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Decision

Matter of: Tetra Tech, Inc.

File: B-409095; B-409095.2

Date: January 17, 2014

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Daniel F. Edwards, Esq., Thompson Hine LLP, for URS Group, Inc., an intervenor.
Stanley E. Tracey, Esq., and James M. Pakiz, Esq., Department of the Army, for the agency.
Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated proposals is denied where the record shows that the agency's evaluation was reasonable and in accordance with the terms of the solicitation and applicable procurement statutes and regulations.
2. Under a solicitation contemplating the award of a fixed-price contract and reserving the right to perform a price realism analysis, protest challenging the agency's price realism analysis is denied where the agency reasonably considered the risk associated with the awardee's lower price, and concluded that the price reflected the awardee's proposal of an innovative, less costly, technology.
3. Protest that agency held discussions with the awardee, and thus was required to conduct discussions with all offerors, is denied where the agency limited the scope of its communication with the awardee to clarifying and confirming what the firm had already committed to do.

DECISION

Tetra Tech, Inc. of Pasadena, California, protests the Department of the Army, Corps of Engineers' award of a contract to URS Group, Inc., of Omaha, Nebraska, under request for proposals (RFP) No. W9128F-13-R-0020, for performance-based environmental remediation services. Tetra Tech challenges the evaluation of proposals and asserts that the agency engaged in improper discussions.

We deny the protest.

BACKGROUND

The RFP, issued on June 21, 2013, contemplated award of a fixed-price contract for performance-based environmental remediation tasks at 81 Installation Restoration Program sites and 1 Military Munitions Response Program site at McConnell Air Force Base in Wichita, Kansas. The solicitation provided that the contractor would assume contractual liability and responsibility for achieving specific performance objectives at each site. RFP at 56. The RFP also allowed offerors to propose “stretch goals” that exceeded the minimum performance objectives, which the agency would also evaluate. RFP at 27, 73.

Award was to be made to the offeror whose proposal represented the best value to the government based on price and the following non-price evaluation factors listed in descending order of importance: (1) technical approach; (2) key project team members/management approach; (3) previous corporate experience; (4) past performance, including small business subcontracting compliance past performance; (5) small business participation plan; and (6) small business subcontracting plan. RFP at 228. For four of the non-price factors--technical approach, key project team members/management approach, previous corporate experience, and small business participation plan--the agency also anticipated preparing a risk rating of low, moderate, or high. The past performance/small business subcontracting past performance factor would be evaluated on the basis of performance confidence assessments, and the small business subcontracting plan factor would be evaluated on a pass/fail basis. The non-price factors, when combined, were approximately equal to price. Id. With regard to price, the solicitation stated that the agency “reserves the right to conduct a price realism analysis to determine whether an offeror’s proposed prices are realistic for the work to be performed.” Id. at 240. The RFP advised that the agency planned to make award without conducting discussions, but the agency reserved the right to conduct discussions if necessary. Id. at 223.

The agency received six proposals by the July 29, 2013 closing date. The source selection evaluation board (SSEB) evaluated the technical proposals and the price team, comprised of a price analyst and a cost engineer, evaluated price proposals. The price team prepared a report, for the SSEB, which then provided its own report, along with the price/cost report, to the source selection authority (SSA).

The SSEB assigned the following ratings to the proposals submitted by URS and Tetra Tech:

Evaluation Factor	URS	Tetra Tech
1. Technical Approach	Acceptable	Acceptable
Technical Risk Rating	High	Moderate
2. Key Project Team Members/Mgmt Approach	Acceptable	Acceptable
Technical Risk Rating	Low	Low
3. Previous Corporate Experience	Acceptable	Acceptable
Technical Risk Rating	High	Low
4. Past Performance/Small Business Subcontracting Past Performance	Relevant	Relevant
Performance Confidence Assessment	Low Confidence	Satisfactory Confidence
5. Small Business Participation Plan	Acceptable	Acceptable
Technical Risk Rating	Low	Low
6. Small Business Subcontracting Plan	Pass	Pass

AR, Tab 5, SSEB Report at 7-8.

With regard to URS's technical approach, the SSEB found that URS proposed objectives that exceeded the minimum performance objectives for 45 of the sites. Id. at 36. The board noted that exceeding minimum performance objectives would be advantageous to the government because it would accelerate the remediation activities and reduce future Air Force liability. Id. The SSEB also noted the following:

The URS proposal uses a [DELETED]. Groundwater at McConnell AFB is in narrow non-continuous lenses [and is] difficult to treat. URS believes [DELETED]. The Board believes the treatment has merit, but a problem with the technology is [DELETED]. URS plans to perform [DELETED] to evaluate the use of [DELETED], and if unsuccessful, will abandon the technology and use a [DELETED], as proposed by the other Offerors.

Id. at 57.

After the SSEB finished its review of the proposals, the contracting officer sent an e-mail to URS stating as follows:

Please confirm in writing to the Government and signed by a person authorized to bind URS Group, Inc. that the following statement is URS Group, Inc.'s understanding of Performance Based Remediation (PBR) at McConnell AFB, KS.:

"URS Group, Inc. understands that the Government is accepting the end-state performance objective in accordance with FAR 37.602 and

not accepting the planned technical approach along with its assumptions. In other words, the Government describes the work in terms of the required results rather than 'how' the work is to be accomplished and the Contractor is responsible for meeting the performance objective for the price proposed, regardless of effort, such as, regulatory difficulties/delays or necessary changed technical approaches needed to accomplish the performance objective."

If this is not URS Group Inc.'s understanding of how [performance based remediation] contracts operate, please explain any differences in understanding.

Please provide the written and signed response (a scanned letter sent via e-mail is acceptable) by close of business 11 September 2013.

AR, Tab 14, Correspondence with URS, at 1. The contracting officer stated that this e-mail was sent "to ensure that there was a 'meeting of the minds' concerning both parties' understanding of performance based remediation." Contracting Officer Supp. Statement at 5. In response to this e-mail, URS submitted a statement signed by two vice presidents affirming the above-quoted understanding. Id. at 3.

With regard to price, the price team prepared a 112-page report reviewing each offeror's price for each of 84 contract line item numbers (CLINs). AR, Tab 6, Price Report. The report identified strengths, and possible discussion items or weaknesses, for each offeror under each CLIN, and also noted any instances where the price proposed for a CLIN was considered to be high or low in light of the offeror's proposed technical approach. Tetra Tech's proposal was the second highest-priced proposal at \$53,010,005, and contained the most pricing issues of any proposal (33 CLINs where the price appeared high), while URS's price proposal was the lowest-priced proposal at \$39,517,129, and contained the fewest pricing issues (8 CLINs where the price appeared to be low and 1 CLIN where the price appeared to be high). Id. at 1, 110. The price team also noted that URS proposed the greatest number of stretch goals, with 73 instances in which URS proposed to exceed the minimum performance requirements or to complete the work under an accelerated schedule. Id. at 112.

After receiving the SSEB report and the price report, the SSA conducted his own evaluation of the proposals. Based on his assessment, the SSA changed several of the ratings assigned by the SSEB, including ratings assigned to the proposals submitted by URS and Tetra Tech.

The SSA assigned the following ratings to the proposals submitted by URS and Tetra Tech:

Evaluation Factor	URS	Tetra Tech
1. Technical Approach	<i>Good</i>	<i>Good</i>
Technical Risk Rating	<i>Moderate</i>	Moderate
2. Key Project Team Members/Mgmt Approach	Acceptable	Acceptable
Technical Risk Rating	Low	Low
3. Previous Corporate Experience	<i>Good</i>	<i>Good</i>
Technical Risk Rating	<i>Moderate</i>	Low
4. Past Performance/Small Business Subcontracting Past Performance	Relevant	Relevant
Performance Confidence Assessment	<i>Satisfactory Confidence</i>	Satisfactory Confidence
5. Small Business Participation Plan	<i>Good</i>	<i>Good</i>
Technical Risk Rating	Low	Low
6. Small business subcontracting plan	Pass	Pass

AR, Tab 4, Source Selection Decision Document (SSDD), at 57-79 (changed ratings in italics).

In the SSA's tradeoff decision, he noted that, while URS submitted the lowest-priced and one of the highest-rated proposals, it did present risk due to the proposed use of [DELETED]. AR, Tab 4, SSDD, at 106. However, the SSA found that the risk of using this [DELETED] technology was mitigated by URS's proposal to [DELETED] with oversight by regulators and the agency to ensure that the approach is effective and will not cause damage to the environment or to the installation's infrastructure. Id. In addition, the SSA noted that, [DELETED] is effective, then cleanup would be more efficient, less costly, and ultimately result in a cleaner environment. Id. The SSA also recognized that, due to URS's low price, evaluators had some concerns that URS may have "underbid" the project. Id. However, the SSA noted that URS had gained an understanding of the scope of work and the regulatory environment at the site through its previous work at the site. Id. The SSA concluded that the proposal submitted by URS represented the best value to the government. Id. at 107. This protest followed.

DISCUSSION

The protester challenges the agency's evaluation of proposals. The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7. In reviewing an agency's evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13; 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 is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781,

Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Here, while our decision does not individually address each and every assertion, we have fully considered all of the protester's arguments and find that none provide a basis upon which to sustain the protest.

Technical Approach

The protester argues that it should have received a rating of outstanding rather than good under the technical approach factor. In this regard, the RFP required the successful offeror to “[c]omplete a base-wide background metals study for soil and groundwater at McConnell [Air Force Base] within one (1) year from award date.” RFP at 31; see RFP at 3. Tetra Tech contends that the agency unreasonably assigned a significant weakness to its proposal based on the agency's finding that the background metals study would be conducted too late in the remediation process. In this regard, the protester claims that the agency's reading of its proposal is incorrect and that the evaluators apparently overlooked indications in the firm's proposal that the study would be completed within 184 working days (258 calendar days) after receipt of the notice to proceed. Supp. Protest at 29.

The agency's assignment of a significant weakness to Tetra Tech's proposal was reasonable. In assigning a weakness, the SSEB report referenced Tetra Tech's technical proposal, which stated that soil and groundwater data within an existing background dataset would be analyzed, and that “[i]f a particular site condition is found to be under-represented in the background data set, additional background samples will be collected as part of planned site activities.” AR, Tab 7, Tetra Tech Proposal, at 24. The SSEB determined that Tetra Tech's proposal to obtain samples and perform the study as a part of the planned remediation activities, followed up by site-specific studies, if necessary, represented a significant weakness. According to the SSEB, the background metals study is the foundation for performing work at many of the sites and therefore needs to be performed prior to the remediation work. AR, Tab 5, SSEB Report, at 44. Indeed, the agency reports that the regulators previously rejected a contractor's plan to collect background samples during planned site activities, rather than prior to the commencement of site activities. Contracting Officer's Statement at 6.

In response, the protester cites an entry in its 39-page, single-spaced, integrated master schedule, and a line in its Sub-CLIN Milestone Payment Description, that indicates a date of July 16, 2014 for the background metals study. AR, Tab 7, Tetra Tech's Proposal, at 101, 141; see Supp. Protest at 29. Tetra Tech argues that these two references should have put the agency on notice that the firm planned to perform the background metals study within one year of the award date as required by the RFP. However, we find that in view of Tetra Tech's narrative description of its plan to rely on existing background data and then collect additional samples, as needed, during planned site activities, these two references, buried within lengthy lists of dates, were not sufficient to clearly demonstrate that Tetra Tech would perform the background metals study before the contractor begins the remediation

activities. In these circumstances, we find reasonable the agency concern with Tetra Tech's approach and the resulting assignment of a significant weakness. See Lamar Strong Assoc., LLC, B-407170, Nov. 19, 2012, 2012 CPD ¶ 322 at 6 (offerors are responsible for preparing a well-written proposal with adequately detailed information that clearly demonstrates compliance with the solicitation).

Price Realism

Tetra Tech also contends that the agency failed to conduct and document a proper "price reasonableness analysis of the URS Group's very low price." Protest at 24. Specifically, the protester claims that the price team identified eight CLINs for which URS's proposed price appeared to be low, but the agency awarded the contract without resolving these concerns. Supp. Protest at 33.

As our decisions make clear, price reasonableness and price realism are distinct concepts. The purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. Logistics 2020, Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7; Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Arguments that an agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism, not price reasonableness. Logistics 2020, Inc., *supra*; C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3; SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. 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. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Navistar Defense, LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 *et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 17.

Here, we view Tetra Tech's argument as going to the realism of URS's pricing. In this regard, the price team evaluated the reasonableness and realism of each of the offerors' proposed prices under each of the 84 CLINs and noted instances in which an offeror's price was considered to be high or low, considering its proposed technical approach. AR, Tab 6, Price Analysis Report, at 2-109. For the vast majority of the CLINs (75 out of 84), the price team concluded that URS's proposed price was appropriate, given the firm's technical approach. *Id.* For 8 CLINs, accounting for approximately 1.6% of URS's overall price, the price team found that URS's price appeared to be low, and for 1 CLIN, the price team found that the price appeared to be high. *Id.* at 3, 18, 19, 25, 26-28, 44, 60, 104. After reviewing all of the offerors' proposals and noting each instance where an offeror's proposed price was considered to be high or low, the price team determined that the differences in prices were generally attributable to offerors' different technical approaches. *Id.* at 110. In considering the risk posed by the variance in offerors' proposed prices,

the SSEB noted “[c]onsiderable variance in proposal cost is realistic,” since each offeror performed its own analysis of the problem and devised its own technical approach to addressing the problem. AR, Tab 5, SSEB Report, at 59.

In his decision, the SSA observed, with regard to URS’s low price, that while there “were concerns that the Offeror may have underbid the project,” URS “has previously worked at the site,” and it has “previously worked with the regulators at the installation so it understands the regulatory environment.” SSDD at 106. The SSA also noted that URS proposed to use [DELETED], which the SSA described as a “more efficient [and] less costly” approach. *Id.* Although the SSA acknowledged that using this technology carries some risk, he found that this risk would be mitigated through URS’s use of [DELETED] conducted with regulator and government oversight to ensure that the technology is effective and does not cause damage to the environment or the infrastructure. *Id.* In addition, the SSA also found that use of a competent [DELETED] subcontractor would further mitigate the risk [DELETED]. SSDD at 64. In this regard, URS proposed to team with [DELETED], which URS described as [DELETED]. AR, Tab 12, URS Proposal Volume 1, at Factor 5, p. 5-4.

In sum, the record indicates that the agency reviewed the realism of URS’s pricing in light of its technical approach. The agency determined that URS’s lower prices generally reflected its use of an innovative, advantageous, and less costly technology, and that the risk associated with using the technology was sufficiently mitigated by URS’s approach in this regard. We find nothing in Tetra Tech’s protest that calls into question the resulting agency determination that URS’s overall pricing was realistic for its technical approach.

Discussions

Finally, Tetra Tech contends that the agency’s e-mail to URS asking it to affirm its understanding of the requirements of the performance-based contract constituted discussions and, having opened discussions with URS, the agency was required to also conduct meaningful discussions with Tetra Tech.

Federal Acquisition Regulation (FAR) § 15.306 describes a range of exchanges that may take place when the agency decides to conduct exchanges with offerors during negotiated procurements. Clarifications are “limited exchanges” between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR § 15.306(a)(2); ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4; Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 8. Discussions, on the other hand, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some

material respect. Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6; see FAR § 15.306(d). In situations where there is a dispute regarding whether communications between an agency and an offeror constituted discussions, the acid test is whether an offeror has been afforded an opportunity to revise or modify its proposal. ERIE Strayer Co., supra. Communications that do not permit an offeror to revise or modify its proposal, but rather request that the offeror confirm what the offeror has already committed to do in its proposal, are clarifications and not discussions. Id.; Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 7.

Here, there is no evidence that URS's affirmation of its understanding of the nature of a performance-based contract resulted in any revision or modification of URS's proposal. Rather, URS simply affirmed that its understanding of the solicitation's terms matched the agency's interpretation of these terms. In doing so, URS merely confirmed what it had already committed to do in its proposal. Under these circumstances, we find that the agency's exchange with URS constituted a clarification and not discussions.

The protest is denied.

Susan A. Poling
General Counsel