presented "an acceptable risk," the agency concluded that Dell's proposal represented the best value. Id. In this regard, CDC did not select HPES' proposal because the agency did not find that "perceived benefits of the higher priced proposal [] merit[ed] the additional price." RFTOP at 1142. On this record, we find that the agency had a reasonable basis for its selection of Dell's proposal.

We deny the protest.

Susan A. Poling
General Counsel