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Decision

Matter of: Raytheon Company

File: B-413981

Date: January 17, 2017

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Devon E. Hewitt, Esq., Protorae Law PLLC, for Leidos, Inc., the intervenor.

Judith L. Richardson, Esq., Defense Threat Reduction Agency, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably evaluated awardee's technical proposal is denied where agency reasonably considered awardee's innovative technical approach and concluded that it was superior to protester's approach.

2. Agency reasonably determined that awardee's proposed rates were realistic where those rates reflected the awardee's proposed technical approach of [redacted].

DECISION

Raytheon Company, of Sterling, Virginia, protests the Defense Threat Reduction Agency's (DTRA or agency) award of a task order to Leidos, Inc., of Reston, Virginia, pursuant to request for proposals (RFP) No. HDTRA1-14-WMD-0058 to provide engineering support and vulnerability assessments.¹ Raytheon asserts that

¹ DTRA is the Department of Defense agency responsible for countering weapons of mass destruction (WMD), and the agency states that the DTRA division for which this procurement is being conducted (referred to as "J9CXA") "develops new methodologies, processes and technological applications for detecting, locating, identifying, physically and functionally characterizing, modeling, and assessing new and existing Hard and Deeply Buried Targets (HDBTs) and WMD targets to support

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it is the incumbent contractor,² and protests that the agency unreasonably evaluated Leidos's technical approach, failed to properly evaluate Leidos's proposed costs, and performed a flawed best-value tradeoff.

We deny the protest.

BACKGROUND

On May 26, 2016, the agency issued RFP No. HDTRA1-14-WMD-0058 to contractors that had previously been awarded indefinite-delivery, indefinite-quantity (IDIQ) contracts entitled "Combating Weapons of Mass Destruction and Research and Technology Development." AR, Tab 5, RFP at 000002.³ The solicitation contained contract line item numbers (CLINs) to perform basic research and development (R&D) and operations and maintenance (O&M) activities (referred to as the "base" CLINs), along with option CLINs to provide "surge support." RFP at 000003-15. For each of the CLINs, the solicitation provided estimated levels of effort in terms of full-time equivalent personnel (FTEs).⁴ Id.

The solicitation contemplated the award of a cost-plus-fixed-fee (CPFF) contract, and provided that the source selection decision would be made on a best-value basis, establishing the following evaluation factors: mission capability,⁵ past performance, and cost/price.⁶

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full dimensional defeat combat operations." Contracting Officer's Statement (COS), Nov. 9, 2016 at 1. Under this effort, "the contractor shall serve as the primary support to DTRA J9CXA in performing its mission in assessing foreign underground facilities (UGFs)." Id.

² The agency states that the requirements of this solicitation reflect the combined requirements of two prior contracts: Raytheon's prior contract and a contract performed by another firm, Lachel and Associates. COS, Nov. 9, 2016, at 12-13. The agency adds that "DTRA knows Leidos and Raytheon well; both have been supporting J9CXA, the requiring activity, for many years." Agency Report (AR), Nov. 10, 2016, at 35.

³ The documents provided with the agency report were submitted with Bates numbering. Our page citations to those documents reference the applicable Bates numbers.

⁴ The solicitation provided that an offeror's proposed level of effort could deviate from the solicitation's FTE estimates, but warned that an offeror's cost proposal must be consistent with its proposed technical approach. RFP at 000049.

⁵ The solicitation provided that the mission capability factor would be evaluated on the basis of two subfactors: technical approach and management approach; that
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On July 1, proposals were submitted by three offerors, including Raytheon and Leidos.⁷ Following the agency's evaluation of those proposals, discussions were conducted, and final proposal revisions (FPRs) were submitted and evaluated. Leidos's and Raytheon's FPRs were evaluated as follows:

	Leidos	Raytheon
Mission Capability		
Technical Approach	Exceptional	Good
Management Approach	Acceptable	Acceptable
Past Performance	Exceptional	Exceptional
Evaluated Cost/Price	\$54,170,049	\$54,249,687

AR, Tab 37, Best Value Decision Memorandum, at 000019.

In evaluating Leidos's proposal under the technical approach evaluation subfactor, the agency identified several strengths, including "two major innovative strengths," and concluded that Leidos's proposal demonstrated "an exceptionally thorough understanding" of the contract requirements. *Id.* at 000004. More specifically, the agency stated:

Leidos demonstrated a thorough approach to Foreign UGF Characterization by detailing the processes and purposes for reverse characterization (target vulnerabilities and targetable elements). They identified inefficiencies in the current characterization process and provided suggested changes to the characterization workflow and team structure to address these inefficiencies. They proposed an extremely innovative reorganization of the engineering teams to improve both the quality and quantity of production while at the same time allowing new engineers to meaningfully contribute earlier in their certification process than currently exists. This proposed reorganization will lead to significant increases in production without increases in cost and was identified as a

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technical approach was more important than management approach; that ratings of exceptional, good, acceptable, marginal or unacceptable would be assigned under each subfactor; and that the subfactor ratings would not be rolled up into an overall factor rating. RFP at 000052-54.

⁶ The solicitation provided that cost proposals "shall be reviewed for realism, reasonableness, and completeness." RFP at 000054.

⁷ The third offeror's proposal, and the agency's evaluation thereof, is not relevant to this protest and is not further discussed.

major strength. Leidos also proposed another long-term innovative solution to the problem of Engineer training and tradecraft relevancy in UGF construction technology by entering into an exclusive agreement with [redacted]. With Government approval, this agreement will allow Engineers to [redacted]. Over time, this arrangement will familiarize Subject Matter Experts (SMEs) with industry best practices, technical innovations, and emerging technologies; provide new insights for UGF assessments; and contribute to building a bench for surge support and was identified as a major strength.

Id. at 000004-5.

On September 23, the agency selected Leidos's proposal for award on the basis of its technical superiority and lower evaluated cost/price, stating that, "Leidos's comprehensive technical approach substantially benefits the Government, provides for greater innovation, reduces risk, and increases opportunities for programmatic success," also stating that Raytheon's technical approach was "not as innovative or as beneficial to the Government." Id. at 000020. Thereafter, Raytheon was notified of the agency's source selection decision. This protest followed.⁸

DISCUSSION

Raytheon asserts that the agency unreasonably evaluated Leidos's proposed approach to performing the solicitation's surge requirements; failed to properly evaluate the realism of Leidos's proposed costs related to the surge requirements; and, based on these alleged errors, maintains that the agency's best value determination was flawed.⁹ As discussed below, we find no merit in any of Raytheon's protest allegations.

⁸ The estimated value of the task order at issue is greater than \$10 million. Accordingly, 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).

⁹ In its initial protest, Raytheon also challenged various other aspects of the agency's evaluation and source selection decision. Following receipt and review of the agency report, Raytheon withdrew all of its other allegations. Raytheon Comments, Nov. 21, 2016, at 1 n.1.

Technical Evaluation

Raytheon first challenges the agency's evaluation of Leidos's proposed technical approach to performing the surge requirements, complaining that Leidos does not intend to use its proposed subcontractor, Lachel and Associates, to perform those requirements,¹⁰ and instead will rely on more junior Leidos staff. Raytheon Comments, Nov. 21, 2016, at 4-10. In this context, Raytheon asserts that "Lachel [has] played a critical role in Raytheon's predecessor prime contract in supporting 'surge' requirements," and maintains that Lachel's experience in performing those requirements is "unique and irreplaceable."¹¹ Id. at 6. Accordingly, Raytheon asserts that Leidos's technical approach should have been evaluated as reflecting substantial performance risk. Id. at 4-8.

The agency responds that the solicitation did not dictate a particular approach to performing the surge requirements and, further, that the manner in which surge requirements have previously been performed was not a criterion against which proposals were to be evaluated. Supp. AR, Nov. 28, 2016, at 3. Indeed, the agency notes that Leidos's approach did not rely on the status quo and, rather than proposing [redacted] to respond to surge requirements, Leidos proposed to respond to surge requirements by [redacted] and [redacted] to perform surge tasks [redacted]. Id. at 5. In this regard, the agency viewed Leidos's proposal to perform the surge requirements as reflecting an innovative approach that differed from the "inefficiencies in the current characterization process." See AR, Tab 37, Best Value Determination Memorandum, at 000004.

The agency further notes that Leidos's proposal reflected an exclusive agreement between Leidos and [redacted], under which Leidos personnel will [redacted] under various other [redacted]. Id. at 6. The agency notes that this exclusive agreement will "support Leidos employees' skills expansion and increase their exposure to industry best practices, technological innovations and emerging technologies." Id. Finally, the agency notes that the RFP did not establish minimum requirements related to performance of the surge requirements and that, consistent with its proposed technical approach, Leidos was able to reasonably propose lower-level labor categories and skill levels to perform those requirements. Id. at 8. Overall,

¹⁰ Both Raytheon and Leidos proposed Lachel and Associates as a subcontractor to assist in performing the "base" CLINs.

¹¹ Remarkably, despite Raytheon's criticism of Leidos's proposed approach, and Raytheon's unequivocal assertion regarding Lachel's "irreplaceable" experience in supporting the surge requirements, it appears that Raytheon, itself, did not intend to rely on Lachel, its proposed subcontractor, for performance of the surge requirements, expressly stating: "Raytheon did not propose the use of Lachel for its Surge support." Id. at 4 n.4.

the agency concluded that Leidos's unique and innovative staffing approach was beneficial to the agency from both a technical and cost/price point of view and, accordingly, that it properly evaluated Leidos's proposed technical approach as exceptional.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's disagreement with the agency's evaluation, without more, is insufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Here, based on our review of the entire record, we find no basis to question the reasonableness of the agency's evaluation of Leidos's proposed technical approach. Specifically, the agency's contemporaneous evaluation documentation provides more than adequate support for the agency's conclusions. For example, in evaluating Leidos's technical approach, the agency's technical evaluation team stated:

[Leidos] proposes a reorganization of the engineering teams to improve the quality and quantity of production while at the same time allowing new engineers to meaningfully contribute earlier in their certification process than currently exists. The proposed reorganization is considered a major strength because it will lead to significant increases in production without increases in cost.

AR, Tab 36, Final Evaluation, at 000006.

The technical evaluation team further stated:

[Leidos] will enter into an exclusive relationship [redacted] whereby Leidos engineers will [redacted] on UGF [underground facilities] projects. Having all engineers with practical experience on current technological UGF construction processes is a major benefit to the Government. Threat nations continue to advance the state-of-the-art in UGF design and construction. Analysts who are equally knowledgeable will improve accuracies and reduce uncertainties.

Id.

Finally, as noted above, the agency's best-value determination specifically noted that Leidos had "identified inefficiencies in the current characterization process and provided suggested changes to the characterization workflow and team structure to address these inefficiencies," as well as proposed an innovative agreement with

[redacted] to assist in [redacted]. AR, Tab 37, Best Value Determination Memorandum, at 000004-5.

Based on our review, we find no basis to question the reasonableness of the agency's determination regarding the technical superiority of Leidos's proposed approach. In this regard, we are unpersuaded that anything in the solicitation required offerors to propose [redacted] to perform the surge requirements. See Tab 5, RFP's Statement of Work, "Surge WMD Analysis and Characterization Support," at 000063-64 ("The contractor shall plan for the provisioning of a typical team, or some mix of the identified labor categories, as required." [Underlining added.]) In short, the record supports the agency's determination that, while Raytheon proposed a more expensive approach to performing the surge requirements that was consistent with its past performance of those requirements, there was nothing unreasonable in the agency's determination that Leidos's less expensive, innovative approach to [redacted], was more beneficial to the government. Raytheon's various challenges to the agency's technical evaluation of Leidos's proposed technical approach are denied.

Cost Realism

Next, Raytheon protests that the agency failed to recognize that Leidos's proposed labor rates for the surge requirements are unrealistically low. In this regard, Raytheon complains that Leidos's proposed surge rates are lower than "the Lachel staff [rates] proposed for [most of] the Base O&M CLINs" and, accordingly, asserts that Leidos's rates are "unreasonable and insufficient to attract and retain the unique and highly-specialized engineering talent necessary to properly perform this work." Raytheon Comments, Nov. 21, 2016, at 10. In this context, Raytheon again notes that "Lachel engineering staff has participated in all previous surge CLIN work." Id.

The agency responds by noting that the manner in which the predecessor contracts had been performed, and the costs that had been previously incurred, were not the criteria against which the agency was to evaluate proposals. The agency further responds that it considered whether Leidos's proposed costs for the surge requirements were consistent with its proposed technical approach, and verified the realism of Leidos's proposed rates by comparing them to the Defense Contract Management Agency's (DCMA) forward pricing rate recommendation, and by conducting market research on several salary websites. Supp. AR, Nov. 28, 2016, at 9-10. The agency states that it concluded that Leidos's proposed rates were, in fact, consistent with its technical approach which, as discussed above, was to [redacted] to perform the surge tasks under the [redacted]. Id. Accordingly, based on its consideration of Leidos's technical approach, and the agency's market

research, the agency concluded that Leidos's proposed rates were within the range of comparable market rates and were realistic.¹² Id.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, an offeror's costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 16.505(b)(3); FAR § 15.305(a)(1); Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7; CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 5 n.1. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR §§ 15.404-1(d)(1), 16.505(b)(3); Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. When conducting a cost realism analysis, agencies are required to consider the realism of a firm's proposed costs in light of its unique technical approach. Metro Mach., Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8-9.

Here, consistent with our discussion above regarding the agency's reasonable evaluation of Leidos's technical approach, we find no basis to question the agency's cost evaluation. Specifically, the record establishes that the agency considered Leidos's proposed rates for performing the surge requirements in the context of its proposed technical approach to [redacted]. The record further establishes that, in the context of Leidos's proposed approach, the agency reasonably determined that Leidos's proposed labor rates for the surge requirements were consistent with market rates for comparable labor. In short, the essence of Raytheon's challenge to the agency's cost evaluation reflects its similar challenge to the agency's technical evaluation--that is, that it was unreasonable for Leidos to rely on lower level, more junior personnel to perform the surge requirements. Consistent with our decision above, we reject the argument that the agency's cost evaluation was flawed. That is, Leidos's proposal reasonably responded to the solicitation requirements by offering an approach that differed from the status quo, and that approach was viewed by the agency as being beneficial not only with regard to enhancing and expanding the technical capability and expertise of the agency's contractor staff, but

¹² The agency further states that, in order to perform an "apples-to-apples" comparison of Leidos's proposed burdened rates to the salary information obtained from the various websites, the agency multiplied the market rates "by a factor of 2 to estimate applicable burdens," viewing this as a conservative approach to ensure a proper comparison. Declaration of DTRA Contract Specialist, Dec. 8, 2016, at 1.

also as offering a lower cost/price. Based on our review of the record here, we find no basis to question the reasonableness of the agency's cost evaluation.

The protest is denied.¹³

Susan A. Poling
General Counsel

¹³ Raytheon also asserts that the agency's best-value determination was flawed based on the alleged flaws in the technical and cost evaluations. Since we have rejected Raytheon's assertions regarding the technical and cost evaluations, Raytheon's challenge to the best-value determination fails to state a valid basis for protest and is not further considered. 4 C.F.R. § 21.1(c)(4) and (f).