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Comptroller General
of the United States

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Decision

Matter of: American Electronics, Inc.

File: B-421306; B-421306.2

Date: February 15, 2023

Edward J. Tolchin, Esq., Offit Kurman, P.A., for the protester.
Matthew Schoonover, Esq., Matthew P. Moriarty, Esq., John M. Mattox II, Esq.,
Ian P. Patterson, Esq., and Timothy J. Laughlin, Esq., Schoonover & Moriarty LLC, for
StraCon Services Group, LLC, the intervenor.
Brian Ritter, Esq., and Aldo Perez, Esq., Department of the Navy, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency evaluated task order proposals contrary to the terms of the solicitation by weighting and rating three elements under the technical factor, and failed to make a proper best-value tradeoff is denied where the record demonstrates that the evaluation and tradeoff were reasonable and consistent with the solicitation.

DECISION

American Electronics, Inc., a small business of California, Maryland, protests the issuance of a task order to StraCon Services Group, LLC, of Fort Worth, Texas, also a small business, under task order request/fair opportunity notice (TOR/FON) No. N00421-22-R-0092. The Department of the Navy, Naval Air Systems Command (NAVAIR), Naval Air Warfare Center Aircraft Division, issued the task order for equipment and services to support foreign military sales customers and new customer development efforts, primarily at Naval Air Station Patuxent River, in Maryland. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. American, the incumbent contractor, argues that its task order proposal was misevaluated and that the Navy failed to conduct a reasonable cost-technical tradeoff in selecting StraCon's higher-priced proposal.

We deny the protest.

BACKGROUND

The TOR/FON, issued July 6, 2022, sought task order proposals from woman-owned small business contractors that hold NAVAIR program management contractor support services multiple award contracts. The TOR/FON anticipated the issuance of a level of effort task order to the vendor whose task order proposal provided the best value to the Navy under two factors, technical and cost/price. In assessing best-value, the technical factor was significantly more important than cost/price. Supp. Agency Report (AR), Tab 4, TOR/FON at 81.¹

The TOR/FON indicated that there were three discrete technical elements under the technical factor (understanding and approach, workforce, and management approach), and those elements would not be separately rated or weighted. TOR/FON at 82. The Navy was to assign an adjectival rating of good, acceptable, or unacceptable based on the overall technical factor evaluation. The technical evaluation also identified “positive findings” (aspects that would provide merit, benefit, or have a favorable impact on the offeror’s performance or risk) and “negative findings” (aspects that would have an unfavorable impact on the offeror’s performance or risk) under each of the three technical elements. *Id.*

The Navy received task order proposals from three vendors, including both American and StraCon.² For American, the evaluation identified four positive findings under the understanding and approach element, 12 under the workforce element, and two under the management approach element. For StraCon, the evaluation identified 12 positive findings under the understanding and approach elements, 11 under workforce, and four under management approach. Supp. AR, Tab 2, Source Selection Decision Memorandum at 5-6.³ Neither American nor StraCon received any negative findings. Each finding was supported by a narrative describing the aspect of the proposal that justified the finding. Both proposals were assessed overall technical ratings of good, which indicated that both proposals “exceed[ed the] requirements and provide[d] benefit . . . to the [Navy] that outweigh[ed] any negative findings. . . .” *Id.* at 3.

The cost/price evaluation included an assessment of cost realism, as well as an assessment of the price if the 6-month extension of services option were to be

¹ Citations to the TOR/FON are to the version included as Tab 4 to the supplemental agency report, which is marked as being conformed through amendment 4.

² The third vendor’s proposal was unacceptable and did not affect the final source selection. AR, Tab 3, Source Selection Decision Memorandum at 5.

³ For clarity and consistency in this decision, we cite to the final--and least redacted--version of the source selection decision memorandum, which was filed as Supp. AR Tab 2.

exercised under Federal Acquisition Regulation (FAR) clause 52.217-8. The Navy made a small cost realism adjustment to American's price of \$50.4 million.⁴ The agency made no realism adjustment to StraCon's evaluated cost/price of \$53.0 million. *Id.* at 4.

The Navy's source selection authority (SSA) reviewed the evaluation record and concluded that although both firms' proposals had received the same overall technical rating, StraCon's higher-priced proposal nevertheless represented the best value, and therefore StraCon should receive the order. After receiving notice of the selection and a debriefing, American filed this protest.⁵

DISCUSSION

American argues that the Navy improperly rated and weighted the elements under the technical factor, and the SSA failed to adequately document the basis for the source selection and made an unreasonable cost technical tradeoff. The Navy argues that the evaluation and source selection were consistent with the TOR/FON, reasonable, and adequately documented. Our review of the record supports the agency's evaluation and source selection, as discussed below.

Evaluation Challenges

In challenging the evaluation, American first contends that the evaluation both rated and weighted the elements of the technical factor in a manner that was contrary to the express terms of the TOR/FON, which stated that the elements would be neither separately rated nor weighted. American argues that this error is apparent in reviewing the rationale for the SSA's conclusion that even though both American and StraCon had both received the same overall adjectival rating, StraCon's proposal was superior to American's under the technical factor. Protest at 5-6. American also points to a statement in the source selection decision that "[t]he evaluation considered the [t]echnical and [c]ost/[p]rice factors stated above in descending order of importance" as evidence that the technical elements were weighted, contrary to the terms of the TOR/FON. Comments & Supp. Protest at 2 (quoting Supp. AR, Tab 2, Source Selection Decision Memorandum at 3).

The Navy contends that the evaluation correctly followed the TOR/FON provision that the technical elements would not be rated or weighted, and that the SSA instead recognized that both firms had received an adjectival rating of good under the technical factor, indicating that both had exceeded the agency's requirements in meaningful

⁴ Cost/price amounts in this decision have been rounded. The realism adjustment did not affect the rounded amounts listed.

⁵ Our Office has jurisdiction to hear this protest challenging the issuance of a task order under the Navy's multiple-award contract because the order is valued over \$25 million. 10 U.S.C. § 3406(f)(1)(B).

ways. The agency argues that the SSA properly considered the specific findings regarding each proposal under each element, and made a reasonable judgment that, notwithstanding the assessment of the same adjectival rating, StraCon's technical approach was superior to American's overall. In support of that judgment, the SSA pointed to the positive findings under the understanding and approach element. MOL at 15-20 (highlighting SSA's discussion of four specific evaluation findings). The Navy argues that the consideration of positive findings did not amount to either rating the elements or weighting them, but instead served as the means for the SSA to distinguish between two proposals that had both merited the same adjectival rating.

Our consideration of this ground of protest begins by interpreting the relevant terms of the TOR/FON. It is fundamental that solicitations must be read as a whole and in a manner that gives effect to all provisions of the solicitation. *Dataproducts New Eng., Inc. et al.*, B-246149.3 *et al.*, Feb. 26, 1992, 92-1 CPD ¶ 231 at 8-9. Where a protester challenges an evaluation and the resulting source selection decision, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable, and whether it was consistent with the stated evaluation criteria and applicable procurement laws and regulations. *Panacea Consulting, Inc.*, B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3.

Here, the TOR/FON provided that the three elements under the technical factor would not be rated or weighted. TOR/FON at 82. Nevertheless, the listing of three distinct elements meant that they were specific discrete areas for evaluation, and the TOR/FON provided that the technical factor would be significantly more important than the cost/price factor in selecting the vendor whose proposal offered the best value.

The record does not support the protester's contention that the SSA weighted or separately weighted the technical factor elements, only that the agency evaluated the elements in making technical findings under the technical factor as a whole, and the agency then weighted the technical factor findings more than the cost/price factor, as provided in the TOR/FON. Our review of the contemporaneous record shows that the SSA reviewed the positive findings for each vendor's proposal at length, explained first that the evaluation had not assigned American's proposal as many substantive positive findings as StraCon's, and noted the understanding and approach element as an area where this was evident. Supp. AR, Tab 2, Source Selection Decision Memorandum at 11. American has not shown that this observation either weighted the understanding and approach element, or indicated that it was being separately rated. The record shows that the SSA described the result of the evaluation and considered a difference between StraCon and American to be evident in relation to the specific elements, and that overall StraCon's proposal was superior to American's under the technical factor. *Id.* at 12.

Likewise, we see no basis to conclude that the statement that the evaluation "considered the [t]echnical and [c]ost/[p]rice factors stated above in descending order of importance," *id.* at 3, shows any conflict with the TOR/FON because the technical factor

was, indeed, more important than the cost/price factor. Rather, the record shows that the SSA considered each vendor's proposal under each of the technical elements and, without weighting or rating any of those elements, reached a reasonable judgment that the positive findings for StraCon's proposal demonstrated superiority when compared to the positive findings assessed to American's proposal. *Id.* at 11-12. The contemporaneous record thus shows that the evaluation was reasonable and consistent with the TOR/FON criteria--including the provision that the technical elements would not be rated or weighted--and accordingly, we deny American's challenge to the technical evaluation.

Cost/Technical Tradeoff

American contends that the Navy failed to justify the selection of StraCon's proposal at its higher price. Specifically, after the SSA concluded that StraCon's proposal was superior under the technical factor, American argues the SSA failed to make a tradeoff, and instead merely determined that StraCon's cost/price was reasonable and awarded the task order on that basis. American argues that the SSA thus failed to meaningfully consider the cost/price difference between the StraCon and American proposals and that the record fails to show a rationale for incurring StraCon's higher price. Comments & Supp. Protest at 2-3.

The Navy argues that the SSA engaged in a detailed comparison of both proposals, and followed the award criteria to assess whether the technical superiority of StraCon's proposal justified its higher evaluated cost/price. Taking into consideration the TOR/FON weighting of the technical factor as significantly more important than the cost/price factor, the SSA concluded that StraCon's proposal represented the best value, which the Navy argues was both reasonable and consistent with the solicitation. Supp. MOL at 4-5.

In conducting a task order competition, an agency's rationale for tradeoffs made between technical and cost/price must be adequately documented, although the documentation need not be extensive. FAR 16.505(b)(1)(iv)(D), (b)(7). We will review the record to determine whether the agency was aware of the relative merits and costs of the competing proposals, and made a reasonable selection. *Accenture Fed. Servs. LLC et al.*, B-417111.5 *et al.*, Sept. 4, 2019, 2019 CPD ¶ 339 at 13.

Our review of the record shows that beyond discussing and comparing the positive findings for StraCon and American, the SSA explained that StraCon's proposal cost was slightly over 7 percent higher than American's without considering the pricing for the 6-month extension of services option, or slightly over 5 percent when including that option (and the small realism adjustment). Supp. AR, Tab 2, Source Selection Decision Memorandum at 13. The SSA then expressed the judgment that the technical advantage of StraCon's proposal justified its higher cost/price, specifically concluding that "[t]he superior technical findings in the StraCon response, particularly in the element of Understanding and Approach warrant[] a premium of 7.38 [percent] over the

Ame[rican] proposed cost.” *Id.* The SSA thus considered and identified the basis for the business judgment that selecting StraCon’s proposal would provide the best value to the Navy. The record shows that the judgment is reasonable and consistent with the TOR/FON criteria.

The protest is denied.

Edda Emmanuelli Perez
General Counsel