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Decision

Matter of: Alpha Data Corporation

File: B-291423

Date: December 20, 2002

J. Scott Hommer, III, Esq., and Benjamin A. Winter, Esq., Venable, Baetjer and Howard, for the protester.

Michael A. Gordon, Esq., and Susan E. Hughes, Esq., Holmes, Schwartz & Gordon, for Modern Technologies Corporation, an intervenor.

James H. Falk, Sr., Esq., James H. Falk, Jr., Esq., and Meredith N. Long, Esq., The Falk Law Firm, for Support Systems Associates, Inc., an intervenor.

Clarence D. Long, III, Esq., Department of the Air Force, 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. Agency reasonably ranked protester's proposal lower than other offerors' proposals under past performance evaluation factor where prime contractor had not performed the type of work solicited, and prime contractors for other offerors had performed such work.

2. Where solicitation provided for price reasonableness to be established through price competition and by comparing proposed labor rates to industry labor rates or labor rates from other contracts for similar work, agency was not required to compare sample task prices to government baseline to determine price reasonableness.

DECISION

Alpha Data Corporation (ADC) protests the failure of the Department of the Air Force to award it a contract under request for proposals (RFP) No. F09603-02-R-61087, for special operations forces (SOF) support services. The protester argues that the Air Force erred in evaluating its past performance and that the agency failed to evaluate offerors' cost proposals adequately.

We deny the protest.

The RFP, which was issued on January 11, 2002, provided for the award of up to four indefinite-delivery/indefinite-quantity contracts, each for a base period of 5 years and two 5-year option periods. The solicitation provided for award of one of the contracts on the basis of full and open competition and for the remainder as small business set-asides.

The RFP provided for the evaluation of proposals on the basis of the following factors and subfactors:

1. Mission Capability
 - a. Special Operation Forces (SOF) Sustainment
 - b. Reaction Capability
 - c. Team Structure
2. Proposal Risk
3. Past Performance
4. Cost/Price

The solicitation advised that the first three factors would be of equal importance in the evaluation; that the three nonprice factors, when combined, would carry significantly more importance than cost/price; that the mission capability subfactors were listed in descending order of importance; and that proposal risk would be evaluated at the mission capability subfactor level. Offerors were to make oral presentations addressing the first two mission capability subfactors and the requirements of each of three sample tasks. The RFP instructed offerors to submit labor rates for a variety of labor categories and provided for a reasonableness analysis of the proposed rates. The RFP also provided for a realism analysis and probable cost calculation of offerors' sample task prices.

Six offerors--the protester, Innovative Technologies Corporation (ITC), Offeror A, Modern Technologies Corporation (MTC), Support Systems Associates, Inc. (SSAI), and TCS Design & Management Services (TCS)--submitted proposals by the February 14 closing date. Of the six offerors, only MTC was not a small business. After conducting discussions and receiving final proposal revisions, the agency evaluators assigned the proposals the following ratings:¹

¹ In accordance with Air Force Federal Acquisition Regulation Supplement § 5315.305(a)(3)(i), the color ratings used in evaluating proposals under the mission capability subfactors were blue--exceptional, green--acceptable, yellow--marginal, and red--unacceptable.

Offeror	SOF Sustainment	Reaction Capability	Team Structure	Confidence Rating	Probable Cost
ADC	Green/Low Risk (LR)	Green/LR	Green/LR	Very Good/Significant	\$213,293
ITC	Green/LR	Green/LR	Green/LR	Very Good/Significant	\$249,315
Offeror A	Green/LR	Green/Medium Risk	Green/LR	Very Good/Significant	\$228,291
MTC	Blue/LR	Green/LR	Green/LR	Very Good/Significant	\$244,449
SSAI	Blue/LR	Green/LR	Green/LR	Exceptional/High	\$104,239
TCS	Blue/LR	Green/LR	Green/LR	Very Good/Significant	\$156,187

In performing his best value analysis, the Source Selection Authority (SSA) determined that under the most important mission capability subfactor, SOF sustainment, there were distinctions in technical quality even among proposals that had been assigned the same color and risk ratings. The SSA ranked the proposals under the subfactor in the following order: MTC, SSAI, TCS, ITC, ADC, and Offeror A.² The SSA also ranked the proposals under the performance confidence factor, noting that “subtle differences” existed among the five offerors with ratings of Very Good/Significant Confidence. The SSA ranked MTC and ITC, the majority of whose contracts were rated very relevant, and the remainder of whose contracts were rated relevant, tied for first; TCS, which had one subcontractor with no experience with either SOF or military aircraft, third; ADC, which, as the prime contractor lacked experience with SOF or military aircraft, fourth; and Offeror A, whose experience was limited to military aircraft and only one of whose subcontractors had SOF aircraft experience in all four program elements, last. *Id.* at 9.

² The SSA documented the basis for his rankings in the Source Selection Decision Document, noting that MTC had “distinguished itself among the Offerors[,] demonstrating strengths related to multiple aspects of the SOF Sustainment subfactor”; that SSAI had demonstrated strengths in its approach to sample tasks 2 and 3 that “communicate[d] an exceptional depth of technical competence and capability in all aspects of the SOF Sustainment subfactor”; that TCS had “demonstrated strengths related to three of the four aspects of SOF Sustainment in [sample tasks 1 and 3]”; that ITC had “demonstrated outstanding processes representing three of the four aspects in their solutions to Sample Tasks 1 and 3”; and that ADC had “demonstrated sound and viable approaches representing two of the four aspects in their solutions to Sample Tasks 1 and 3.” Source Selection Decision Document at 6-7.

The SSA determined that MTC's proposal represented the best value to the government and that it should receive the contract to be awarded pursuant to full and open competition. The SSA further determined that the proposals of SSAI, TCS, and ITC represented the best value among the small business proposals. The SSA found that the technical superiority of the foregoing proposals and the superior past performance of these four offerors outweighed any cost difference between their proposals and the proposals of ADC and Offeror A. On September 3, the Air Force awarded contracts to MTC, SSAI, TCS, and ITC.

ADC objects to the agency's ranking of its proposal as fourth among the five proposals receiving performance confidence ratings of Very Good/Significant Confidence based on its lack of experience with SOF or military aircraft. Pointing to the SSA's statement (in the Source Selection Decision Document, at 9) that "[a]lthough all of the subcontractors for ADC have experience with SOF aircraft, ADC, who is the prime, would be fourth based on their lack of experience with SOF or military aircraft," the protester contends that the SSA considered only the prime contractor's experience in ranking the team's past performance relative to other offerors. The protester argues that the agency should have considered the past performance of all of the companies comprising its team, i.e., the subcontractors, as well as the prime contractor, in his assessment.³

The agency explains that the SSA did not mean by the above-cited statement that only the past performance of ADC, the prime contractor, was considered in ranking ADC's team's past performance relative to other offerors'; rather, the agency explains, consistent with the terms of the RFP, which provided for consideration of past performance information regarding critical subcontractors, teaming partners, and/or key personnel, RFP § M ¶ 2.3.3.3, the evaluators considered the past performance of all team members, but determined that the past performance of ADC's team was distinguishable from that of MTC's, ITC's, and TCS's teams based on the prime contractor's lack of experience with SOF or military aircraft. The agency argues that the source selection officials reasonably concluded that a prime contractor's lack of SOF experience introduced a measure of risk into its proposal.

While Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii) directs agencies to take into account past performance information regarding subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the acquisition, the significance of, and the weight to be assigned to, a subcontractor's past performance is a matter of contracting agency discretion. See

³ The protester objects to the distinction between prime and subcontractor past performance, not to the distinction between SOF/military aircraft experience and other types of experience, and the emphasis in the evaluation on experience with SOF and military aircraft was consistent with the solicitation.

Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5; see also Strategic Res., Inc., B-287398, B-287398.2, June 18, 2001, 2001 CPD ¶ 131 at 5-6. Similarly, the weight to be assigned a prime contractor's past performance—or lack thereof—should, in our view, be considered a matter of contracting agency discretion. Here, because the RFP solicited services in support of SOF aircraft and weapons systems, the agency determined that it was important that the prime contractor itself have had some previous experience with SOF programs. The reasonableness of this determination is supported by the RFP's incorporation of FAR § 52.219-14, Limitations on Subcontracting, which provides that by submitting an offer for a services contract, a small business offeror agrees that "[a]t least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern." Since ADC, as the prime small business, would be obligated to perform at least 50 percent of the contract labor with its own employees, the firm's lack of experience with SOF programs was clearly pertinent.

ADC also objects to the Air Force's evaluation of offerors' cost/price proposals, complaining that the agency failed to establish a baseline with which to compare offerors' sample task prices for reasonableness, and that it failed to assess the risk associated with the lowest-cost proposals. In the former regard, ADC contends that no weight was given to the fact that its aggregate sample task price was 17 percent lower than ITC's, and in the latter regard, the protester complains that no performance risk was attributed to SSAI's proposal despite the fact that SSAI's price was less than half that of MTC, which received the highest rating on sample task solutions.

The RFP instructed offerors to furnish cost/price proposals consisting of direct labor rates, a labor loading factor, add-on factors, and price schedules for each of three sample tasks. RFP § L ¶ 5.2. The RFP provided that reasonableness would "be established by the existence of adequate price competition and by comparing all, or a representative sample of, the proposed direct labor rates to industry labor rates or labor rates from other contracts for similar work." RFP § M ¶ 2.4.1.1.1. The solicitation further provided that the evaluators would analyze the sample task prices for realism by reviewing and evaluating the skill mix, specific hours, and kinds and quantity of materials proposed by the offerors, with the intent of determining "whether the estimated proposed sample task prices are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the approach described in the Offeror's technical proposal." RFP § M ¶ 2.4.1.1.2.

The SSA determined that all offerors' cost/price proposals were reasonable based on the existence of adequate price competition and thorough evaluation of the proposed rates and factors against the government's direct labor rate range. Source Selection Decision Document at 9. The SSA further determined that the sample task pricing for all offerors except Offeror A was realistic. The SSA noted that the sample task prices varied significantly because of the wide range of technically acceptable solutions proposed by the offerors. Id. at 10.

We see no basis to conclude that the agency was required to compare sample task prices with a government estimate to determine reasonableness. The solicitation did not provide for such analysis; moreover, the agency has provided a reasonable explanation for why comparison of offerors' sample task prices to one another (or an agency estimate) was not appropriate here (i.e., offerors proposed technical solutions to the sample tasks of varying levels of complexity). The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion, Resource Consultants, Inc., B-290163, B-290163.2, June 7, 2002, 2002 CPD ¶ 94 at 3 n.1, and the protester has not demonstrated that the agency abused its discretion here in assessing price reasonableness primarily on the basis of offerors' proposed labor rates.

Regarding the protester's argument that the evaluators failed to acknowledge the performance risk associated with SSAI's low total proposed cost for the three sample tasks, the evaluators determined that SSAI's price reflected an understanding of the requirements and was consistent with the approach described in its technical proposal. Source Selection Decision Document at 10. In other words, the evaluators did not find that SSAI's prices entailed a performance risk. The protester has given us no basis to question the reasonableness of this determination.⁴

Finally, to the extent that the protester contends that the Air Force failed to take cost into account in its best value trade-off, the record shows that cost was considered. Specifically, the SSA found that the technical superiority of MTC and ITC's proposals and the better past performance of those offerors outweighed the cost difference between their proposals and those of ADC and Offeror A. Source Selection Decision Document at 13.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ To the extent that the protester is arguing that the agency should have considered price in assigning proposals a rating under the proposal risk evaluation factor, the RFP provided for the evaluation of proposal risk at the mission capability subfactor level, RFP § M ¶ 2.2, and price was not among the mission capability subfactors. To be timely, any objection to the terms of the RFP would have had to be filed prior to the RFP closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2002).