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Decision

Matter of: Tessada & Associates, Inc.

File: B-293942

Date: July 15, 2004

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William A. Roberts, III, Esq., Paul F. Khoury, Esq., Timothy W. Staley, Esq., and William J. Grimaldi, Esq., Wiley Rein & Fielding, for BearingPoint, Inc., an intervenor.

Michael B. Majeski, Esq., John F. Ruoff, Esq., and John Thompson, Esq., Defense Finance and Accounting Service, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of proposal evaluation and source selection is denied where record shows evaluation and award decision were reasonable and consistent with solicitation's evaluation terms and applicable procurement rules.

DECISION

Tessada & Associates, Inc. protests the agency's evaluation of its proposal and the award of a contract to BearingPoint, Inc. under request for proposals (RFP) No. HQ0423-04-R-0002, issued by the Defense Finance and Accounting Service (DFAS) for accounting reconciliation services. Tessada contends that its technical proposal should have been evaluated more favorably and that the firm's offer should have been considered the most advantageous to the agency in light of its lower price. The protester contends that the award to BearingPoint on the basis of that firm's technically superior, higher-priced proposal was unreasonable.

We deny the protest.

The RFP, issued on December 17, 2003, contemplated the award of an indefinite-quantity contract for a base and 4 option years.¹ The services called for by the RFP, which are required to resolve out-of-balance conditions between accounting records and systems to facilitate contract closeout processes, include both full and limited scope reconciliations.² All reconciliation requests were to originate as limited scope reconciliations requiring performance within a total of 35 hours and payment at a fixed price; full reconciliations, providing additional time for completion (as requested by the contractor and approved by the agency), were to be charged at an hourly rate for all work done (including the initial 35 hours of work prior to conversion of the effort to a full reconciliation). RFP at 18.

The RFP contemplated a “best value” source selection and provided that award would be made to the offeror providing “the greatest confidence that it will best meet or exceed the requirements affordably.” Id. at 87. Offerors were specifically advised that

[t]his may result in an award to a higher rated, higher priced offeror, where the decision is consistent with the evaluation factors and the Source Selection Authority (SSA) reasonably determines that the technical superiority and/or overall business approach and/or superior past performance of a higher price[d] offeror outweighs the cost difference.

Id.

The RFP provided the following three evaluation factors for award: past performance, technical, and price. Past performance was the most important factor; the past performance and technical factors combined were significantly more important than price. The technical factor consisted of the following three subfactors: technical approach (requiring responses to two sample tasks); key personnel (requiring program manager and alternate program manager resumes demonstrating for each individual a minimum of 6 years of general experience in task management related to contract finance, contract reconciliation, accounting,

¹ Forty percent of the work called for under the RFP was set aside for small businesses; this protest involves the competition for the remaining unrestricted portion of the work.

² The RFP provided that a full reconciliation consists of a complete review and alignment of all contractual records and will result in no adverse financial conditions in the overall contract; limited scope reconciliations involve review of less than all contractual documentation to correct specifically identified adverse financial conditions without creating or increasing other adverse or out-of-balance conditions. RFP at 17.

business, and financial management services of similar size and complexity to the work described in the RFP); and management plan. Id. at 22, 73-78, and 88. Offerors were instructed that price was the least important evaluation factor for award and would be evaluated for realism and consistency with the technical proposal; the RFP cautioned that unbalanced prices could result in a negative risk assessment. Id. at 89.

BearingPoint and Tessada, both incumbent contractors for these services, submitted the proposals ranked first and second, respectively, in line for award. Tessada's proposal offered a lower price than BearingPoint's; BearingPoint's proposal, however, was rated technically superior to Tessada's.³ The BearingPoint proposal received the highest rating of "excellent" under every past performance and technical factor and subfactor; Tessada's proposal received ratings of "very good" for both the past performance factor and the technical factor (with subfactor ratings of "very good" for technical approach, "good" for key personnel, and "excellent" for management plan). While BearingPoint's proposed price was higher than Tessada's, the agency deemed it reasonable in relation to the government estimate and assessed it as "low risk." Tessada's proposed price, however, was assessed as "medium risk" in light of the agency's concern that a substantial difference in price between Tessada's lower-priced limited scope reconciliation work and higher-priced full reconciliation rates rendered the protester's pricing structure unbalanced; as explained further below, the evaluators were concerned that Tessada's pricing approach provided an incentive to seek additional full reconciliation work during contract performance. Determining that the overall technical superiority of the BearingPoint proposal outweighed the additional cost associated with it, the agency awarded a contract to that firm. After a debriefing, Tessada filed this protest.

Tessada protests the agency's evaluation of its proposal under the factors for past performance, technical (including the technical approach and key personnel subfactors), and price. The protester also generally challenges the agency's "best value" analysis and award to BearingPoint on the basis of its higher-rated, higher-priced proposal.

In reviewing protests against allegedly improper evaluations and awards, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable, and in accord with the RFP's terms and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7. Our review of the

³ BearingPoint's price for the unrestricted portion of the work was \$16,652,556; Tessada's price was \$11,895,440.

record here provides no basis to question the reasonableness of the agency's evaluation of the protester's proposal or the award to BearingPoint.

Tessada first challenges the reasonableness of the agency's evaluation of its proposal under the past performance evaluation factor, which, as stated above, was the most important evaluation factor for award. In this regard, Tessada only generally argues that its proposal should have been rated excellent for past performance, as BearingPoint's was, since Tessada received some "excellent" customer satisfaction ratings from past performance references. The agency reports, however, and our review confirms, that while BearingPoint's past performance references mostly gave the firm the highest ratings available, and also submitted highly favorable comments that squarely support the "excellent" rating the firm's proposal received under the past performance factor, Tessada received approximately equal numbers of "excellent" and "very good" past performance ratings, as well as a few lower ratings of "satisfactory." Given the mix of ratings received from the firm's past performance references, and the protester's failure to refute in any way the agency's detailed support for the firm's "very good" past performance rating, there is no basis for us to question the propriety of the past performance evaluation, or the lower past performance rating assigned to the Tessada proposal.

The protester next challenges the evaluation of its proposal under the technical approach subfactor. As stated above, for the evaluation of technical approach, offerors were to submit solutions to two sample reconciliation services tasks. In this regard, the RFP advised offerors to "provide a comprehensive response documenting additional information deemed necessary to resolve the problem, all assumptions, processes, and any proposed action, while identifying inherent quality control measures." RFP at 73. The responses were to be "evaluated on the methodology and processes used rather than on a perceived 'right' answer" to determine whether "the offeror clearly understands all the tasks involved in the sample problems and knows how to approach them." *Id.* at 73 and 88. Tessada received full credit for its response to the first sample task, but received less than full credit for its solution to the second sample task because its proposed approach was considered inefficient, in that the firm reviewed additional, and, in the agency's view, extraneous documents where the agency had contemplated only a limited scope reconciliation.

Tessada argues that it should have received full credit for its response because it was detailed, as required by the RFP, and was estimated by the firm to take less than the 35 hours allowed under the RFP for limited scope reconciliations. In this regard, Tessada contends that even if its full audit approach was more extensive than the agency considered necessary, the agency would still be charged for the effort at the fixed price for limited scope reconciliations (since the work was to be completed within the 35-hour limit).

Our review of the record confirms the reasonableness of the agency's evaluation of the protester's sample task response. The RFP expressly notified offerors that their

solutions' methodologies and processes would be evaluated in order to determine whether "the offeror clearly understands all the tasks involved . . . and knows how to approach them." RFP at 88. The agency explains that, while a limited scope reconciliation was contemplated under the sample task, the protester's response indicated a full scope audit was performed, including review of numerous documents considered irrelevant to, and unnecessary for, the required reconciliation work. Tessada does not argue that the additional work it performed is necessary for resolution of the specific problem identified in the task, but, rather, suggests that since the RFP sought comprehensive explanations from the offerors, it should receive additional credit because it detailed each of the processes it proposed. We do not agree.

The record shows that the protester's sample task response received most (5 of 7) of the points available, primarily due to its comprehensive discussion of reconciliation matters. Consistent with the terms of the RFP for assessment of how the offeror chose to approach the task, we believe the agency was reasonable in concluding the additional, unnecessary work performed by the firm was a legitimate basis for withholding full credit. Further, as the agency points out, performance of unnecessary work, and the labor hours associated with it (even if performed within the amount of time allowed under the contract's fixed-price component), reasonably relates to contractor productivity under the overall contract requirements, since unnecessary work, and the additional labor hours spent performing that work, may inhibit timely completion of the balance of work required under the contract. Accordingly, our review of the record does not support the protester's contention that the agency's evaluation of its proposal under the technical approach factor, namely, the agency's decision not to assign full evaluation credit to the sample task response in question, was unreasonable.

Tessada next challenges the agency's evaluation of its proposal under the key personnel subfactor; specifically, Tessada contends that the agency failed to properly evaluate the qualifications of its proposed alternate program manager. The protester contends that the agency improperly concluded that the individual's resume failed to demonstrate a minimum of 6 years of general experience in task management related to contract finance, contract reconciliation, accounting, business and financial management services of similar size and complexity to the work described in the solicitation. In addition to the slightly more than 5 years of general task management experience that was credited by the agency, the protester suggests that it should have been credited for the individual's work directing negotiations with banks for government loans and coordinating a production team designing computer programs for accounting and financial data. Our review of the record confirms the reasonableness of the agency's evaluation. Offerors were instructed to explain how the duties listed by key personnel on their resumes were relevant to work to be undertaken under the RFP and to "tie [the individual's] experience to the [RFP's] experience requirements." RFP at 75. As the agency reasonably concluded, the general description of the work in this individual's resume

for which the protester seeks credit does not explain any relevant task management responsibilities of similar size and complexity to the work required here. Consequently, we conclude that the agency was reasonable in determining that the minimum experience requirement had not been met for this individual.⁴

Tessada next protests the agency's assignment of "medium risk" to its price proposal. This risk assessment was primarily based upon the agency's concern about the substantial increase in price between the protester's fixed price for limited scope reconciliations (covering up to 35 hours of work) and its hourly rate for full scope reconciliations (which rate would also apply to the initial 35 hours of work performed prior to conversion of the job to full reconciliation performance/payment terms as well as additional hours required for completion of the reconciliation). The agency reasoned that this pricing disparity would encourage the firm to seek conversion of limited scope reconciliation work to full reconciliation work to gain additional hours of work and an associated higher price.⁵ The agency also reasoned that it would have to spend additional time managing the contractor's work to ensure that limited scope reconciliation work was timely performed and would not require conversion to full reconciliation terms. In this regard, the agency considered that its own efforts to control costs through close review of, and perhaps rejection of, the contractor's requests for conversion to full reconciliation terms would also present a risk in terms of performance, since insistence by the agency on completion of work within the limited scope reconciliation time period (at its associated fixed price) could increase the potential for contractor shortcuts and resultant errors.

In response to the agency's explanation of its medium risk assessment, Tessada does not challenge the agency's report of the firm's [deleted], but, rather, challenges the methodology the agency used to conclude that there is a large disparity between the firm's prices for limited scope and full reconciliation services. We see no basis to question the agency's approach.

As explained above, the RFP called for offerors to propose a lump sum price for each limited scope reconciliation to be performed, and an hourly rate for full reconciliation work. In order to compare an offeror's rates for limited scope and full reconciliation work, the agency calculated an hourly rate for the limited scope work;

⁴ While the protester suggests that the favorable rating of "excellent" received for its program manager's qualifications should raise its overall key personnel rating to at least "very good" instead of the "good" rating received under the key personnel subfactor, it provides no support for the contention, especially, since, as discussed above, its alternate program manager's resume failed to demonstrate compliance with the RFP's minimum requirements.

⁵ The record shows that the agency's concern in this regard also stems from [deleted].

the agency did this by dividing an offeror's proposed lump sum price by 29.75 hours, the length of time on average it has taken to complete limited scope reconciliations. Based on this calculation, Tessada's hourly rate for full reconciliations was 28 percent higher than its hourly rate for limited scope reconciliations. Tessada argues that it would have been more reasonable to calculate Tessada's hourly rate for limited scope reconciliations by using the firm's average hours for completion of limited scope reconciliations actually performed during fiscal year 2003 under its incumbent contract for the services. The protester argues that because its limited scope reconciliations that year were completed in less time than the agency's historical average for such work, such an evaluation would show that its hourly rate for limited scope reconciliations in fact was higher than its hourly rate for full reconciliations.

The record does not support the protester's objection to the agency's evaluation methodology or its contention that the agency was otherwise unreasonable in assessing a medium risk to the firm's proposed pricing. The agency's historical hourly average for completion of limited scope reconciliations was used across-the-board to evaluate all offers and, unlike Tessada's 1-year performance data, the figure used by the agency represented a longer term historical average. The evaluation record further shows that the agency recognized that Tessada and BearingPoint, because of their experience performing the work under their incumbent contracts, could be expected to complete the limited scope reconciliations faster than a new contractor without such experience. As a result, the agency also calculated hourly rates for both Tessada and BearingPoint using an average completion time 10 percent shorter than the 29.75 hour average. This calculation still revealed a sizeable (*i.e.*, 15 percent) disparity between the protester's limited scope and full reconciliation prices. Proposal Analysis Report at 79-85.

Further, as the agency reports, during performance of its incumbent contract, [deleted]. Accordingly, Tessada's suggested use of its 2003 average completion time for limited scope reconciliations appears to be of questionable reliability, as the figure apparently excludes that portion of work that initially was anticipated to be completed within the shorter performance period for limited scope reconciliations, but which was not met by the protester and required conversion to full reconciliation terms. In sum, given the agency's reasonable application of a historically-based average to all proposals, and the agency's reasonable concern about potential risk associated with the protester's pricing structure, we have no basis to question the agency's assignment of a medium risk rating to the proposal.⁶

⁶ Tessada also argues that the price evaluation (and overall evaluation) is flawed because no price proposal point score or total evaluation point score was calculated for the offers. This challenge, however, provides no basis to find the agency's otherwise detailed, reasoned evaluation of proposals improper. Point scores and adjectival ratings are mere guides to decision-making and the failure to assign point
(continued...)

Lastly, Tessada's protest of the reasonableness and sufficiency of the source selection authority's (SSA) price/technical tradeoff analysis and source selection decision also provides no basis to question the award to BearingPoint. Where a solicitation provides for a "best value" procurement and, as here, emphasizes the significantly greater importance of technical factors over price, an agency has considerable discretion to award to an offeror with a higher technical rating and higher price. WPI, B-288998.4, B-288998.5, Mar. 22, 2002, 2002 CPD ¶ 70 at 10. Source selection officials, who are not bound by the recommendations or methodologies of evaluators, have discretion, subject to the tests of rationality and consistency with the established evaluation factors, to make price/technical tradeoffs in deciding between competing proposals. We will review the reasonableness of the SSA's judgment concerning the significance of the proposal differences and whether the selection is justified in light of the RFP evaluation scheme.⁷ See Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 11-12; Environmental Chem. Corp., B-275819, Apr. 1, 1997, 97-1 CPD ¶ 154 at 5.

Our review confirms the reasonableness of the SSA's tradeoff determination. The RFP's past performance and technical factors combined were to be significantly more important than price in the source selection. As discussed above, BearingPoint's proposal was evaluated as technically superior to the Tessada proposal under the past performance and the technical factors. Our review of the record shows that the technical superiority of BearingPoint's proposal, in terms of its higher past performance and technical ratings, as well as additional favorable performance information known to the SSA regarding BearingPoint's comparatively higher productivity and accuracy under the incumbents' contracts, was reasonably found to outweigh the lower price (reasonably determined to present some contract administration and performance risk to the agency) of Tessada's technically inferior proposal. Given the reasonableness of the evaluators' and the SSA's evaluation of

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scores for certain aspects of the evaluation here is inconsequential where the evaluation otherwise provides meaningful narrative regarding the technical merit of competing proposals. See Management Tech., Inc., B-257269.2, Nov. 8, 1994, 95-1 CPD ¶ 248 at 6-7. We also note that Tessada has not shown that it has been prejudiced in any way by the agency's failure to assign point scores in the manner sought by the protester. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

⁷ Contrary to the protester's contention, there is no requirement that a selection official, in performing a cost/technical tradeoff, "dollarize" by calculating a precise value for the technical advantages offered. See TeKONTROL, Inc., B-290270, June 10, 2002, 2002 CPD ¶ 97 at 5.

the firms' proposals, we have no reason to question the propriety of the agency's determination that BearingPoint's higher-rated, higher-priced proposal offered the best value to the agency.

The protest is denied.

Anthony H. Gamboa
General Counsel