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Decision

Matter of: WPI

File: B-288998.4; B-288998.5

Date: March 22, 2002

Michael W. Clancy, Esq., and Frank K. Peterson, Esq., Holland & Knight, for the protester.

Rand L. Allen, Esq., Philip J. Davis, Esq., and Timothy W. Staley, Esq., Wiley Rein & Fielding, for Booz-Allen & Hamilton, Inc., an intervenor.

Carl J. Peckinpough, Esq., and Charles S. McNeish, Esq., for DynCorp Information & Enterprise Technology, Inc., an intervenor.

Ronald G. Allen, Esq., Lt. Col. John M. Smith, and Clarence D. Long, III, Esq., Department of the Air Force, for the agency.

Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably determined that awardees' higher levels of resources available to perform the contract constituted meaningful benefits to the agency where the solicitation provided that an offeror's technical capacity to respond to workload requirements around the world was the most important consideration under two of three technical evaluation factors.
2. Protester's challenge to the manner in which the agency evaluated offerors' costs/prices is not timely filed, where solicitation unambiguously advised offerors of the agency's intended method of evaluation, and the protester responded to the solicitation without objection.
3. Where solicitation established cost/price as the least important evaluation factor and provided that it was "significantly" less important than the combined technical factors, we find no basis to question the agency's judgment that the awardees'

technical superiority outweighed the protester's lower evaluated cost/price, where that determination was supported by a documented, comprehensive discussion of the various factors the agency considered.

DECISION

WPI protests the Department of the Air Force's award of contracts to Booz-Allen & Hamilton, Inc. and DynCorp Information & Enterprise Technology, Inc. under request for proposals (RFP) No. F41624-00-R-8042 to provide global engineering, integration, and technical assistance (GEITA) services related to environmental requirements. WPI asserts that the agency failed to properly evaluate technical proposals, failed to properly evaluate cost/price, and failed to perform a reasonable tradeoff between cost/price and technical factors.

We deny the protest.

BACKGROUND

On April 17, 2001, the Air Force issued solicitation No. F41624-00-R-8042, seeking proposals to provide a broad spectrum of support services for the Air Force Center for Environmental Excellence (AFCEE) and for AFCEE's customers worldwide. Specifically, the solicitation required support for "any and all" AFCEE programs, including restoration, compliance, pollution prevention, conservation and planning, fuel facility engineering, base realignment and closure (BRAC) activities, and military family housing initiatives, to include privatization and outsourcing activities. RFP, SOW, at 4-5. The SOW emphasized the worldwide nature of the requirements, noting that contractors will be required to provide on-site assistance at locations around the world where "the intensity, criticality, or other factors warrant[] immediate attendance and full-time residence." *Id.* at 17.

The solicitation contemplated award of up to four indefinite-delivery/indefinite-quantity (ID/IQ) contracts, two competed pursuant to full and open competition and two competed as small business set-asides.¹ The solicitation also provided for source selection on a "best value" basis, and stated that the agency intended to make awards on the basis of initial proposals without conducting discussions. Regarding source selection, the solicitation provided that awards would be based on the following evaluation factors, listed in descending order of importance: mission capability, past performance, proposal risk, and cost.² In addition to establishing

¹ WPI did not compete under the small business set-aside portion of this procurement; accordingly, we do not further discuss that portion of the procurement.

² Under both mission capability and proposal risk, the solicitation established the following subfactors, listed in descending order of importance: technical capacity, (continued...)

cost/price as the least significant factor, the solicitation emphasized the limited weight to be given cost/price, stating that it was “significantly” less important than the other factors combined. RFP § M002(A).

Regarding preparation of cost proposals, section L of the solicitation directed offerors to submit fully burdened hourly rates for twenty specified labor categories.³ Offerors were advised that, for purposes of evaluating cost/price, the agency would develop a “composite average rate” for each proposal by applying each offeror’s labor rates to a “typical core labor hour mix required to complete [the] requirements under this contract,”⁴ and dividing each offeror’s total costs to perform the pricing task by the total hours within the task. RFP § M002(F).

Initial proposals were submitted prior to the June 1 closing date by ten offerors, including DynCorp, Booz-Allen, and WPI; each of these offerors subsequently made

(...continued)

specialized experience, management, and commitment to small business. The solicitation advised offerors that these subfactors would not be “rolled up” into an overall rating for the primary evaluation factor. RFP § M002(C).

³ The categories listed were: Architect Sr.-level, Architect Mid-level, Chemical Engineer Sr.-level, Chemical Engineer Mid-level, Chemist Sr.-level, Chemist Mid-level, Civil Engineer Sr.-level, Civil Engineer Mid-level, Environmental Engineer Sr.-level, Environmental Engineer Mid-level, Geologist Sr.-level, Geologist Mid-level, Hydrogeo/Hydrologist Sr.-level, Hydrogeo/Hydrologist Mid-level, Industrial Hygienist Sr.-level, Industrial Hygienist Mid-level, Physical/Env. Scientist Sr.-level, Physical/Env. Scientist Mid-level, Toxicologist Sr.-level, Toxicologist Mid-level. To qualify as mid-level personnel, the solicitation required a bachelor of science degree in the appropriate technical field and 8 years of experience. To qualify as senior-level personnel, the solicitation required a masters degree in the appropriate technical field and 12 years of experience. RFP § L-5.4.2.1.

⁴ The contracting officer described this “core labor mix” as “a pricing task that represented the types of task orders that may be issue[d] against the basic contract.” Agency Report, Tab 12, Price Competition Memorandum, at 3. During the telephone hearing that GAO conducted in connection with this protest, the agency’s cost analyst testified that the pricing task reflected “44 percent of the work [expected to be performed] based on past experience.” Hearing Transcript (Tr.) at 91.

an oral presentation to the agency. Proposals were thereafter evaluated against the technical evaluation factors listed above and the following ratings were assigned:⁵

	Booz-Allen	DynCorp	WPI
Mission Capability			
–Technical Capacity	Blue/Exceptional	Blue/Exceptional	[deleted]
–Specialized Exper.	Blue/Exceptional	Blue/Exceptional	[deleted]
–Management	Blue/Exceptional	Blue/Exceptional	[deleted]
–Small Business	Green/Acceptable	Green/Acceptable	[deleted]
Past Performance	Exceptional	Very Good	[deleted]
Proposal Risk			
–Technical Capacity	Low	Low	[deleted]
–Specialized Exper.	Low	Low	[deleted]
–Management	Low	Moderate	[deleted]
–Small Business	Low	Low	[deleted]

As noted above, the solicitation provided that evaluation of offerors’ technical capacity was the most important subfactor under both the mission capability factor and the proposal risk factor. The solicitation further identified the specific types of technical capacity that would be evaluated, stating that the agency would assess each offeror’s:

Capacity to staff worldwide on-site services.

Capacity to support multiple tasks, worldwide, simultaneously, across the entire spectrum of the Statement of Work.

Capacity to effectively respond to volume and complexity surges in workload across the entire spectrum of the Statement of Work.

Capacity to leverage AFCEE’s environmental team chiefs, project managers, and government consultants in the execution of its

⁵ Under the mission capability factor, the solicitation defined a “blue/exceptional” rating as “[e]xceeds specified minimum performance, or capability requirements in a way beneficial to the Air Force,” and a “green/acceptable” rating as “[m]eets specified minimum performance, or capability requirements necessary for acceptable contract performance.” RFP § M002(C). Under the proposal risk factor, the solicitation defined a rating of “low” risk as “[h]as little potential to cause disruption of schedule, increased cost, or degradation of performance,” and a rating of “moderate” risk as “[c]an potentially cause some disruption of schedule, increased cost, or degradation of performance.” RFP § M002(E).

customers' programs across the entire spectrum of the Statement of Work.

Capacity to use, evaluate, and integrate information technology systems pursuant to AFCEE's mission execution, [in accord with] the Statement of Work.

RFP § M002(C)(1).

In rating WPI's technical capacity as [deleted] with [deleted], the agency expressed its concern over [deleted]. The agency concluded that WPI's reliance on [deleted] could lead to the [deleted]. The agency was also concerned with WPI's [deleted]. The agency concluded that [deleted].

In contrast, the agency evaluated Booz-Allen's and DynCorp's technical capacity as "blue/exceptional" with "low" proposal risk. The agency noted that Booz-Allen's proposal reflected "10,000 personnel in more than 90 offices on 6 continents with on-site staff in more than 25 locations," concluding that Booz-Allen had "[e]xceptional volume and complexity surge capacity in every facet of [the] statement of work." Agency Report, Tab 6A, Proposal Analysis Report, at 36. Similarly, the agency noted that DynCorp's proposal reflected DynCorp's "6,000 personnel, worldwide capacity in all 50 states and foreign locations including Europe, Asia, Middle East, and Pacific Rim," and concluded that DynCorp's proposal "demonstrated an exceptional technical capacity to exceed the minimum requirements." Agency Report, Tab 6A, Proposal Analysis Report, at 43-44.

In evaluating the cost/price associated with each offeror's proposal, the agency provided copies of the proposals to the cognizant Defense Contract Audit Agency (DCAA) offices, seeking input and verification from DCAA as to the realism and reasonableness of the offerors' direct and indirect labor rates. Based in part on DCAA's input, the contracting officer concluded that, with certain adjustments,⁶ DynCorp's, Booz-Allen's, and WPI's rates were reasonable and realistic. The agency then calculated a "composite average rate" for each offeror, as contemplated by RFP § M002(F), discussed above. The evaluated composite rates for DynCorp, Booz-Allen and WPI were \$81.04, \$79.90, and [deleted], respectively.

Consistent with the solicitation provision disclosing the agency's intent to make awards on the basis of initial proposals, the agency determined that discussions were unnecessary and performed a cost/technical tradeoff based on the above-described

⁶ WPI's rates were adjusted to reflect costs associated with [deleted]. DynCorp's rates were adjusted to reflect home office rates, as required by the solicitation, rather than a blend of home office and regional rates. These adjustments have not been challenged.

ratings and evaluated costs. Applying the relative weights established in the solicitation, that is, that technical factors were “significantly more important” than cost/price, the source selection authority (SSA) concluded that the benefits associated with the technical superiority of DynCorp’s and Booz-Allen’s proposals outweighed their higher costs. Accordingly, the agency selected DynCorp’s and Booz-Allen’s proposals as offering the best value to the government and awarded contracts to them on September 6. This protest followed.

DISCUSSION

WPI first protests the agency’s determination that DynCorp’s and Booz-Allen’s proposals were technically superior, particularly challenging the agency’s evaluation of technical capacity. In short, WPI complains that the technical capacity reflected in its proposal should have been rated as favorably as that of the awardees. We disagree.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. In reviewing an agency’s evaluation, we will not reevaluate technical proposals, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and applicable statutes and regulations. An offeror’s mere disagreement with the agency does not render the evaluation unreasonable. Matrix Int’l Logistics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 4.

Here, as noted above, the solicitation specifically provided that proposals would be evaluated with regard to each offeror’s capacity to respond to workload surges and to simultaneously support multiple tasks, across the entire spectrum of contract requirements, at locations around the world. WPI does not dispute that DynCorp’s and Booz-Allen’s proposals reflected higher levels of available resources; rather, WPI maintains that the level of resources it proposed was more than adequate to accomplish the task and, therefore, that the additional resources reflected in the awardees’ proposals did not constitute additional value. More specifically, WPI asserts that no more than 229 full-time equivalent personnel (FTEs) will be required to perform the contract annually.⁷ Based on that assumption, WPI maintains that, “by having [deleted] personnel ready to immediately commence work, [WPI] had almost [deleted] the necessary capacity” and, therefore, “any alleged [Booz-Allen] or

⁷ WPI’s calculation is based on the agency’s pricing task that contained a total of 193,840 hours, along with the agency price analyst’s statement that the pricing task represented 44 percent of the total contract requirements. Based on this data, WPI calculates the total annual contract requirements to be 440,545 hours and, assuming 1,920 hours per year, WPI concludes that no more than 229 FTEs will be required to perform the contract annually.

DynCorp advantage in technical capacity is 'illusory'." WPI Post-Hearing Comments (Feb. 26, 2002), at 3.

The agency agrees that WPI's technical capacity was considered adequate, that is, "acceptable." Nonetheless, the agency maintains that the significantly higher levels of resources offered by DynCorp and Booz-Allen reflected real value in the context of the solicitation requirements here.

WPI's argument that any technical capacity beyond that offered by WPI is without value is based on the assumption that contract performance will occur at a uniform rate throughout the six-year performance period, and that the distribution of labor actually required under subsequent task orders will, similarly, be spread uniformly across the labor categories contained in the pricing task. Neither of these assumptions is consistent with the provisions of the solicitation. As noted above, RFP § M002(B)(1) specifically advised offerors that their proposals would be evaluated with regard to each offeror's capacity to "respond to volume and complexity surges" and to "support multiple tasks, worldwide, simultaneously, across the entire spectrum of the Statement of Work." Similarly, the solicitation specifically advised all offerors that the list of labor categories for which offerors were required to submit rates "is not exhaustive of all labor categories," and in fact, "constitute[s] only an abbreviated sampling of labor likely to be employed." RFP § L-5.4.2.1. In light of the uncertainty regarding the type and volume of resources that will actually be required, as well as uncertainty regarding the timing of those requirements, we find nothing unreasonable in the agency's conclusion that DynCorp's and Booz-Allen's significantly higher level of available resources offered value to the agency and that, overall, DynCorp's and Booz-Allen's proposals were reasonably rated superior to WPI's with regard to the technical evaluation factors.⁸

WPI next protests that the agency failed to properly evaluate the cost/price associated with each proposal. As noted above, offerors were required to submit hourly rates for various labor categories. However, the solicitation also provided that submission of these rates did not bind an offeror to actually provide any type of labor at any of the rates proposed. Specifically, under the heading "Cost of Pricing Information for Evaluation Purposes Only," the solicitation stated: "For use in the

⁸ In addition to challenging the agency's evaluation of technical capacity, WPI argues that its rating for past performance should have been higher than both of the awardees', and/or that the agency should have afforded greater weight to WPI's past performance. WPI also takes exception to its risk rating of [deleted] under the management subfactor of the proposal risk factor. We have considered all of WPI's arguments, reviewed the agency's extensive evaluation record supporting this procurement, and find no basis to question the reasonableness of the agency's conclusion that the awardees' technical proposals were materially superior to WPI's technical proposal.

Government's evaluation matrix only, provide fully burdened hourly labor rates . . . for the following labor categories.” RFP § L-5.4.2 (underlining in original).

Accordingly, WPI protests that the evaluated cost/price of each proposal bears no relationship to the costs the Air Force will actually incur.

The non-binding nature of the “proposed” labor rates is troubling, in our view, particularly in the context of an ID/IQ contract where the levels of effort that will actually be employed under subsequent task orders is similarly subject to future negotiation. Where, as here, offerors apparently have no legal obligation to perform the competed contract using the “proposed” rates, there is a reasonable basis for concern that offerors may submit rates which, while potentially evaluated as reasonable, may be considerably lower than the rates the offerors will actually use.⁹ Notwithstanding this concern, it is indisputable that, here, the solicitation fully advised potential offerors of the precise manner in which the agency intended to evaluate proposed costs/prices, and WPI responded to that solicitation without objection.

Our Bid Protest Regulations require that a protest based on a solicitation defect which, as here, is clearly apparent prior to the time set for submission of proposals, must be filed prior to that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2000). An offeror may not “sit on its hands” in the face of an unambiguous solicitation provision which the protester views as defective, then, upon failure to obtain award, challenge the validity of the source selection decision on the basis of the alleged defect. Accordingly, we will not, now, further consider WPI’s assertion that the manner in which the agency evaluated costs/prices in this procurement was improper.¹⁰

Finally, WPI protests that the agency failed to perform a reasonable tradeoff between costs/prices and the technical evaluation factors. In short, WPI maintains that the agency could not reasonably conclude that the benefits associated with DynCorp’s and Booz-Allen’s technical proposals were worth the higher total costs.¹¹

⁹ For example, our review of the record here leads us to question the rates submitted by WPI. As a general matter, WPI’s [deleted]. Specifically, WPI responded [deleted].

¹⁰ To the extent WPI’s protest includes arguably timely assertions that the awardees’ rates – which were significantly higher than WPI’s rates – should have been evaluated as being unrealistically low, we have reviewed the record, including the input the agency obtained from DCAA, and find no merit in WPI’s assertions.

¹¹ Again, to the extent this portion of WPI’s proposal is based on its dissatisfaction with the manner in which the agency advised offerors it would evaluate costs, the protest is not timely.

The procurement record here includes substantial documentation in support of the agency's cost/technical tradeoff. Specifically, the source selection decision states:

Pursuant to my GEITA program goal, requirements, and RFP criteria, [Booz-Allen] and DynCorp are in a league of their own with regard to performance potential, risks, and understanding of and ability to excel in the GEITA program. They are superior to all other offerors. Their approach and capability pose significantly less risk (virtually no risk in the most important subfactors) in the diverse GEITA platform. Their costs are reasonable, realistic, and very close (\$79.90 and \$81.04 respectively). . . . The closest competitors to them are WPI, [deleted], and [deleted], who pose a double threat to my GEITA objectives and needs: they bring significant risk pursuant to a potential performance level considerably lower than the awardees'.

WPI's, [deleted], and [deleted] costs are close together ([deleted], [deleted], and [deleted], respectively), which suggests a definite correlation between capability/risk level and cost, as with [Booz-Allen] and DynCorp above.

* * * * *

Due to WPI's reliance on [deleted], they cannot support my diverse, higher level GEITA requirements without significant detriment to technical mission, schedule and/or cost. . . . We would have to continually search for external contingencies in lieu of WPI's [deleted]. My mission execution ability would be severely handicapped and my customers would be forced to seek services elsewhere.

WPI's worldwide capability is limited and would severely hinder my ability to sustain and progress in worldwide program execution.

As a very small prime, and especially considering the enormous challenges resulting from their technical limitation and risk, WPI cannot [deleted] and [deleted] their [deleted] without [deleted].

* * * * *

Therefore, I conclude that the high confidence and certainty in [Booz-Allen's] and DynCorp's understanding, approach and proposed performance far outweigh an ostensive potential cost difference that may be discerned with sole regards to WPI's . . . proposed rates at the [deleted].

Source Selection Decision (Addendum) at 24-30.

Where a solicitation provides for a best value procurement and, as here, emphasizes the significantly greater importance of technical factors over cost/price, an agency has considerable discretion to award to an offeror with a higher technical rating and higher price. Systems Integration & Dev., Inc., B-271050, June 7, 1996, 96-1 CPD ¶ 273 at 6. Further, there is no requirement that an agency attach specific dollar values to the benefits associated with a technically superior proposal. Federal Acquisition Regulation (FAR) § 15.308; Suddath Van Lines, Inc.; The Pasha Group, B-274285.2, B-274285.3, May 19, 1997, 97-1 CPD ¶ 204 at 10; Kay and Assocs., Inc., B-258243.7, Sept. 7, 1995, 96-1 CPD ¶ 266 at 6.

Here, as discussed above, the agency reasonably concluded that DynCorp's and Booz-Allen's proposals were technically superior to WPI's – particularly with regard to technical capacity, the most important consideration under mission capability and proposal risk. Further, it is clear that the SSA applied the solicitation's stated evaluation scheme, which made technical superiority significantly more important than cost/price, and weighed WPI's evaluated cost/price (as reflected in its composite rate) along with WPI's [deleted], against the higher evaluated costs/prices of Booz-Allen and DynCorp (as reflected in their composite rates) along with their relative technical strengths. Based on that comprehensive analysis, quoted in part above, the agency concluded that Booz-Allen's and DynCorp's proposals represented the best values to the government. The fact that the SSA did not calculate a total projected dollar cost/price for each proposal does not invalidate the analysis. On this record, we find no basis to question the reasonableness of the agency's judgment regarding its cost/technical tradeoff, and WPI's assertions to the contrary constitute mere disagreement with the agency's judgments.

The protest is denied.

Anthony H. Gamboa
General Counsel