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Decision

Matter of: Black & Veatch Special Projects Corporation

File: B-408607

Date: November 6, 2013

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Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement for the issuance of a cost-reimbursement task order on a best-value basis considering, among other things, technical understanding and cost realism, the selection of the proposal of the vendor with higher most probable costs was reasonable, where the agency found that the protester's lower costs did not reflect the best value to the agency, given that the protester's unrealistic proposed costs demonstrated a lack of understanding.

DECISION

Black & Veatch Special Projects Corporation (B&V), of Overland Park, Kansas, protests the issuance of an \$11.22 million task order to CH2M Hill, Inc., of Chantilly, Virginia, by the Defense Threat Reduction Agency under request for task order proposals (RFTOP) No. 0013 for services related to biological weapon threat reduction in Iraq and Afghanistan.¹ B&V challenges the agency's evaluation of its proposal and selection decision.

¹ As the value of this task order is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award, indefinite-delivery/indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

BACKGROUND

Among the Defense Threat Reduction Agency's missions is the prevention of the proliferation of chemical and biological weapons of mass destruction. Pursuant to this mission, the agency's cooperative biological engagement program (CBEP) seeks to prevent the proliferation of expertise, materials, equipment and technologies that could contribute to the development of biological weapons. Contracting Officer's (CO) Statement at 1.

The RFTOP was issued under Federal Acquisition Regulation (FAR) Subpart 16.5 procedures to vendors holding multiple-award, indefinite-delivery/indefinite-quantity contracts supporting CBEP. The solicitation sought proposals for the issuance of a cost-plus-award-fee task order for various projects in Iraq and Afghanistan. As relevant here, one of the optional tasks was for renovating the central public health laboratory in Afghanistan.

Vendors were informed that the task order would be issued on a best-value basis, considering the following factors in descending order of importance: management/technical approach, past performance, and cost. The management/technical approach factor included four subfactors (of equal importance): ability to operate in country, staffing approach and key personnel, technical approach, and project management. RFTOP amend. 1, at 6-8. With respect to the management/technical approach factor, vendors were informed that the agency would evaluate the effectiveness and efficiency of vendors' approaches to managing the planning and execution of projects. Vendors were also informed that the agency would evaluate vendors' understanding of task order requirements. Id. at 6.

With regard to cost, vendors were instructed to propose costs that were consistent with the vendors' management and technical approach. Id. at 5. The RFTOP stated that the agency would, among other things, evaluate the vendor's proposed costs for realism. In this regard, the solicitation stated that the agency would

determine the most probable cost by adjusting the Offeror's proposed cost, when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis. The most probable cost may differ from the proposed cost and will reflect the Government's best estimate of the cost of any contract that is most likely to result from the Offeror's proposal. The most probable cost will be used to determine [the] best value to the agency.

Id. at 8.

The agency received two proposals, B&V's and CH2M Hill's, which were evaluated by the agency's technical, past performance, and cost evaluation teams. Both proposals were found to be acceptable under the management/technical approach and past performance factors. The agency's cost evaluation team, however, concluded that B&V's proposed costs for the renovation of the central public health laboratory in Afghanistan were not realistic. CO's Statement at 8. Specifically, the agency determined that B&V's proposed cost of \$100,080 for renovation of the laboratory was unrealistically low, in light of the fact that B&V's proposal did not demonstrate a unique approach justifying the low costs.² See Agency Report (AR), Tab 6, Decl. of Technical Evaluation Team (TET) Lead, at 1. The agency concluded that B&V did not understand the requirements for renovating the laboratory. Id.; CO's Statement at 8.

The agency had communications with both vendors to clarify their understanding of the RFTOP requirements, including the renovation of the central public health laboratory. CO's Statement at 9; AR, Tab 13, Down-Select Decision Memorandum, at 3. In response to the agency's communication, B&V explained that it understood that this work did not include actual implementation of the renovations. See AR, Tab 8, B&V Email to CO, at 4-5.

The agency amended the solicitation's option for renovation of the central public health laboratory in Afghanistan to include all activities necessary to complete the renovations in accordance with the agency's design documents. RFTOP amend. 2. Vendors were instructed to provide a new technical narrative (no more than half a page), a revised risk matrix, a revised schedule, and a revised cost proposal, addressing the requirements for the central public health laboratory. Id.

Both vendors submitted revised proposals, which were evaluated by the agency's technical and cost evaluators. B&V increased its proposed costs for renovation of the central public health laboratory from \$100,080 to \$164,285. In this regard, B&V stated in its technical narrative that it would complete these renovations in accordance with the statement of work (SOW) by applying

[B&V's and its subcontractor's] mutual expertise in diagnostic laboratory upgrading and subcontracting to review the bids submitted in response to the [central public health laboratory] Renovation tender and select the bid that offers best value and

² The agency's amended independent government estimate (IGE) for the laboratory renovation work is \$1,157,835. See AR, Tab 10, IGE. The IGE was based upon a design document that was provided to the vendors. AR, Tab 9, Decl. of Agency Financial Manager, at 1.

lowest risk. [Subcontractor] Procurement Director . . . will then lead effort to finalize and award fixed-price, turnkey subcontract to the successful bidder.

AR, Tab 12, B&V Revised Proposal, Technical Narrative for Central Public Health Laboratory Renovation.

Although the agency found B&V's revised proposal to be technically acceptable and identified no strengths or weaknesses in the revised submission,³ the agency again concluded that B&V's proposed costs for the laboratory renovation were unrealistically low. In this regard, the technical and cost evaluators conferred and agreed that there was nothing in B&V's revised proposal to show that B&V could perform the work at its proposed low costs. AR, Tab 6, Decl. of TET Lead, at 2. To calculate the most probable cost for this work, the agency increased B&V's proposed cost by \$1,082,491. AR, Tab 13, Down-Select Memorandum, at 6-7. The vendors' proposed costs and most probable costs for performing the task order were as follows:

	Proposed Costs	Probable Costs	Difference
B&V	\$9,974,605	\$11,057,096	\$1,082,491
CH2M Hill	\$11,997,800	\$12,006,807	\$9,007

Id. at 7, 10.

The results of the agency's technical and cost evaluations were presented to the agency's source selection authority (SSA), who considered the various strengths and weaknesses in each of the proposals.⁴ The SSA recognized that the technical evaluators found that both proposals demonstrated acceptable technical approaches and understanding and had relevant good past performance. See id. at 10. The SSA concluded, however, that the significant upward adjustment in B&V's proposed costs for the laboratory renovation showed B&V's lack of understanding of the requirements for this work. Id. The SSA determined that, although B&V offered a

³ The record does not indicate how B&V's plan to later identify a subcontractor to perform the renovations was an acceptable response to the solicitation's requirement to demonstrate a technical understanding and approach to performing the renovation.

⁴ The agency's evaluation of technical proposals did not include adjectival or point score ratings, but included narratives describing the proposals' respective strengths and weaknesses.

lower probable cost for performing the task order, CH2M Hill “provides the best value to the Government due to its exceedingly strong technical approach to operating in Iraq and Afghanistan and the most realistic cost approach that demonstrates a thorough understanding of the SOW.” Id. at 11.

This protest followed a debriefing.

DISCUSSION

B&V complains that the SSA unreasonably concluded from the agency’s upward adjustment of the firm’s proposed costs for renovation of the central public health laboratory that B&V lacked understanding of the requirements. The protester argues that the solicitation did not advise vendors that the results of the cost realism evaluation could be used in this fashion.⁵ B&V does not challenge, however, the reasonableness of the agency’s cost realism analysis that resulted in a nearly \$1.1 million increase in B&V’s probable costs.

Source selection decisions, including those, as here, involving task order competitions, must be reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. NOVA Corp., B-408046, B-408046.2, June 4, 2013, 2013 CPD ¶ 127 at 5; ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7.

We do not agree with B&V that the SSA was not permitted under this solicitation to use the results of the agency’s cost realism evaluation to assess the firm’s understanding of the requirements. Here, the RFTOP informed vendors that the agency would both evaluate their technical understanding of the requirements and assess the realism of their proposed costs. See RFTOP amend. 1, at 6, 8. We recognize that the solicitation did not specifically caution vendors that the agency would consider whether unrealistic costs indicated the vendor’s lack of understanding of the requirements. Such a consideration, however, is reasonably encompassed by the evaluation criteria that provided, as noted above, for assessing

⁵ On this front, the protester also complains that the agency’s communications with B&V prior to RFP amendment 2 failed to apprise B&V of deficiencies in its proposal relating to its proposed costs for renovating the central public health laboratory. Protest at 23-24. The agency responded to this ground of protest in a supplemental submission after filing its agency report, see DTRA Letter, Sept. 5, 2013, and B&V did not substantively respond to the agency’s submission. Rather, B&V now requests that our Office disregard the Agency’s “untimely response.” See Protester’s Comments at 1 n.1. We decline to do so, and consider B&V’s protest grounds to be abandoned. See Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.

the vendors' understanding and cost realism. In this regard, the FAR defines cost realism as a process of independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal.⁶ FAR § 15.404-1(d)(1); Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5.

The protester also challenges the agency's evaluation of its technical proposal. Specifically, B&V objects to the weakness assessed in its proposal for failing to provide standard operating procedures for the transportation of equipment, and complains that its proposed management team should have been assessed as a strength.

The evaluation of proposals in a task order competition is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6; Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶ 20 at 6. Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Logis-Tech, Inc., B-407687, Jan. 24, 2013, 2013 CPD ¶ 41 at 5; Bay Area Travel, Inc., et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 9. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

We find no merit to the protester's arguments. With regard to the assessed weakness in B&V's proposal for failing to provide operating procedures for transporting equipment, the RFTOP provided for the evaluation of vendors' approaches to developing standard operating procedures for handling the transportation of samples, consumables, and equipment. See RFTOP amend. 1, at 7. Here, B&V's proposal addressed its plans for handling and transporting samples, but did not provide any explanation of how it would transport equipment. B&V argues that the solicitation's statement of work emphasized the transportation of samples (as opposed to equipment), see SOW ¶ 4.2.3, and that "B&V can hardly be criticized for focusing its attention there, especially given the tight 15-page limit

⁶ The ordering provisions of FAR subpart 16.5 require ordering agencies to establish prices for task orders consistent with the policies and methods of FAR subpart 15.4. See FAR § 16.505(b)(3).

on the technical volume.”⁷ Protester’s Comments at 13. B&V’s argument that the SOW emphasized the transportation of samples ignores the fact that the RFTOP required vendors to address the transportation of both samples and equipment, which B&V failed to do.⁸

With regard to B&V’s proposed management team, B&V argues that the agency’s failure to assess a strength in B&V’s proposal for its management team was based upon the agency’s mistaken understanding that B&V proposed only two management personnel. B&V states that it actually proposed a management team “composed of three experts with strong CBEP and host country experience.” See Protester’s Comments at 14; AR, Tab 5, B&V Initial Technical Proposal, at 4. The agency responds that B&V’s arguments are based upon B&V’s misunderstanding of a statement made by an agency official in B&V’s debriefing. That official states in a declaration that her statement during the debriefing concerned the matrixing of two of B&V’s management personnel and not that the agency understood that B&V had proposed only two management personnel. See AR, Tab 6, Decl. of TET Lead, at 4. The TET Lead also states that the evaluators recognized that B&V had proposed qualified management personnel that satisfied, but did not exceed, the requirements. To the extent that B&V disagrees with this assessment, its disagreement does not show that the agency’s evaluation judgment was unreasonable.

B&V complains that the SSA’s selection decision was not based upon the vendors’ most probable costs. See Protester’s Comments at 3-4. This argument is belied by the contemporaneous record, however, which shows that the SSA was aware that B&V’s probable costs were evaluated as lower than CH2M Hill’s. The SSA concluded, however, that B&V’s lower probable costs did not reflect the best value to the agency, where B&V’s unrealistically low proposed costs for renovation of the central public health laboratory suggested a lack of understanding. See AR, Tab 13, Down-Select Decision Memorandum, at 10.

The protest is denied.

Susan A. Poling
General Counsel

⁷ To the extent that B&V objects to the solicitation’s page limitations for proposals, this alleged apparent solicitation impropriety should have been protested before the closing time for receipt of proposals under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1).

⁸ The SOW also addressed the requirement for transportation of equipment. See SOW ¶ 4.2.3.