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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Coastal Maritime Stevedoring, LLC

File: B-296627

Date: September 22, 2005

Michael A. Gordon, Esq., and Donald C. Holmes, Esq., Holmes & Gordon, for the protester.

Capt. Geraldine Chanel, Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Source selection authority unreasonably rated as satisfactory an offeror's small business subcontracting plan that failed to address many of the required elements of Federal Acquisition Regulation § 19.704 and that furnished conflicting information regarding offeror's overall objective for small business subcontracting.
 2. Price/technical tradeoff determination that failed to take into consideration several of the advantages of protester's higher-rated, higher-priced proposal was not reasonably based.
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DECISION

Coastal Maritime Stevedoring, LLC protests the award of a contract to Marine Terminal Corporation East (MTCE) under request for proposals (RFP) No. W81GYE-05-R-0003, issued by the U.S. Army Surface Deployment and Distribution Command for stevedore and related terminal services at Blount Island Terminal in Jacksonville, Florida. The protester argues that the Army's evaluation of MTCE's proposal and the agency's "best value" determination were unreasonable.

We sustain the protest.

BACKGROUND

Services to be furnished pursuant to the contract include the discharge and loading of ships, rail cars, and trucks and the drayage of containers between rail, truck, and ship staging areas. The solicitation requires that the contractor be capable of handling multiple and simultaneous vessel, rail, and truck operations on an

around-the-clock basis. RFP Performance Work Statement at 10. The contractor is required to furnish all of the equipment needed to perform the services.

The RFP, which was issued on January 19, 2005, contemplated the award of a 4-year, fixed-price requirements contract to the offeror whose proposal represented the best value to the government. The solicitation provided for the evaluation of proposals on the basis of price and the following non-price factors, listed in descending order of importance: relevant experience, past performance, technical approach, management approach, and socio-economic commitment. Technical approach was to be evaluated on the basis of two equally-weighted subfactors--equipment and quality control. The solicitation further provided that the non-price factors, when combined, were approximately equal in weight to price.

Four proposals were received by the February 24 closing date. The agency evaluated the proposals, conducted discussions, and solicited final revised proposals. The technical evaluation team (which evaluated relevant experience, technical approach, and management approach) identified [deleted] in Coastal's final proposal. The technical evaluators identified [deleted] in MTCE's final proposal. The socio-economic commitment team did not assign Coastal a rating because Coastal is a small business;¹ it rated MTCE's proposal as [deleted] under the factor. Agency Report, Tab 23. As explained in greater detail below, after being advised by the program manager for the stevedore and related terminal services program, who served as chairperson of the technical evaluation team, that he thought that MTCE had [deleted] in its technical proposal, the source selection authority (SSA) [deleted] that had been assessed regarding that proposal. Negotiation Summary Memorandum, June 6, 2005, at 6. In addition, as also explained below, the SSA [deleted] of MTCE's proposal under the socio-economic commitment factor from [deleted].

¹ The RFP provided that firms meeting the criteria for certification as a small business would be rated as neutral under the socio-economic commitment subfactor. RFP amend. 2, at 14.

[Deleted]

Prior to making her best value determination, the SSA again consulted with the program manager, asking him for estimates of the cost savings associated with the [deleted] identified in Coastal's proposal. The program manager responded that there was [deleted] identified in Coastal's proposal and that the cost savings associated with the remaining [deleted] would total approximately [deleted] over the life of the contract.

The SSA concluded that MTCE's proposal represented the best value to the government, reasoning as follows:

Although Coastal achieved an [deleted] rating technically, it is [deleted] than the [independent government cost estimate] and [deleted] than MTCE. The Program manager was contacted to review the [deleted] identified in Coastal's proposal. There were a total of [deleted] identified within Coastal's proposal. Of those [deleted], the Program Manager indicated that only [deleted] would be worth an additional cost to the Government: [deleted].² The cost benefit to the Government associated with the above advantages is roughly [deleted] over the life of the contract. To determine the effect this [deleted] would have on the outcome of the source selection decision, Coastal's bid was adjusted [deleted]. Adjusting Coastal['s] bid by the anticipated cost [deleted] still resulted in a delta of slightly [deleted] between Coastal and MTCE's proposed prices. A determination is therefore made that Coastal's proposal is [deleted] to the Government. The advantages are not worth the additional cost of [deleted].

Id. at 14.

By letter dated June 8, the contracting officer notified the protester that MTCE had been selected for award. In response to the protester's timely request, the contracting officer furnished it with a written debriefing by letter dated June 10. On June 15, Coastal protested to our Office.

ANALYSIS

The protester challenges the Army's evaluation of the awardee's proposal in two evaluation areas and asserts that the price/technical tradeoff was flawed. As explained in detail below, we find unreasonable the agency's evaluation of the

² As noted above, the program manager in fact identified [deleted] that would result in cost savings. In addition to the [deleted] noted by the SSA, the program manager identified [deleted].

awardee's proposal in one of the challenged areas, the socio-economic commitment factor,³ and we conclude that the price/technical tradeoff was improper because the SSA failed to consider all the [deleted] identified in the protester's [deleted], as well as the protester's and MCTE's ratings in the area of performance risk.

Socio-economic commitment factor

The protester argues that the SSA's rating of MTCE's proposal as [deleted] under the socio-economic commitment factor was unreasonable. Coastal contends that its competitor's proposal merited a rating of [deleted] under the factor. We agree with the protester.

The RFP required each large business offeror to submit a subcontracting plan in accordance with the requirements outlined in Federal Acquisition Regulation (FAR) § 19.704(a).⁴ The solicitation defined the government's desired objective for small

³ While the socio-economic commitment factor was the least important of the non-price evaluation factors, it played [deleted]. In this regard, the proposals of both offerors were [deleted]. Id. at 2, 7, 14.

⁴ FAR § 19.704(a) defines the required elements of a subcontracting plan. These include:

- Separate percentage goals for using small business, veteran-owned small business, service-disabled veteran owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;
- A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to each of the five subcategories of small businesses;
- A description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to each subcategory;
- A description of the method used to develop the subcontracting goals;
- A description of the method used to identify potential sources;
- Information as to whether the offeror included indirect costs in establishing subcontracting goals;
- The name and a description of the duties of the individual administering the subcontracting plan;
- A description of the efforts the offeror will make to make sure that the various subcategories of SBs will have an equitable opportunity to compete for subcontracts;
- Assurances the offeror will include the clause at FAR § 52.219-8 in all subcontracts offering further subcontracting opportunities; and
- Assurances that the offeror will furnish required reports to the government.

business subcontracting as 10 percent of the total contract value. Offerors were instructed to allocate the proposed objective among the subcategories of small disadvantaged businesses, women-owned small businesses, service-disabled veteran-owned small businesses, and Historically Underutilized Business Zone (HUBZone) small businesses and to furnish past performance information regarding subcontracting goals and achievement across these subcategories for the past 5 years. The RFP also required offerors to provide a rationale for each objective that did not meet the government's desired objective.

The RFP advised offerors that their subcontracting plans would be evaluated to determine the extent to which they complied with and addressed the elements of FAR § 19.704 and FAR § 52.219-9.⁵ The RFP further advised that the agency would evaluate the past performance information on subcontracting goals and achievements to determine the extent to which offerors had established realistic goals and succeeded in achieving them. The solicitation provided that the rating would also take into consideration the rationale provided by each offeror as to why its proposed subcontracting goal was less than the government's desired goal.

In its initial proposal, MTCE defined its desired objective for subcontracting to small businesses as [deleted] and indicated that this amount would be used [deleted]. The socio-economic commitment evaluation team noted that MTCE's plan [deleted]; accordingly, the evaluators rated MTCE's subcontracting plan as unsatisfactory. The team further noted that the offeror had [deleted].

The contracting officer apprised MTCE of the insufficiencies in its subcontracting plan during discussions. The contracting officer further informed MTCE that the [deleted].

MTCE revised its subcontracting plan in its final revised proposal. MTCE redefined its desired objective for subcontracting to small businesses as [deleted] and listed a variety of [deleted] that it could potentially obtain from small businesses [deleted]. MTCE noted that [deleted] of its cost derived from union labor, supervision and MTCE equipment, and that while it [deleted] MTCE Final Proposal at 112. The proposal further indicated that based on historical data, MTCE estimated that it would spend [deleted] for fuel and oil, [deleted] for maintenance of equipment, [deleted] for gear, [deleted] for office supplies and office services, [deleted] for travel and hotel expenses, and [deleted] for out-of-pocket expenses (such as tires and crane lighting). MTCE furnished a list of small business vendors, identifying the socio-economic status of the vendor and the type of service to be furnished.

⁵ FAR § 52.219-9 also defines the required elements of a subcontracting plan. The elements defined are essentially the same as those defined in FAR § 19.704.

The socio-economic commitment evaluation team again rated the proposal as unsatisfactory under that factor, noting that MTCE did not meet the requirements of FAR § 19.704. Agency Report, Tab 23.

The SSA contacted MTCE to clarify whether it intended to subcontract to small business concerns [deleted] (as stated at one point in its final proposal) or a lesser sum [deleted] arrived at by totaling the amounts in its itemized listing. The SSA also noted that the agency could not [deleted] furnished by MTCE in its proposal with the intended services to be subcontracted out; thus, she requested that MTCE [deleted] E-mail from SSA to MTCE, May 19, 2005. MTCE's representative responded as follows:

The total should be [deleted], it appears that Equipment Lease/purchase was left out of the listing. Frankly, I can't make the [deleted] due to the fact that [names omitted] are all unavailable this morning. However, in order to meet [deleted]. We are in the process of doing this in all areas where we operate.

E-mail from MTCE to SSA, May 19, 2005.

The SSA changed MTCE's rating on the socio-economic commitment factor from [deleted], noting that the offeror's revised proposal had addressed the issues raised in discussions and that MTCE's objective for small business subcontracting, as revised, [deleted] with the government's desired objective.

We think that the SSA's rating of MTCE's proposal as [deleted] under the socio-economic commitment factor was [deleted]. First, contrary to the SSA's assertion, [deleted]. While we recognize that the source selection plan did not require that a subcontracting plan meet every requirement of FAR § 19.704 to be rated as satisfactory, we nonetheless do not see how the agency could reasonably have [deleted].

Second, given the [deleted] in MTCE's proposal, we do not see how the SSA could reasonably have [deleted] for small business subcontracting of 10 percent of the total contract amount. In this regard, while MTCE represented at one point in its final proposal that it would attempt to purchase supplies and gear worth [deleted] (or about [deleted] of the total contract amount) from small business vendors over the life of the contract, MTCE Final Proposal at 111, it represented elsewhere in its final proposal that only [deleted] of the contract amount would be allocated to the category of contract overhead, from which expenditures for supplies and gear are to be made, id. at 112, and still elsewhere that specified cost categories (i.e., union labor or supervision, supervision, material handling equipment purchase, contract overhead, corporate overhead, and profit) "make up [deleted] of our total estimated cost and cannot be supplied by small business." Id. at 111.

Equipment subfactor

The protester argues that MTCE's proposal should have been assigned a deficiency and rated as unsatisfactory under the equipment subfactor of the technical approach factor because [deleted].⁶

The technical evaluation team rated MTCE's initial proposal as [deleted] under the equipment subfactor, noting [deleted] that [deleted] Technical Evaluation Summary, Mar. 4, 2005, at 11. The evaluators noted that [deleted] Id. MTCE was notified that the agency viewed its [deleted].

In its final revised proposal, MTCE [deleted]. MTCE also added the following representation to its equipment listing:

[Deleted]

MTCE Final Revised Proposal at 73. Each of the technical evaluators, including the chairman of the evaluation team, [deleted]; the following language from the evaluation worksheet of the evaluation team chairman was repeated verbatim in the addendum to the technical evaluation report recording the results of the evaluation of revised proposals:

[Deleted]

Addendum to Technical Evaluation Report, May 13, 2005, at 4.⁷ Despite this [deleted] with regard to the equipment subfactor.

⁶ The Performance Work Statement (PWS) required the contractor to use a top handler when lifting any container 20 feet or larger. PWS § 6.5.1.7. According to the protester, this covers "literally every container coming off a ship." Protester's Comments, July 28, 2005, at 4.

⁷ The other two evaluators noted as follows on their individual evaluation worksheets:

Evaluator 1:

[Deleted]

Evaluator 2:

[Deleted]

Agency Report, Tab 21, at 23, 32.

As previously noted, the SSA contacted the chairman of the technical evaluation committee during her review of the evaluation report and received from him an e-mail captioned [deleted] that stated as follows:

[Deleted]

E-mail from Chairman of the Technical Evaluation Team to the SSA, May 26, 2005. Relying upon this comment, the SSA determined that MTCE [deleted].

While we find the content of the chairman's e-mail troubling, given [deleted], we nonetheless see no basis to question the reasonableness of the SSA's rating of MTCE's proposal as [deleted] under the equipment subfactor. In this regard, while the SSA [deleted] noted by the evaluators, she did not change the rating [deleted] that they had assigned the proposal under the subfactor. Given the expertise of the technical evaluators, we see no basis [deleted] their judgment that the number of toplifters, tuggers, and forklifts offered by MTCE represented a weakness, but did not rise [deleted] in its proposal. Accordingly, we see no basis to question their rating of the proposal [deleted] under the equipment subfactor.⁸

Price/Technical Tradeoff Determination

The protester argues that the source selection authority's price/technical tradeoff determination was [deleted] because it took into account only the advantages in Coastal's proposal that resulted in quantifiable cost savings to the government.

In a best-value procurement, it is the function of the source selection authority to perform a price/non-price factor(s) tradeoff, that is, to determine whether one proposal's superiority under the non-price factor or factors is worth a higher price. A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 4. We will review the selection decision to ensure that it was reasonable and consistent with the evaluation scheme set forth in the solicitation. Id.

⁸ The protester also argues that the agency failed to perform a meaningful analysis of MTCE's estimated productivity levels, which, in the protester's view, were [deleted]. The protester is in essence arguing that the agency should have performed an analysis of MTCE's commodity rates, i.e., its rates for loading and unloading various-sized vehicles and containers on and off of ships, rail cars, and trucks. The solicitation required offerors to submit fixed rates for the performance of these tasks, however, and an agency is not required to conduct a realism analysis of fixed prices. This is so because a fixed-price (as opposed to a cost-type) contract places the risk and responsibility for loss on the contractor. Duncan Sec. Consultants, Inc., B-290574, Aug. 8, 2002, 2002 CPD ¶ 144 at 3-4.

Based on our review of the record here, we agree with the protester that the SSA's tradeoff analysis was unreasonable. The SSA concluded that Coastal's proposal was not worth the cost differential of approximately [deleted] that separated it from MTCE's proposal based on information furnished to her by the program manager regarding the [deleted] identified in Coastal's technical proposal. The SSA mischaracterizes the information furnished to her by the program manager, however. Contrary to the SSA's statement in the Negotiation Summary Memorandum at 14, quoted above, the program manager's analysis did not indicate that only some of the [deleted] identified by the technical evaluators "would be worth an additional cost to the government"; instead, he identified those [deleted] that would result in a cost benefit (*i.e.*, cost savings) to the government.⁹ The distinction is far more than a semantic one, since an advantage in an offeror's technical proposal need not result in cost savings to the government to be of value to the government. In our view, the SSA had an obligation to consider all of the advantages of Coastal's proposal in her tradeoff determination, and not simply those that would effectively reduce the cost of Coastal's proposal. That is, the SSA had an obligation to consider whether the [deleted] advantages that, according to the Program Manager, would not result in cost savings to the government nonetheless furnished sufficient additional value to the government to make Coastal's proposal a better value overall than MTCE's, despite [deleted]. Because the SSA failed to perform such an analysis, we think that her determination lacked a reasonable basis.

The SSA's analysis was further unreasonable in that it failed to take into account the difference in the ratings of the two proposals with regard to performance risk, instead, as noted above, focusing exclusively on the [deleted].¹⁰ Where a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made. FAR § 15.308; Blue Rock Structures, Inc., B-293134, Feb. 6, 2004, 2004 CPD ¶ 63 at 5. A tradeoff determination in favor of a lower-rated, lower-priced proposal that fails to acknowledge significant strengths of the higher-rated proposal and furnish an

⁹ The program manager entered the notation "No cost benefit" after each of [deleted] advantages. He entered the following notations after the remaining [deleted] advantages:

[Deleted]

--See #6 Above [referring to second advantage above].

--See #4 Above [referring to first advantage above].

[Deleted]

Coastal Maritime Stevedoring--Analysis of Dollar Cost Benefits for Advantages, at 1-2.

¹⁰ Based on the past performance information received, the SSA rated Coastal's proposal as low risk and MTCE's as low to moderate risk.

explanation as to why they are not worth a price premium is not, in our view, a sufficiently documented tradeoff determination. See Blue Rock Structures, Inc., supra, at 6.

RECOMMENDATION

Because we find that the agency's evaluation of MTCE's proposal under the socio-economic commitment factor and the agency's tradeoff determination were unreasonable, we sustain the protest. We recommend that the agency make a new source selection decision (preceded, if deemed appropriate, by further discussions and submission of final revised proposals) consistent with the findings in our decision. If the agency determines that a proposal other than MTCE's represents the best value to the government, we recommend that the agency terminate the award to MTCE and make award to the offeror selected. We also recommend that the agency reimburse the protester the costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2005). In accordance with section 21.8(f) of our Regulations, Coastal's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel