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Decision

Matter of: WorldTravelService

File: B-284155.3

Date: March 26, 2001

Barry Roberts, Esq., and Brian J. Hundertmark, Esq., Roberts & Hundertmark, and Paul M. Tschirhart, Esq., Sher & Blackwell, for the protester.
Mark Pestronk, The Travel Law Firm, for Omega World Travel, Inc., an intervenor.
Terrence J. Tychan and Michael Colvin, Department of Health & Human Services, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In solicitation for fixed-price travel services, protest that awardee's price is unreasonably low and demonstrates a lack of understanding of the requirement is denied where solicitation did not provide for realism analysis.

2. Protest that contracting agency conducted inadequate and unequal discussions as between the protester and awardee is denied where the record shows that the agency properly tailored discussions to each offeror, and provided each the same opportunity to revise its proposal.

3. Fact that past performance evaluation does not specifically refer to relative risk assessment contemplated by evaluation criteria is unobjectionable, since relative risk assessment was implicit in agency's scoring of each proposal, and protester has not shown that awardee's past performance record indicates significant performance risk.

DECISION

WorldTravelService (WTS) protests the award of a contract to Omega World Travel, Inc. under request for proposals (RFP) No. 263-99-P(BH)-0032, issued by the National Institutes of Health (NIH), Department of Health and Human Services, for travel services. WTS challenges the evaluation, the adequacy of discussions and the price/technical tradeoff.

We deny the protest.

BACKGROUND

NIH issued this solicitation in 1999 for travel services, including transportation, lodging, and car rental, for four types of travel: staff, patient, VIP, and meeting travel. Proposed fees for these services were to be based on the reasonable cost of making the appropriate reservations and of providing related services. In addition to these fees, the successful contractor was permitted to retain all revenue (e.g., commissions) accrued from travel bookings and other services. This was a performance-based procurement, under which offerors were left to propose the best method of meeting the agency's requirements. Performance objectives were included to ensure that the agency's standards were met. In addition to the required services, the RFP requested certain "other desired services," and also permitted offerors to propose additional "value-added" services. The RFP contemplated the award of a fixed-price, indefinite-delivery, requirements contract for a base year, with 4 option years.

Proposals were to be evaluated on the basis of mandatory qualification criteria (conformance to specified minimum requirements and experience) and four evaluation factors: understanding the requirement (100 points); quality control, performance standards and management (30 points); past performance (10 points); and other desired services (10 points). Prices for core services were evaluated by multiplying proposed transaction fees by the estimated volume of each transaction for the total performance period. Prices for value-added services were to be evaluated for price reasonableness. The technical factors combined were to be significantly more important than price, and award was to be made to the offeror whose proposal provided the combination of features offering the best overall value to the government. RFP § M.1.

Six offerors, including WTS and Omega, submitted proposals, all of which were found technically acceptable and placed in the competitive range. After discussions, NIH determined that WTS's higher-rated proposal represented the best value despite its significantly higher price, and made award to that firm. Omega then filed a protest in our Office challenging the evaluation of its technical proposal and the price/technical tradeoff. Recognizing that its best value analysis was largely undocumented, NIH took corrective action and we dismissed the protest as academic (B-284155, Dec. 8, 1999).

NIH reopened negotiations with all offerors in the competitive range and obtained final proposal revisions (FPR) from each. Based on its evaluation of the FPRs, NIH again determined that WTS's higher-rated, significantly higher-priced proposal represented the best value. Omega filed a second protest with our Office, again challenging the evaluation of its technical proposal and the price/technical tradeoff. In response to this protest, NIH again determined to take corrective action on the basis that the statement of work did not adequately reflect the needs of the agency

and the evaluation factors did not reflect the importance of certain aspects of the work. We therefore dismissed this second protest as academic (B-284155.2, June 29, 2000).

NIH amended the RFP and requested new FPRs. Of the three offerors responding, only WTS's and Omega's proposals were deemed acceptable. After reviewing the revised proposals, the technical evaluation panel (TEP) identified various concerns and questions for WTS and Omega. NIH conducted discussions with and solicited FPRs from both. The final evaluation results were as follows:

Factor (points)/Offeror	**WTS**	**Omega**
Understanding requirement (100)	**91.75**	**78.5**
Quality control procedures (30)	**27**	**27.24**
Past performance (10)	**9**	**7**
Other desired services (10)	9.25	5.75
Total Points (150)	137	**118.5**
Price	$3,088,050	$2,121,000

Even though WTS's proposal again was rated higher than Omega's, the source selection authority (SSA) determined that there was no question that Omega fully understood the stated requirements, and that WTS's technical superiority was not sufficient to warrant paying its approximate $967,000 higher price; the SSA therefore concluded that Omega's proposal represented the best value to NIH. After receiving notice of the ensuing award and a debriefing, WTS filed this protest with our Office.

PRICE EVALUATION

WTS challenges the agency's price evaluation as flawed on the basis that it failed to recognize that Omega's low price demonstrated a lack of understanding of the RFP's requirements.

This argument is without merit. Where, as here, an RFP contemplates the award of a fixed-price contract, the agency is not required to conduct a realism analysis; this is because a fixed-price (as opposed to a cost-type) contract places the risk and responsibility for loss on the contractor. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. An agency may provide for the use of a price realism analysis for the limited purpose of measuring offerors' understanding of the requirements or to assess the risk inherent in an offeror's proposal, PHP Healthcare Corp., supra, but there is no requirement that it do so.

Here, the RFP did not provide that the agency would conduct a realism analysis of the proposals, or otherwise assess technical understanding with reference to the

offered prices.[1] Rather, the RFP provided only for multiplying the fixed unit prices by the estimated (historical) volume of tickets--an analysis designed to assess whether offers were unbalanced--and for a price reasonableness determination for the value-added services. RFP §§ M.3, M.4. Under these circumstances, the agency was not required to evaluate Omega's price against the technical requirements. (We note that the agency nevertheless actually compared all offerors' prices with one another in spreadsheet form, and specifically concluded from this comparison that Omega understood the requirement, Second Revised Source Selection Memorandum (Selection Memo) at 5, and that its price was sufficient to perform the contract. See Astro Pak Corp., B-256345, June 6, 1994, 94-1 CPD ¶ 352 at 5. WTS has not shown that the agency's conclusions in this regard were unreasonable.)[2]

TECHNICAL EVALUATION

WTS contends that several aspects of Omega's technical proposal failed to meet the RFP's requirements, and that this calls into question the price evaluation. According to WTS, had the agency either ensured that Omega met the requirements or notified WTS that they had been relaxed, the difference in the offerors' prices would have been much smaller.

In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's determination was reasonable and consistent with the evaluation criteria listed in the solicitation. Hattal & Assocs., B-243357, B-243357.2, July 25, 1991, 91-2 CPD ¶ 90 at 7.

We have reviewed each of WTS's allegations and find that none has merit. For example, WTS asserts that Omega failed to provide adequate staffing in three areas: VIP services, off-site office personnel, and the electronic self-booking system. With

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[1] The RFP's evaluation provisions in section M make no mention of a realism analysis, and WTS does not explain the basis for its assertion that a price realism/technical understanding analysis was required. RFP section L.10.C.4, "Information Other than Cost or Pricing Data," did call for the submission of data to permit the contracting officer "to determine price reasonableness or cost realism"; however, since the operative language is set forth in the alternative, and this is a fixed-price, not a cost-type, contract, it appears that the required information related to the evaluation of the reasonableness of the value-added services.

[2] WTS also asserts that the agency's price reasonableness evaluation of Omega's low prices was flawed. However, the purpose of a price reasonableness review is to determine whether the prices offered are higher--as opposed to lower--than warranted. USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 7. Since WTS asserts that Omega's prices are too low, not too high, there is no reason to question Omega's prices on the basis of price reasonableness.

regard to VIP services and the off-site office, WTS observed that Omega had not proposed the same level of staffing as WTS, which based its proposal on the levels maintained under the incumbent contract. However, as noted above and by the agency, this was a performance-based contract--rather than establish minimum requirements for staffing, the RFP left it to offerors to determine the best means of meeting the requirements. NIH therefore evaluated Omega's proposal on its own merits, and concluded that Omega's proposed staffing was sufficient for the required services. WTS has identified nothing in Omega's proposal or elsewhere in the record that would lead us to question this conclusion.

As another example, the RFP advised offerors that NIH may be investigating or implementing an electronic (Internet) self-booking system, and set forth the agency's requirements regarding this system. WTS observes that Omega did not satisfy the agency's requirements because it did not propose to have a travel consultant involved in this reservation process, even though the RFP required the contractor to make reservations and to issue and deliver tickets. RFP § C.5.1. However, there was no requirement for a travel consultant to be involved in this electronic system, and given that the purpose of the system was to permit "self-booking," it is not apparent why WTS believes a travel consultant was necessary.[3]

DISCUSSIONS

WTS asserts that discussions were unequal, and thus improper, because the agency specifically advised Omega of deficiencies in its proposal, but did not do the same for WTS.[4]

In negotiated procurements, the scope and extent of discussions with offerors in the competitive range are a matter of contracting officer judgment. FAR § 15.306(d)(3); Biospherics, Inc., B-285065, July 13, 2000, 2000 CPD ¶ 118 at 5. While offerors must be given an equal opportunity to revise their proposals, and the FAR prohibits favoring one offeror over another, discussions need not be identical; rather,

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[3] The fact that WTS may have elected to propose additional staff to meet this requirement does not make it the only acceptable approach for this performance-based procurement. In any event, apart from a blanket promise to meet the agency's requirements, WTS's own proposal of an on-line system does not mention a reservation agent's involvement. WTS Proposal at 55-56.

[4] WTS refers to this as "technical leveling," i.e., helping an offeror bring its proposal up to the level of others through successive rounds of discussions. While technical leveling was once prohibited under the Federal Acquisition Regulation (FAR), this concept is no longer part of the regulatory framework governing federal procurements. See Dynacs Eng'g Co., Inc., B-284234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 4.

discussions are to be tailored to each offeror's proposal. FAR §§ 15.306(d)(1), (e)(1); Northrop Grumman Corp.; ITT Gilfillan, B-274204 et al., Nov. 27, 1996, 96-2 CPD ¶ 232 at 10. For discussions to be meaningful, they must lead offerors into the areas of their proposals requiring amplification or revision. The Communities Group, B-283147, Oct. 12, 1999, 99-2 CPD ¶ 101 at 4.

We find nothing improper in the discussions here. While Omega's discussions contained a number of technical questions, and WTS's did not, the absence of similar questions for WTS is attributable to the fact that the agency did not find any technical deficiencies in WTS's proposal which required correction through discussions. Supplemental Report at 4. The agency was not required to conduct all-encompassing discussions or discuss every element of WTS's proposal receiving less than the maximum points available, DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95 at 6, and it did not do so with Omega.

The agency did conduct discussions with WTS in the one area where its proposal was deficient: price. In this regard, the agency specifically advised WTS in the final round of discussions that it "need[ed] to take a look at [its] prices [because] they are way too high." Agency Report (AR), Tab IX, at 2. WTS asserts that this discussion question was not meaningful because it did not specifically identify the value-added services which WTS could eliminate to reduce its prices.[5] However, the agency was not required to identify the specific areas where WTS should lower its price; it was required only to lead WTS into the area of the deficiency, and its statement that WTS's prices were "way too high" clearly did this. We note that WTS in fact reduced its price in response to discussions.

TECHNICAL TRANSFUSION

WTS asserts that the agency engaged in technical transfusion--that is, that it conveyed WTS's technical solution to an RFP requirement to Omega--which is prohibited by FAR § 15.306(e)(2). Specifically, WTS notes that the RFP required special treatment by contractors dealing with NIH patient travelers for the reason (among others) that "these patients may speak different languages, including sign language." RFP § C.1.1.b. WTS's technical solution included an offer of staff capable of communicating in 25 languages, including American Sign Language, and foreign language interpretation/translation services. Omega's proposal did not mention any foreign language or services for the hearing impaired and, in discussions, NIH advised Omega that "[t]here was no mention of interpreter services being available for on-site location." AR, Tab IX, at 4. Omega's FPR clarified its intent to provide translation and interpretation services, and to equip its office to handle the needs of

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[5] WTS also claims that the agency should have informed it of the RFP requirements which it allegedly relaxed for Omega. As discussed above, the agency did not relax any of the requirements for Omega.

the hearing-impaired. WTS maintains that the agency's exchange with Omega improperly conveyed WTS's technical solution to Omega.

There was no technical transfusion here. Even though the RFP did not list interpretation services as a specific requirement, it is plain from the RFP that such services were necessary to meet the stated requirement for the special treatment of NIH patient travelers. As NIH observes, "[t]he ability to communicate with any patient is then a requirement not a value added service." Supplemental Report at 4. Advising Omega during discussions that it had neglected to address these services was a proper means of ensuring that the services would be provided if Omega received the award, and in no way disclosed any unique technical solution developed by WTS.[6]

PAST PERFORMANCE EVALUATION

WTS asserts that the past performance evaluation was flawed. In this regard, the RFP provided that the past performance evaluation would be based on information obtained from offeror-provided references, which were to be checked through a questionnaire, and was to include an assessment of the relative risks associated with each offer. RFP § M.2.E.[7] WTS contends that NIH improperly deviated from this stated approach, because the questionnaires are not mentioned in the evaluation narrative and there is no record of a risk assessment.

Determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. Our Office will examine a past performance evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4.

With regard to the questionnaires, each offeror submitted three questionnaires completed by their respective references, and the TEP was satisfied that this was a sufficient number to perform a thorough evaluation. Supplemental Report at 4. The evaluation score sheets do not quote the questionnaires, but the agency explains that the TEP reviewed them prior to scoring each offeror's proposal. Id. We find no basis to question the agency's account. While WTS alleges generally that its evaluation score would have been higher, and Omega's lower, had the agency

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[6] Omega proposed its own approach of using its arrangement with a foreign language interpretation service to provide NIH travelers with access to interpreters and translators in more than 143 languages via three-way telephone conferencing. Omega FPR at 1.

[7] WTS also notes that the agency report contains no record of interviews with references. However, while the original RFP (section L.10.B.13) called for such interviews, the amended section L omitted any mention of them.

properly evaluated the proposals, it does not point to anything in the questionnaires or elsewhere in the record to support these allegations. Our own review of the record discloses nothing that would contradict the agency's evaluation.[8]

Further, while there is no specific mention of a risk assessment in the evaluation record, we think the assessment was implicit in the past performance evaluation results. In this regard, the RFP defined the performance risks to be evaluated as those associated "with an offeror's likelihood of success in performing the acquisition requirements as indicated by that offeror's record of past performance." RFP § M.2.E. Based on this description, it is apparent that the performance risk associated with an offeror was reflected in its past performance evaluation. Based on its review of the questionnaires, the TEP assigned WTS a score of 9 (out of 10 available) points, and Omega 7 points. While WTS's score would equate with a finding of less risk than that associated with Omega, the agency found no weaknesses in this area for either proposal, and WTS points to nothing in Omega's past performance information available to the agency that would support a finding of significant risk. This aspect of the evaluation therefore was unobjectionable.

PRICE/TECHNICAL TRADEOFF

WTS calculates (using its own mathematical formula) that, in making its award determination, NIH weighted technical factors at only 69.9 percent and price at 30.1 percent. In WTS's view, this weighting was inconsistent with the RFP's statement that the technical factors would be "significantly" more important than price. WTS believes its technical proposal was clearly superior to Omega's, and that a proper weighting of the technical and price factors would have resulted in selection of its proposal for award.

Our review of price/technical tradeoff decisions is limited to determining whether the tradeoff was reasonable and consistent with the solicitation's evaluation criteria. Loral Aeronutronic, B-259857.2, B-259858.2, July 5, 1995, 95-2 CPD ¶ 213 at 16. Notwithstanding a solicitation's emphasis on technical merit, an agency properly may select a lower-priced, lower technically rated proposal if it decides that the cost premium involved in selecting a higher-rated, higher-priced proposal is not justified, given the acceptable level of technical competence available at the lower price.

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[8] WTS contends that the agency should have considered Omega's allegedly poor performance under a contract with the Public Health Service (PHS) in evaluating the firm's past performance. However, the agency states that it was unaware of the PHS contract, and Omega states that it did not submit it as a reference because the contract was completed more than 5 years earlier, and it had numerous newer contracts on which to rely. Accordingly, there was nothing improper in the agency's failure to consider this contract.

Tidewater Homes Realty, Inc., B-274689.5, Aug. 11, 1998, 98-2 CPD ¶ 40 at 4; Research Triangle Inst., B-278254, Jan. 12, 1998, 98-1 CPD ¶ 22 at 6.

The tradeoff here was reasonable. Preliminarily, we note that WTS's conclusion regarding the weightings accorded the technical and price factors derives entirely from its own mathematical formula; it is not reflected in the RFP or in the evaluation record, and thus carries no weight in our review. Moreover, we do not agree with WTS that giving technical factors more than twice as much weight as price is inconsistent with an RFP designation of technical factors as significantly more important than price.

Nothing in the record indicates that the agency failed to give the technical factors the proper weight. The SSA recognized that WTS's technical proposal was superior to Omega's, and that technical factors were significantly more important than price. Selection Memo at 2. In determining that Omega offered the best overall value to the government, the SSA simply concluded that WTS's technical superiority did not warrant paying WTS's substantially greater price. Id. at 4. In this regard, NIH's intent to strike an appropriate balance between technical merit and price is evident in its discussions with WTS. By notifying the protester that its prices were "way too high," the agency sent a clear message to WTS that it did not consider the technical features of its proposal to be worth its proposed price. While, in response, WTS lowered its price, the agency obviously did not consider the reduction sufficient. We find nothing unreasonable in the agency's conclusion.[9]

The protest is denied.

Anthony H. Gamboa
General Counsel

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[9] WTS complains that the source selection decision was flawed because it did not explain why the agency had reversed its two prior source selections, in which it found the protester's proposal to be the best value despite even larger price premiums. NIH's actions regarding the prior source selections are irrelevant to the one here; the agency has justified its selection, and we have found that it was reasonable.