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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: TMG Services, Inc.

File: B-410929; B-410929.2

Date: March 25, 2015

Richard J. Conway, Esq., and Michael J. Slattery, Esq., Dickstein Shapiro LLP, for the protester.
Denis L. Durkin, Esq., Baker & Hostetler LLP, for David Boland, Inc.; Andrew J. Haliw III, Esq., for Custom Mechanical Systems Corporation; Sarah B. Cameron, Esq., Dinsmore & Shohl LLP, for Howard W. Pence, Inc.; Richard L. Carr, Jr., Esq., and Charles W. Mahan, Esq., Dunlevey, Mahan & Furry, for Butt Construction Company, Inc., the intervenors.
Tarrah M. Beavin, Esq., Department of the Army, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that awardee's price for a multiple-award contract was unreasonable is denied where the awardee's price was approximately 13.7% higher than the government estimate and 21.8% higher than the next highest-priced awardee, and the awardee's proposal offered a superior approach (including an accelerated schedule), as specifically encouraged by the solicitation.

2. Protest that awardee's schedule narrative for the required sample project was not project specific, thus allegedly rendering the proposal non-compliant with the solicitation requirements, is denied where the awardee's bar chart schedule was project-specific, and nothing in the solicitation clearly and unequivocally required that the narrative, as distinct from the bar chart schedule, also be project specific.

DECISION

TMG Services, Inc. (TMG), of Cleveland, Ohio, protests the Department of the Army, U.S. Army Corps of Engineers' (USACE) decision not to select it for one of five contracts awarded for construction services under request for proposals (RFP) No. W912QR-14-R-0007. Specifically, TMG argues that it should have been selected for award rather than two of the other awardees--David Boland, Inc., of Titusville, Florida, and A&D GC, Inc. (A&D), of Santee, California. In TMG's view, the agency's evaluation of the proposals submitted by those companies was unreasonable.

We deny the protest.

BACKGROUND

The RFP, issued on April 4, 2014, contemplated the award of multiple indefinite-delivery/indefinite-quantity (IDIQ) contracts, with a 3-year base period and one 2-year option, for design/build construction services for the agency's Great Lakes and Ohio River Division.

The RFP provided for a two-phase procurement. Agency Report (AR), Tab 3, RFP, Amend. No. 2, at 3; see Contracting Officer's (CO) statement (COS) at 1. In Phase I, a maximum of ten "most highly qualified" vendors were to be selected to participate in Phase II based on the evaluation of past performance and management proposals. RFP, Amend. No. 2, at 3. The agency received 37 Phase I proposals. COS at 3. Nine of the offerors were selected to submit Phase II proposals. Id.

Phase II offerors were required to submit contract pricing based on proposed labor rates and solicitation estimates of required hours for designated labor categories, as well as a solution for a sample project, "Design and Construct Kitchen Walk-In Cooler." AR, Tab 1, RFP at 5 (Contract Rate Pricing), 7 (Price Breakout Schedule); AR, Tab 6, RFP, Amend. No. 5, at 3, 6-8. Phase II proposals were evaluated by the source selection evaluation board (SSEB) under the following factors: design technical, with subfactors for schedule, design drawings, and design narratives; and price. RFP, Amend. No. 5, at 4-5. The overall design technical factor was equal in importance to price. Id. at 4. Possible technical ratings were outstanding, good, acceptable, marginal, and unacceptable. Id. at 5.

The RFP advised that price would be evaluated as follows:

> The total evaluated price will be determined by adding the Grand Total (base plus all options) [Multiple Award Task Order Contract] price from Section 00010 with the Total Proposed Price for Sample project from Section 00100. The price will be reviewed by the Price Evaluation Board and Contracting Officer/SSA [Source Selection Authority] for reasonableness through the use of price analysis. . . . Award will not be made to offerors who do not provide reasonable and realistic prices for all disciplines listed in the Contract Rate Pricing proposal, and for all line items in the Sample Project Price Breakout Schedule. Further, proposals that do not utilize the binding rates proposed in the Contract Rate Pricing proposal to calculate the price for the sample project will not be considered for award.

Id. at 8.

Under the RFP, "no less than three and no more than five" contracts were to be awarded in Phase II "to the responsible offerors whom the Source Selection Authority determines conform to the solicitation, are fair and reasonable, and offer the best overall value to the Government, all factors considered." RFP at 8.

All nine offerors selected in Phase I submitted proposals in Phase II, including TMG, David Boland, and A&D. COS at 3. Proposals were evaluated by the Source Selection Evaluation Board (SSEB), which prepared a summary evaluation report for Phase II. AR, Tab 15, SSEB Report, Oct. 1, 2014. The Source Selection Advisory Council (SSAC) reviewed the SSEB Report and prepared a comparative analysis report. AR, Tab 17, SSAC Report, Oct. 23, 2014. A Price Evaluation Board (PEB) conducted an analysis of the price proposals of all offerors. AR, Tab 16, Price Evaluation Report (PER); see COS at 7-8.

At the conclusion of the Phase II evaluation, six offerors[1] were included in the best value tradeoff, with technical ratings and evaluated prices as follows:

Factor	Howard W. Pence	Butt Const.	Custom Mechanical Systems	A&D	TMG Services	David Boland
Technical	Good	Good	Good	Acceptable	Acceptable	Good
Schedule	Acceptable	Good	Good	Acceptable	Acceptable	Good
Design Drawings	Good	Acceptable	Acceptable	Acceptable	Acceptable	Acceptable
Design Narratives	Good	Good	Good	Outstanding	Acceptable	Outstanding
Price	$26,853,722	$28,728,225	$30,331,740	$31,730,225	$32,240,695	$38,345,495

AR, Tab 18, Source Selection Decision Document (SSDD), at 3.

Based on the above evaluation, the SSA found that four offerors, Howard W. Pence, Butt Construction Company, Custom Mechanical Systems Corporation and A&D, were "clearly among the five offerors that provide the best value to the Government." SSDD at 5. The tradeoff decision with regard to the fifth and final IDIQ award therefore was between the two remaining offerors, TMG and David Boland. In this regard, the SSA found that:

[1] Three Phase II offerors were otherwise eliminated from further consideration. Source Selection Decision Document at 3.

> Though David Boland Services provided a higher-priced proposal, I concur with the SSAC that the technical advantages associated with its highly rated proposal, which received the highest possible rating for subfactor C and the second highest rating for the most important factor, are worth the price premium over the lower-priced, but lower rated offeror, TMG Services.

Id.

Award was made to the five successful offerors on November 26. After receiving a debriefing, TMG filed this protest with our Office.

DISCUSSION

TMG challenges the evaluation of David Boland's and A&D's proposals, arguing that its proposal should have been selected over the proposals of these two companies. In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. iGov, et al., B-408128.24 et al., Oct. 31, 2014, 2014 CPD ¶ 329 at 8; The Boeing Co., B-409941, B-409941.2, Sept. 18, 2014, 2014 CPD ¶ 290 at 6. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. iGov, et al., supra; Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. Here, we have considered all of TMG's arguments, and find that none furnishes a basis to question the selection decision. We discuss the most significant arguments below.

Award to David Boland

TMG asserts that David Boland's proposed price was unreasonably high such that the award to David Boland was improper. In this regard, an agency is required to determine that offered prices are fair and reasonable before awarding a fixed-price contract. Federal Acquisition Regulation (FAR) § 15.402(a). Indeed, the RFP here specifically provided that award would not be made to "offerors who do not provide reasonable and realistic prices for all disciplines listed in the Contract Rate Pricing proposal and for all line items in the Sample Project Price Breakout Schedule." RFP, Amend. No. 5, at 8. The FAR permits the use of various price analysis techniques and procedures to ensure fair and reasonable pricing, including the comparison of proposed prices to each other or to an independent government estimate. FAR § 15.404-1(b)(2); Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. A price reasonableness determination is a matter involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. Comprehensive Health Servs., Inc., supra.

Here, the agency's Price Evaluation Board generally evaluated offerors' price proposals as follows:

Rank	Contractor	Total Price	% of IGE	Notes
1	Howard Pence	$26,853,722	79%	Highest Value; Very Competitive
2	Butt Construction	$28,728,225	84.6%	Highest Value; Very Competitive
3	CMS	$30,331,740	89.3%	Competitive overall; Competitive hourly rates
4	A&D	$31,730,225	93.4%	Average rates; Average project cost
5	TMG	$32,240,695	94.9%	Very competitive sample project; Higher hourly rates.
6	Offeror A[2]	[redacted]	[redacted]	[redacted]
7	David Boland	$38,345,495	113.7%	Generally non-competitive
8	Offeror B	[redacted]	[redacted]	[redacted]
9	Offeror C	[redacted]	[redacted]	[redacted]

PER at 2; SSAC Report at 15; SSEB Report at 17. The independent government estimate (IGE) was $33,976,084. PER at 2.

With regard to price reasonableness, the Price Evaluation Board stated that:

> The IGE was compared against the proposals from the [nine offerors in Phase II]. The IGE represents the [group] very well and in general falls slightly above average values in most regards. If ranked as a bidder, the IGE would be 6 of 10. Based on comparison of the IGE and established statistical measure of the core group, fair and reasonable cost is established. Given the number of respondents it is apparent there is adequate competition for this solicitation.

PER at 1. In particular, with regard to David Boland's proposal, the evaluators found that:

> For the base period, the hourly rates for the Project Manager and Superintendent fall within one standard deviation below the mean. The hourly rates for the CQC [construction quality control] Manager, SSHO [site safety and health officer], and Civil Engineer fall within one standard deviation above the mean. All other rates fall within two standard deviations above the mean. For the option period, the Civil Engineer rate is increased to fall within two standard deviations above the mean. All other rates fall within two standard deviations above the

[2] Information with regard to the three Phase II proposals that were not considered in the tradeoff analysis is redacted.

> mean. For the option period, the Civil Engineer rate is increased to fall within two standard deviations above the mean. When compared to the Core Competitive Pool, these rates are considered high. The offeror's proposed sample project price of $325,491 is ranked 7th from lowest to highest and is considered high within this pool.

PER at 3. The evaluators concluded that David Boland's proposal presented "high cost risk for future task orders based on [its] high proposal for the sample project and higher hourly rates." PER at 4.

TMG points out that David Boland's overall price was approximately 13.7% ($4,669,411) higher than the IGE and approximately 21.8% ($6,915,270) higher than the next highest-priced awardee's (A&D) price. Comments and Supp. Protest at 3; see also Protest at 7-8. Further, TMG points out that many of David Boland's proposed labor rates were the highest of all offerors for both the base and option periods. Comments and Supp. Protest at 3; see PER, attachs. (contract rates spreadsheets). TMG asserts that these price disparities indicate that David Boland's price was unreasonably high.

We find the agency price evaluation to be unobjectionable. As an initial matter, the record indicates that the price evaluators conducted a comprehensive evaluation using techniques available under FAR § 15.404-1(b)(2), including a comparison of proposed prices received in response to the solicitation to each other and to an independent government estimate, and documented that evaluation. See PER at 1-4. With regard to David Boland's proposal, for example, the price evaluators compared and contrasted the hourly rates for key personnel with regard to both the base period and the option period, PER at 3; compared those prices to prices of other competitive offerors and recognized that they were "high," id.; compared David Boland's sample project price to other offerors' prices and recognized that it was "high," id.; and determined that David Boland's proposal presented "high cost risk" for future task orders based on its high price for the sample project and higher hourly cost rates, PER at 4.

While the evaluators recognized that David Boland's prices were "high" compared to other offerors' prices, they did not conclude that they were unreasonably high. SSAC Report at 4. In this regard, the fact that David Boland's proposed prices were higher than other offerors' proposed prices, in itself, does not make David Boland's overall price unreasonable. See Oasis Systems, LLC, B-407273.54 et al., supra, June 19, 2014, 2014 CPD ¶ 199, at 15-16. Our cases have not established a fixed price differential that must result in a determination by the evaluators that a proposed price is unreasonable, and we decline to do so here. See, e.g., Ashland Sales and Service Company/Macon Garment Inc., a Joint Venture, B-400466, Oct. 23, 2008, 2008 CPD ¶ 196 at 3. Indeed, we have found no cases, and the protester points to none, in which prices were found to be unreasonable based wholly on percentage differentials comparable to those found in this acquisition.

See, e.g., Federal Security Systems, Inc., B-281745.2, Apr. 29, 1999, 99-1 CPD ¶ 86 at 6; cf. Creative Info. Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 7 (price nearly 7 times the government estimate and 4.6 and 9 times competitors' prices was unreasonable on its face). See also Integrated Concepts & Research Corporation, B-309803, Oct. 15, 2007, 2008 CPD ¶ 117 at 4-6 (protester's evaluated cost, which was more than three times awardee's evaluated cost, was not so high as to be unreasonable or unacceptable for award "given its technical approach"); IAP World Services, Inc., B-297084, Nov. 1, 2005, 2005 CPD ¶ 199 at 4 (where protester's price was 34% higher than the government estimate and comparably higher than other offerors' prices, differentials were not of a magnitude that suggests that protester's price was unreasonable on its face); Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 5 n.5 (price differential of 40% between offerors did not indicate that higher price was unreasonable on its face).

Further, an agency in performing a price reasonableness evaluation should consider price relative to the particular approach taken by the offeror. Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 25; see, e.g., Integrated Concepts & Research Corporation, supra (protester's evaluated cost was not so high as to be unreasonable or unacceptable for award "given its technical approach"); Metro Mach. Corp., B-297879.2, May 3, 2006, 2006 CPD ¶ 80 at 9-10 (mechanical application of an agency's own estimates for labor hours or costs to determine evaluated costs, without the exercise of informed judgment by the contracting agency in independently analyzing the offeror's proposed costs based upon its particular approach and circumstances, was unreasonable). Here, the RFP specifically advised offerors that: "For Phase II submittals, requirements stated in this RFP are minimums. Innovative, creative or cost-saving proposals that meet or exceed the requirements are encouraged and will be rated accordingly." RFP, Amend. No. 5, at 3. In this regard, the SSA found that "Boland exceeded the requirements of the solicitation" in several ways, including a proposed, "realistic and achievable," schedule which provided a shorter duration than the 180 days required by the RFP, giving it a "significant qualitative advantage." SSDD at 4. In these circumstances, we conclude that TMG has not shown that the agency's determination that David Boland's overall price was reasonable given its technical approach was inconsistent with the solicitation or otherwise unreasonable.[3]

[3] We note for the record, however, that David Boland may need to reduce its prices to be successful in the task order competitions anticipated by these contracts.

Award to A&D

TMG asserts that the agency improperly evaluated the technical proposal of A&D with regard to its proposed schedule for the sample project. In this regard, Section 4.1.1 of the RFP required offerors to:

> Provide a bar chart schedule utilizing days in lieu of dates, showing how the work will be performed and completed within the duration shown in [FAR] 52.211-10. Show all required design phases, including reviews and resolution of comments. Show the construction phases for all features of the project. Identify all fast tracking of design and construction[.]

RFP, Amend. No. 5, at 6. In addition, offerors are required to provide a "narrative," accompanying the schedule:

> Include a narrative not to exceed 1 page that describes how the schedule will be used to manage design and construction and include internal procedures for handling delays to minimize time growth or 'schedule creep.' Show completion, turnover, and as-built submissions.

Id.

The record indicates that A&D's proposed bar chart schedule was project specific, and included a detailed timeline setting forth particular design, demolition, architectural and structural activities. A&D Proposal, Bar Schedule. The SSEB, however, identified a weakness with regard to A&D's narrative: "The offeror provided a standard narrative that would cover any project. The narrative was not project specific." SSEB Report at 10-11. The SSAC Report echoed the SSEB's concerns. SSAC Report at 6. TMG asserts that A&D's failure to submit a project-specific narrative rendered its proposal non-compliant with the requirements of Section 4.1.1.

The agency responds that there is nothing in the RFP that requires that the narrative (as distinct from the bar chart schedule itself) be project specific. Supp. AR at 8. The agency asserts that it is

> entirely possible for an offeror to adequately satisfy this Solicitation requirement through the submission of a schedule narrative that generically discusses its procedures for managing schedules, handling delays, and minimizing time growth without specifically referencing the project at hand.

Id.

We see no issue with the agency's reading of Section 4.1.1 of the RFP. The provision clearly differentiates between the bar schedule and the narrative and identifies different requirements for each. In addition, there is no requirement in the RFP that the narrative be project specific. In these circumstances, we cannot conclude that A&D's proposal failed to comply with an express requirement of the RFP, making it ineligible for award.

The protest is denied.

Susan A. Poling
General Counsel