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Decision

Matter of: Kilda Group, LLC

File: B-409144; B-409144.2

Date: January 29, 2014

Steven J. Koprince, Esq., Petefish, Immel, Heeb & Hird, LLP, for the protester.
Jeffery A. Lovitky, Esq., Jeffrey A. Lovitky Law Office, for Abrams Learning & Information Systems, Inc., the intervenor.

William R. Korth, Esq., Department of Veterans Affairs, for the agency.
Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's price realism evaluation is denied where the agency reasonably concluded that the awardee's price was not unrealistic based on a comparison with the total average price for the offerors.
 2. Agency's evaluation of proposals and selection of a lower-rated, lower-priced proposal for award were unobjectionable where the agency's decisions were reasonable and consistent with the solicitation's terms.
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DECISION

Kilda Group, LLC, of Annapolis, Maryland, protests the award of a contract to Abrams Learning & Information Systems, Inc. (ALIS), of Arlington, Virginia, under request for proposals (RFP) No. VA119A-13-R-0046, issued by the Department of Veterans Affairs (VA) for leadership training services. Kilda contends that the agency failed to adequately evaluate the awardee's prices for realism. Kilda also challenges various aspects of the evaluation of ALIS' proposal under the non-price factors, and the best-value selection decision.

We deny the protest.

BACKGROUND

The RFP was issued as a total small business set-aside, seeking proposals to design a strategy for delivering a core curriculum of training programs for agency leaders at the supervisory, management, and executive levels. As amended, the RFP described a broad range of requirements, identifying a number of mandatory tasks such as, project management, on-demand training, executive development, and blended learning. RFP amend. 1, at 8-14.

The RFP provided for the award of a fixed-price contract with definitive and indefinite-delivery/indefinite-quantity contract line items (CLINs) for a four-month base period and three 1-year options. Id. at 65. Award was to be made on a best-value basis considering the following factors listed in descending order of importance: (1) technical approach; (2) past performance; (3) socioeconomic considerations; and (4) price. The non-price factors, when combined, were significantly more important than price. Id.

Under technical approach, the RFP established that the agency would evaluate proposals to determine the offerors' understanding and approach to meeting all solicitation requirements, to include "the extent to which each requirement has been addressed." Id. at 69. Technical risk was to be evaluated under this factor to determine the degree of risk associated with the offeror's proposed approach and the likelihood of success in meeting the specified requirements. Id.

For the purpose of evaluating past performance, the RFP instructed offerors to list at least three and up to ten relevant contracts, to include relevant contracts of subcontractors proposed to perform major or critical aspects of the solicited services. Relevant contracts were defined as those similar in size, scope, and complexity that were completed during the past three years or that were currently in progress. Id. at 67. As to the socioeconomic considerations factor, the RFP indicated that an offeror which is a service-disabled veteran-owned small business (SDVOSB) would receive full evaluation credit; non-veteran owned offerors that propose to subcontract 7% or more of the contract value to an SDVOSB firm or 10% or more of the contract value to a veteran-owned small business (VOSB) would receive some evaluation credit. Id. at 70. Concerning price, the RFP required offerors to submit fixed unit and extended prices for each CLIN except for CLINs 10009, 20009, and 30009, which had stated minimum and maximum dollar values established by the government. Id. at 30, 32, 34. Additionally, offerors were instructed to provide the basic elements of their proposed prices to include, items such as "direct labor, fringe benefits, travel, materials, subcontracts, purchased parts, shipping, indirect costs and rate, fee and profit." Id. at 68. The solicitation provided that the agency would evaluate proposed prices to determine if they were fair, reasonable, and realistic. Id. at 29-35.

The agency received proposals from twelve offerors, including Kilda and ALIS. The agency's evaluation team rated proposals under the technical approach factor by assigning adjectival ratings of excellent, good, satisfactory, marginal, or unsatisfactory. AR exh. 5.1, Business Clearance Memorandum (BCM), at 5. In evaluating proposals under past performance, the agency assigned ratings of neutral, very low risk, low risk, moderate risk, high risk, or very high risk. *Id.* at 21. Under the socioeconomic considerations factor, the evaluators assigned adjectival ratings of full credit, partial credit, some credit, or no evaluation credit. *Id.* at 26.¹ In evaluating price, the agency compared the proposed prices to the median price of \$28,340,513. *Id.* at 30-31.

The final results of the agency's evaluation were as follows:

	Technical Approach	Past Performance ²	Socio-Economic Consideration	Total Price
ALIS	Satisfactory	Very Low Risk	Some Credit	\$24,790,945.96
Offeror A	Good	Low Risk	Full Credit	\$47,349,921.19
Offeror B	Unsatisfactory	Not Reviewed	Full Credit	No data
Offeror C	Satisfactory	Very Low Risk	Full Credit	No data
Offeror D	Marginal	Low Risk	No Credit	\$30,660,119.43
Kilda	Excellent	Very Low Risk	Full Credit	\$36,589,968.58
Offeror E	Marginal	Neutral	Some Credit	No data
Offeror F	Unsatisfactory	Not Reviewed	No Credit	\$22,809,094.00
Offeror G	Marginal	Very Low Risk	Full Credit	\$19,538,232.69
Offeror H	Marginal	Low Risk	Full Credit	\$19,888,372.00
Offeror I	Marginal	Very Low Risk	Full Credit	No data
Offeror J	Unsatisfactory	Not Reviewed	No Credit	\$25,097,556.47

AR exh. 5, BCM, at 32 (emphasis added). The independent government estimate (IGE) for the solicited services was \$47,811,668.00. *Id.* at 30.

¹ As it relates to this protest, some credit was defined as follows:

Non-Veteran contractors proposing to use SDVOSB or VOSB as subcontractors with executed teaming agreements, Mentor-Protégé, or the like for 7% or more of the value to an SDVOSB or 10% or more of the value to a VOSB.

AR exh. 5.1, BCM, at 26.

² Proposals that received an unsatisfactory rating under the technical approach factor were not evaluated under the past performance factor. AR exh. 5.1, BCM, at 32.

The contracting officer reviewed the evaluation findings and ultimately concluded that the technical benefits of Kilda's proposal were not worth the \$12 million price premium over ALIS' lower-rated, but technically acceptable proposal. Id. at 31-34. The contracting officer also indicated that "the overall average of the proposals is approximately \$28M, there is no reason to believe that the price of ALIS. . . is unrealistic. . . ." Id. at 33. Thereafter, the agency made award to ALIS and this protest followed.

DISCUSSION

In challenging the award decision, Kilda argues that the agency failed to reasonably evaluate whether ALIS' low proposed price was realistic. Specifically, the protester asserts that the agency should have considered the "realism of [ALIS'] labor rates and line item rates," Protest at 2, and that the agency impermissibly compared ALIS' proposed price to a composite price that included the proposed prices of technically unacceptable offerors. Protest at 6-8. Kilda also raises a number of other challenges to the evaluation of ALIS' proposal under the non-price evaluation factors, and asserts that the agency failed to award on a best-value basis as contemplated by the solicitation, instead making award solely on price. For the reasons discussed below, we find no basis to sustain the protest.

Price Realism

Where an RFP contemplates the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may, as here, provide in the solicitation for the use of a price realism analysis to measure an offeror's understanding of the requirements or to assess the risk inherent in a proposal. Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 6; Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 2. Our Office has repeatedly held that the depth of an agency's price realism is a matter within the sound exercise of the agency's discretion and our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17; Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5; Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 5; Star Mountain, Inc., supra, at 6.

The Federal Acquisition Regulation (FAR) recognizes a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including a comparison of proposed prices with each other and comparison of proposed prices with an IGE. See FAR §§ 15.404-1(b)(2)(i), (ii), (iv); Islandwide Landscaping, Inc., B-293018, Dec. 24, 2003, 2004 CPD ¶ 9 at 2; Quality Elevator Co., B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 7.

Here, the VA compared ALIS' total price to the median total price of \$28,340,513, calculated based on the total prices of eight offerors.³ As noted above, based on this comparison, the agency concluded that ALIS' proposed price was reasonable and realistic.

In challenging the agency's evaluation, Kilda insists that the VA should have considered whether ALIS' proposed labor rates and proposed unit prices were realistic, rather than simply comparing ALIS' total proposed price to the median of the offered prices. The RFP, however, did not specifically establish that the agency would perform the type of realism analyses sought by Kilda. That is, there was no express requirement for an analysis of proposed labor rates, nor was there a requirement for a CLIN-by-CLIN (*i.e.*, line item unit prices) comparison among the offered prices to determine whether prices were realistic.

Although Kilda ultimately believes that a more detailed realism assessment was necessary, as noted above, the extent of a price realism analysis is within the sound exercise of the agency's discretion and agencies are free to use a number of techniques in assessing price realism. Indeed, we have found that a comparison of prices received is among the proposal analysis techniques that may be used under FAR § 15.404-1, and also "can be appropriate in a price realism analysis." Islandwide Landscaping, Inc., *supra*. To the extent Kilda believes that ALIS cannot perform the contract at its proposed price, the protester's disagreement with the agency's judgment provides no basis to sustain the protest where the protester does not show that the agency acted unreasonably. Vizada Inc., B-405251 *et al.*, Oct. 5, 2011, 2011 CPD ¶ 235 at 5.

Kilda also argues that the realism assessment was unreasonable since it was based on an unreasonably calculated median price. In this regard, the protester highlights the fact that the agency calculated the median using the prices of two proposals that had been rated as unsatisfactory under the technical approach factor, in part, because they did not have an acceptable understanding of the agency's needs. See AR exh. 5.1, BCM, at 32. We agree with the protester that the agency should not have included the prices for these two firms in calculating the median.⁴ See Lifecycle Construction Servs., LLC, B-406907, Sept. 27, 2012, 2012

³ Four offerors either submitted no prices or submitted incomplete pricing information and were not included in calculating the median price. AR exh. 5.1, BCM, at 30-31.

⁴ The protester also argues that the agency's median calculation should not have included the prices for the firms with proposals rated as "marginal." Where the solicitation did not establish that marginally rated firms were ineligible for award, we have no basis to conclude that the agency acted improperly by including the prices of such firms in its calculation of the median price.

CPD ¶ 269 (sustaining protest of agency's price realism evaluation where agency compared awardee's price to a median price calculated based on prices of proposals found unacceptable or ineligible for award). Nevertheless, when these firms' prices are excluded, the median does not change significantly--it goes up from \$28,340,513.00 to \$29,802,909.98 (a change of approximately 5%). Our Office will not sustain a protest absent a showing of prejudice to the protester; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. In our view, given the minimal impact on the calculated median, we have no basis to conclude that the protester was prejudiced by the alleged error.

Non-Price Evaluation

Kilda raises a number of other challenges to the evaluation of ALIS' proposal under the technical, past performance, and socioeconomic factors. Kilda also argues that the agency failed to follow the terms of the solicitation in making award since the agency only considered technical acceptability and price. Although we do not address each of the protester's arguments in this decision, we have considered them all and conclude that they do not provide a basis to sustain the protest.

As a general matter, the evaluation of an offeror's proposal is a matter within the agency's discretion and a protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. National Gov't Servs., Inc., B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5; VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. Our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations.

Regarding the technical evaluation, Kilda argues that two of ALIS' proposed key personnel did not demonstrate the minimum qualification requirements set forth in the solicitation, and, as a consequence, ALIS' proposal should have been rejected out of hand.

The RFP identified the senior project manager and senior program analyst as key personnel and required the senior project manager to have ten years of intensive and progressive experience managing programs and tasks in an educational and training setting. Regarding the senior program analyst position, the RFP identified the minimum level of experience as "ten (10) years of progressive experience directly supporting the government." RFP amend. 1, at 17-18.

The contemporaneous evaluation record indicates that the evaluators found that the resume for the senior project manager did not clearly demonstrate ten years of progressive experience managing program and tasks in an educational and training

setting. Similarly, the agency found that the resume for the senior program analyst did not clearly demonstrate ten years of progressive experience directly supporting the government. As a result, the evaluators assessed ALIS' proposal a technical weakness, finding that the offeror did not adequately address the key personnel requirements. AR exh. 5.1, BCM, at 7. Although Kilda believes that the agency should have assigned ALIS a deficiency, as opposed to a weakness, for failing to demonstrate the requisite levels of experience for two of its key personnel, we have no basis to question the propriety of the agency's evaluation where the solicitation did not establish that the failure to demonstrate the requisite key personnel experience would result in rejection of the proposal; but rather, merely indicated that the agency would evaluate "the extent to which each requirement has been addressed." RFP amend. 1, at 69. The fact that Kilda disagrees with the agency's evaluative judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

Kilda also challenges the agency's evaluation of ALIS' past performance, arguing that it was improper for the VA to credit ALIS with the past performance history of its subcontractors. Supp. Protest at 9-12 (Dec. 2, 2013). An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. Moreover, our Office has held that, in the absence of any prohibition in the RFP, an agency may properly evaluate and give weight to the past performance of a proposed subcontractor. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 5-6. In this regard, FAR § 15.305(a)(2)(iii) expressly provides that agencies "should take into account past performance [of] . . . subcontractors that will perform major or critical aspects of the requirement."

Here, offerors were required to submit at least three, but no more than ten, past performance references for the prime offeror. The RFP also allowed offers to submit past performance information regarding "subcontractors that will perform major or critical aspects of the requirement." RFP at 67. The RFP defined a "major subcontract" as one involving "20% of the total contract effort." RFP amend. 1, at 67. ALIS submitted four references for itself, and six references for three of its proposed subcontractor--three for [REDACTED], two for [REDACTED] and one for [REDACTED].⁵ The record indicates that the VA received completed past

⁵ The record reflects that ALIS' proposal indicated that its third subcontractor, [REDACTED], was not a considered major subcontractor, but ALIS included past performance information for [REDACTED] because it was proposed to perform a "critical aspect of the requirement." ALIS Proposal, Vol. II, at 3. The record is unclear whether the agency considered the one reference provided for this subcontractor to be relevant.

performance questionnaires for each of these references, with each assigning ALIS and its subcontractors the highest possible ratings for all categories listed on the questionnaire. The evaluators found all but one of the references to be relevant and assigned ALIS' proposal a very low risk rating under the past performance factor. AR exh. 5.1, BCM, at 22.

The protester argues that the agency should not have considered any of ALIS' subcontractor references because, in its view, none of the proposed subcontractors was a "major subcontractor" as defined by the solicitation, that is, one performing at least 20% of the total contract effort. Supp. Protest at 11. For example, based on information in ALIS' price proposal, Kilda calculates that [REDACTED] would perform "slightly less than 5% of the total contract value," therefore, it was improper for the VA to consider the two past performance references for [REDACTED] in evaluating ALIS' proposal under this factor.⁶ Id. at 11-12.

⁶ We find Kilda's calculations in this regard misleading because they are premised on a total contract value, which assumes that the agency will order the maximum value for the unpriced CLINs--those with stated minimum and maximum dollar values. The price information provided by ALIS for [REDACTED], however, was based on the labor value for only the priced CLINs. See ALIS Proposal, Vol. III, at 1. As noted above, the RFP did not provide for the submission of unit prices for the CLINs with stated maximum and minimum values. Instead, it instructed offers to use the maximum value as a plug number. The actual "contract value" was simply not knowable at the time of award given the undefined nature of the agency's requirements.

This disconnect also serves as the basis for Kilda's contention that ALIS improperly received credit under the socioeconomic factor for having proposed [REDACTED], a SDVOSB, to perform more than 7% of the contract value. Based on its own calculations and assumptions, Kilda argues that ALIS' price proposal indicated that [REDACTED] would perform less than 7% of the total value of the contract. These allegations are similarly misplaced since they are premised on a total contract value based on the maximum value of the unpriced CLINs whereas ALIS' information about [REDACTED] effort is based only on the "priced" CLINs (not the CLINs with undefined minimums and maximums). As noted in the discussion below, ALIS indicated that [REDACTED] would receive 20% of the total labor value of the contract for the base period and a minimum of 10% of the total labor value of each option period. ALIS Proposal, Vol. III, [REDACTED] Teaming Agreement, attach. 1. Based on an assumption of the minimum order value, which is all that the contract guaranteed, ALIS clearly identified [REDACTED] as performing more than 7% of the total value of the contract. See Supp. AR at 3 (showing that the work share dollars allocated to [REDACTED] are more than 8% of the value of the contract based on ALIS' assumptions). To the extent more than the minimum is in fact ordered, [REDACTED] effort would increase consistent with the teaming agreement such that [REDACTED] would receive the agreed upon minimum percentage of the
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In our view, the record is unclear as to whether the subcontracts with [REDACTED] and [REDACTED] qualified as “major subcontracts,” which were defined by the solicitation as subcontracts constituting “20% of the total contract effort.” The term “contract effort,” however, was not defined by the solicitation and the ultimate scope and value of the contract remained undefined due to the indefinite nature of the agency’s requirements. Accordingly, ALIS’ teaming agreements with [REDACTED] simply indicated that [REDACTED] will receive 20% of the total labor value of the base, and a minimum of 10% of the total labor value of each awarded contract option period; under the agreement with [REDACTED] is guaranteed 10% of the total labor value related to certain tasks for the base period, and a minimum of 20% of the total labor value of the option years.

Notwithstanding the lack of clarity regarding the “major subcontractor” issue, the solicitation also provided that the agency would consider past performance information for subcontractors proposed to perform critical aspects of the requirements, and there can be little doubt that [REDACTED] and [REDACTED] were proposed to perform critical aspects of the requirements. [REDACTED] is to “serve as the lead for Task 5 [Executive Development],” which is one of the six major tasks described in the statement of work. Similarly, ALIS indicated that [REDACTED] would provide support for several of the major tasks in the areas of “blended learning, communities of practice and [contract administration].” ALIS Proposal, Vol. III, at 1. Moreover, even without considering any of the past performance information of ALIS’ subcontractors, we have no basis to find ALIS’ past performance rating of “very low risk” unreasonable or fundamentally unfair. The agency received four past performance references specifically for ALIS, which independently demonstrated relevant past performance, and ALIS received the highest possible evaluation ratings for these references, whereas, Kilda, which also received the highest rating, submitted three relevant references, two of which were for Kilda itself, with the third submitted for its major subcontractor. AR ex. 5.1, BCM, at 23-24. As noted above, our Office will not sustain a protest based on an alleged agency error, absent a finding of competitive prejudice. See McDonald-Bradley, supra.

Additionally, the protester’s allegation that the agency improperly converted this best value procurement to a low price, technically acceptable procurement has no merit. It is well-settled that a single evaluation factor—even a lower-weighted factor—may properly be relied upon as a key discriminator for purposes of a source selection decision. See, e.g., DPK Consulting, B-404042, B-404042.2, Dec. 29, 2010, 2011 CPD ¶ 12 at 13 (source selection authority, in making a tradeoff

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total labor value. Accordingly, Kilda’s arguments in this regard do not provide a basis to sustain the protest.

analysis, may ultimately focus on a particular discriminator, even if it is not the most heavily weighted factor). Here, from the discussion in the source selection decision, it is clear that the contracting officer made a qualitative assessment of the technical proposals and concluded that ALIS' lower-rated, lower-priced proposal represented the best value to the government. We have no basis to the question the agency's judgment in this regard.

The protest is denied.

Susan A. Poling
General Counsel