



Decision

Matter of: DataSource, Inc.

File: B-412468.9

Date: April 14, 2017

Pamela W. Hopkins for the protester.

John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for Imagine One Technology & Management, Ltd., an intervenor.

Michelle S. Bennett, Esq., Department of the Navy, for the agency.

Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency engaged in unequal treatment by eliminating protester's proposal from the competition is dismissed as legally and factually insufficient where protester fails to assert that any proposal retained in the competition contained errors similar to the error identified in protester's proposal.

DECISION

DataSource, Inc., a woman-owned, small business located in McLean, Virginia, challenges the issuance of a task order by the Department of the Navy to Imagine One Technology & Management, Ltd., of Colonial Beach, Virginia, pursuant to request for proposals (RFP) No. N00024-14-R-3125, for information technology support services. The protester argues that the agency engaged in preferential and unequal treatment by excluding DataSource's proposal from the competition as non-compliant with the RFP and then issuing a task order to Imagine One despite alleged errors in Imagine One's proposal.

We dismiss the protest.

BACKGROUND

The solicitation was issued on September 17, 2014, under the Navy's SEAPORT-e multiple-award contract, seeking a contractor to provide engineering and professional services in support of ship maintenance systems information technology for the Navy's maritime maintenance enterprise solution. The RFP contemplated the issuance of a

cost-plus-incentive-fee, level-of-effort task order with a one-year base period, and four one-year options. The RFP anticipated that the task order would be issued to the firm whose proposal represented the best value to the government considering three evaluation factors: technical capability, including subfactors (in descending order of importance) for technical knowledge and capability, management approach, and staffing approach; past performance; and total evaluated cost. RFP at 84. Technical capability was more important than past performance, and, when combined, the two non-cost factors were significantly more important than total evaluated cost. Id.

The RFP advised offerors that “[l]etters of [i]ntent shall be provided for all key personnel not currently employed by the prime or proposed subcontractor, demonstrating their agreed upon start date in accordance with the requirements in Attachment 07 in the [k]ey [p]ersonnel sheet.” Id. at 72. Likewise, the solicitation stated that:

For any key personnel that is not a current employee of the offeror or one of its subcontractors, a letter of intent or contingent hire letter as required under Section L Paragraph 4.1.3.1 will be sufficient so long as it includes the key personnel’s agreed upon salary and direct-labor hourly rate.

Id. at 77. The RFP further advised offerors that “in order to be eligible for award” a “proposal shall meet all solicitation requirements.” Id. at 83.

DataSource submitted a proposal that was evaluated as unacceptable for failure to include a letter of intent for a proposed task order project manager, one of the 29 key personnel specified in the solicitation. On November 4, 2015, the agency notified the protester that its proposal had been eliminated from further consideration. On November 16, DataSource filed a protest of the agency’s elimination decision with our Office, which we docketed as B-412468.1. In its protest, DataSource argued that the requirement to submit letters of intent for key personnel not currently employed by the prime or proposed subcontractors was not a material requirement of the RFP such that a failure to submit one of the letters of intent would render the proposal unacceptable. Protest, Nov. 16, 2015, at 8-9. On February 16, 2016, our Office issued a decision denying DataSource’s protest. See DataSource, Inc., B-412468, Feb. 16, 2016, 2016 CPD ¶ 59. We found that the agency reasonably concluded that the missing letter of intent was a material omission that rendered DataSource’s proposal unacceptable. See id. at 4.

On August 17, 2016, the Navy announced it was issuing the subject task order to Imagine One. On December 6, our Office sustained a protest filed by another protester against the agency’s evaluation and award decision under the RFP. See Target Media Mid Atlantic, Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358. In Target Media, we found that the agency had failed to evaluate the realism of the awardee’s cost proposal in accordance with its proposed technical approach and failed to evaluate the awardee’s professional employee compensation plan in accordance with the requirements of the solicitation. See id. at 4-7.

After the Navy completed its corrective action in response to our decision, on March 17, 2017, the agency again issued a task order to Imagine One. Agency Dismissal Req. at 1. This protest followed.¹

DISCUSSION

DataSource argues that the Navy engaged in unfair and preferential treatment, when it permitted Imagine One to continue in the competition despite eliminating DataSource because of an omitted letter of intent for DataSource's proposed task order project manager. In this regard, DataSource contends that our decision in Target Media, identified "major failings in the Imagine One proposal and [the Navy's] subsequent determination to allow Imagine One to continue in the competition." Protest, Mar. 20, 2017, at 7. DataSource contends that, by contrast, its proposal was disqualified despite the fact that the letter of intent requirement was not mentioned in the RFP's evaluation factors section.

We dismiss the protest.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Id. As set forth below, we conclude that DataSource's protest does not set forth allegations or evidence sufficient to establish the likelihood that it will prevail in its protest.

DataSource argues that our decision in Target Media indicated that "Imagine One's actual proposed cost was . . . inadequate and unrealistic for implementing the technical approach proposed." Resp. to Dismissal Req. at 3.² The protester bases this assertion on the fact that while the agency upwardly adjusted Imagine One's proposed costs, our decision in Target Media nonetheless found the agency's evaluation of cost realism and professional compensation to be inadequate.

We find this argument to be insufficiently supported and speculative. Contrary to the protester's assertion, our decision in Target Media did not reach any conclusion with

¹ The awarded value of the task order exceeds \$25 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. See 10 U.S.C. § 2304c(e)(1)(B).

² The protester's response to the agency's dismissal request did not contain page numbers. Our Office separately assigned consecutively numbered pages to the unnumbered pages in this document. The citations to this document in this decision are to the page numbers assigned by our Office.

regard to the realism of Imagine One's costs or professional compensation plan. Instead, we concluded that the agency's evaluation process was not reasonable. In fact, our decision did not decide whether Imagine One's labor rates were "markedly low and unrealistic," but instead noted that the contemporaneous record on this issue was insufficiently supported for us to reach a determination. See Target Media, supra, at 6 n.3. In addition, with regard to the agency's cost adjustments to Imagine One's proposal, we note that the agency's upward adjustment of Imagine One's costs does not, without more, establish that Imagine One's technical proposal was inadequate or should have been downgraded. See Glacier Tech. Solutions, LLC, B-412990.3, Mar. 15, 2017, 2017 CPD ¶ 91 at 8; Science Applications Int'l Corp., Inc., B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 9. Accordingly, the protester's contention that the agency waived errors in Imagine One's proposal is not adequately supported.

Furthermore, we note that even if the protester could demonstrate that Imagine One's proposal contained deficiencies relating to its labor costs or professional compensation, such deficiencies are not similar to DataSource's omission of a letter of intent for its proposed task order project manager. Where a protester alleges that an evaluation is the product of unequal treatment, the protester must show that the difference in the evaluation result was, in fact, the result of unequal treatment, rather than differences in the offerors' proposals. See Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 6. Here, the requirement DataSource's proposal violated--the requirement to include letters of intent for key personnel--is fundamentally different from the requirement that Imagine One's proposal is alleged to have violated--the requirement to propose adequate professional compensation and labor costs. Thus, even if the protester were correct that the agency had waived the latter requirement, it would not mean that the agency treated offerors unequally by failing to waive other, unrelated requirements.

The protest is dismissed.

Susan A. Poling
General Counsel