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Decision

Matter of: Raymond Express International, LLC

File: B-409872.3; B-409872.4; B-409872.5

Date: September 11, 2015

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Ralph J. Tremaglio, III, Esq., and Helen J.S. White, Esq., Defense Commissary Agency, for the agency.

Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that award was improper because award document incorrectly lists awardee's name and address is denied where award document correctly lists awardee's commercial and government entity code and data universal numbering system number, and where record shows identity of awardee is sufficiently clear to contractually bind the firm.

2. Protest against agency's evaluation of unit pricing is denied where record includes contemporaneous data to show agency error did not prejudice protester.

DECISION

Raymond Express International, LLC, of Los Angeles, California, protests the award of contracts to MPG West, LLC (MPG), of La Quinta, California, and International Distributors, Inc. (IDI), of Barrigada, Guam, under request for proposals (RFP) No. HDEC09-14-R-0002, issued by the Defense Commissary Agency (DeCA) for fresh fruit and vegetables (FF&V) for commissary stores in South Korea, Japan (to include Okinawa), and Guam. Raymond alleges that the award to MPG was improper because it was made to an entity that does not legally exist. Raymond also alleges that the agency's evaluation of MPG's and IDI's proposals was unreasonable.

We deny the protest.

BACKGROUND

DeCA operates commissary stores throughout the world for the resale of groceries and household items to members of the military and other authorized patrons. The solicitation here, which DeCA issued on February 3, 2014, and amended six times, contemplated the award of one or more requirements-type indefinite-delivery contracts with a base period of two years and three one-year option periods. RFP at 1, 21, 26, 62. Under the solicitation, the successful contractor(s) would be responsible for the delivery of a variety of FF&V to DeCA commissary stores throughout South Korea, Japan (to include Okinawa), and Guam.¹ Id. at 3. The solicitation permitted offerors to submit separate proposals for one or more of the South Korea, Japan, and Guam requirements. Id. DeCA estimated the value of the procurement to be approximately \$198 million. Contracting Officer's Statement at 1.

Award was to be made based on a best-value tradeoff considering the following three factors, listed in descending order of importance: technical capability/risk; past performance; and price. RFP at 21. The technical/risk factor included the following five equally-weighted subfactors: quality program; experience/existing commercial relationships; force protection; transportation; and value-added services. Id. The past performance factor included the following three equally-weighted subfactors: quality history/customer satisfaction; product delivery; and business relations. Id. Regarding the past performance evaluation, the solicitation provided that the agency would consider the offerors' past performance efforts, and then assign relevancy and confidence assessment ratings. See id. at 23-24.

Under the price factor, the solicitation defined "price" as the "minimum percentage of patron savings" proposed by an offeror. RFP, amend. No. 0006, at 2. The solicitation defined "patron savings," in turn, as "a price savings to the commissary patron when compared to the prices of like items from comparable private sector retail stores in the local commuting area" ² RFP, amend. No. 0004, at 5. The solicitation provided that during performance, the contractor would update its FF&V unit pricing on a weekly basis, but that the proposed patron savings percentage always would apply. Id. Hence, although the FF&V prices paid by commissary

¹ Since 2008, Raymond has been the incumbent contractor for the agency's FF&V requirement in the Pacific area. Am. Protest at 2, 13. The agency's recompetition of this requirement was the subject of previous litigation brought by Raymond. See Raymond Express Int'l, LLC v. United States, 120 Fed. Cl. 413 (2015); Raymond Express Int'l, B-409872.2, Nov. 6, 2014, 2014 CPD ¶ 317.

² The solicitation required an offeror's proposed patron savings to be at least 15 percent. RFP, amend. No. 0005, at 3.

patrons would fluctuate with the market during performance, the discount they would receive relative to prices in local stores would remain constant.³

In addition to proposing a patron savings discount percentage, the solicitation required offerors to provide their unit prices for the week of December 8, 2014 for a group of “high volume” FF&V items.⁴ RFP at 5-10; RFP, amend. No. 0006, at 3. The unit prices were to reflect the application of the offeror’s proposed patron savings discount. RFP, amend. No. 0006, at 3. For each high volume item, the solicitation included an estimated quantity of the agency’s weekly requirement. RFP at 83-94.

Regarding the evaluation of the unit prices, the solicitation provided as follows:

The proposed unit prices . . . will be analyzed for price reasonableness and the accuracy of the application of the proposed Price (minimum percentage of patron savings). . . . The Government will analyze the . . . unit prices provided by offerors for the specified period for price reasonableness or realism[;] however the . . . unit prices will not be the basis of contract award.

RFP, amend. No. 0006, at 3. Thus, although the solicitation communicated that the agency would evaluate the unit prices for reasonableness (and potentially realism), it also communicated that the competitive “price” being evaluated under the price factor was the offeror’s proposed patron savings discount. See id. at 2-3.

The agency received six proposals in response to the solicitation, including proposals from Raymond, MPG, and IDI.⁵ AR, Tab 37, SSDD, at 4. Following an evaluation by the source selection evaluation board (SSEB), one offeror was eliminated from the competitive range, and discussions were opened with the remaining five offerors. Id. at 9. Three rounds of discussions ensued, after which the agency requested and received final proposal revisions (FPR) from each of the five competitive range offerors. See id. at 13-18.

³ The solicitation stipulated that during performance, the agency would monitor the contractor’s prices for reasonableness using monthly “market basket surveys” based on FF&V pricing in local retail stores. RFP, amend. No. 0004, at 5.

⁴ The high volume items included FF&V such as apples, bananas, oranges, broccoli, carrots, celery, lettuce, onions, green peppers, potatoes, and tomatoes. RFP at 83-94.

⁵ Raymond and MPG submitted proposals for the South Korea, Japan, and Guam requirements, while IDI submitted a proposal only for the Guam requirement. See Agency Report (AR), Tab 37, Source Selection Decision Document (SSDD), at 19-20.

Based on the FPRs, the SSEB assigned final ratings to the proposals. The proposals of Raymond, MPG, and IDI all were assigned the highest available rating--outstanding--under all five technical/risk subfactors. AR, Tab 37, SSDD, at 19-20. These three proposals also were assigned the highest available confidence assessment rating--substantial confidence--under the past performance factor. Id. Additionally, Raymond's and MPG's proposals were assigned ratings of very relevant under all three past performance subfactors, while IDI's proposal was assigned ratings of relevant under the three past performance subfactors. Id. Compared to the Raymond, MPG, and IDI proposals, the proposals of the other two competitive range offerors received lower ratings under the technical/risk subfactors, lower past performance confidence assessment ratings, and lower past performance relevance ratings. Id.

With regard to price, the offerors' proposed patron savings discount percentages for the three geographic requirements are shown in the table below.

	<u>Raymond</u>	<u>MPG</u>	<u>IDI</u>	<u>Offeror 4</u>	<u>Offeror 5</u>
South Korea	27%	34%	no offer	[DELETED]	[DELETED]
Japan	27%	30%	no offer	[DELETED]	[DELETED]
Guam	27%	34%	40.1%	[DELETED]	[DELETED]

AR, Tab 37, SSDD, at 19-20.

The contracting officer--who also served on the source selection advisory council (SSAC) and served as the source selection authority--reviewed the SSEB's evaluation findings and documented a source selection decision.⁶ AR, Tab 37, SSDD. For the South Korea and Japan requirements, the contracting officer concluded that since the Raymond and MPG proposals both received the highest-available ratings under the technical/risk and past performance factors, MPG's higher proposed patron savings discount was determinative of best value. Id. at 21. She therefore made award to MPG for the South Korea and Japan requirements. Similarly, for the Guam requirement, the contracting officer concluded that since the Raymond, MPG, and IDI proposals all received the highest-available ratings under the technical/risk factor and substantial confidence ratings under the past performance factor, IDI's higher proposed patron savings discount was determinative of best value. Id. at 22. She therefore made award to IDI for the Guam requirement.

⁶ The contracting officer also participated in the preparation of an SSAC report in which detailed evaluation findings and numerous proposal discriminators were documented. See AR, Tab 36, SSAC Comparative Analysis Report.

Following a debriefing, Raymond filed a protest with our Office.

DISCUSSION

Raymond alleges that the award to MPG was improper because it was made to an entity that does not legally exist. Raymond also asserts that the agency's evaluation of MPG's and IDI's proposals was unreasonable in various respects. We have reviewed all of Raymond's arguments, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest. Below we discuss Raymond's principal contentions.

Identity of Awardee

Raymond argues that the award to MPG must be overturned because it was made in the name of an entity that does not exist. Comments at 2-6; Supp. Comments at 2-5, 8-14. In this regard, Raymond points out that the award document--i.e., the standard form (SF) 1449 signed by the contracting officer--lists the awardee as "Parma Fruit MPG West," rather than MPG West, LLC, and lists an address that is not MPG West, LLC's address. According to Raymond, no entity named Parma Fruit MPG West is registered in the System for Award Management (SAM), and there is no commercial and government entity (CAGE) code or data universal numbering system (DUNS) number associated with that name. Am. Protest at 11. Also according to Raymond, state corporate records show that no entity is registered under the name Parma Fruit MPG West, as either a stand-alone name or as a tradename. Am. Protest at 11; Comments at 4-5. Finally, Raymond points out that with limited exception, MPG's proposal did not refer to the offering entity as MPG West, LLC, but instead used names such as "Parma Fruit MPG West, LLC," "Parma Fruit MPG West," and "parma fruit MPGwest - GLOBAL." Comments at 3-4; Supp. Comments at 2.

The contracting officer responds that the award document lists the CAGE code and DUNS number of MPG West, LLC (as opposed to Parma Fruit MPG West or any other entity), and that the reference therein to "Parma Fruit MPG West" is a clerical error that she will correct after the protest proceeding has concluded. Contracting Officer's Statement at 6-7. She also states that only one CAGE code and one DUNS number appeared in MPG's proposal--those of MPG West, LLC--and that it was clear to her from the proposal that MPG West, LLC was the offeror. Id. at 7. Finally, the contracting officer provided a printout showing that prior to the award determination, the agency accessed the SAM database page that confirms that the CAGE code and DUNS number listed in MPG's proposal are registered to MPG West, LLC. AR, Tab 39, SAM Search Results for MPG, at 2558.

For its part, MPG explains that MPG itself caused the error by inadvertently listing "Parma Fruit MPG West" in the "offeror" box of the completed SF 1449 that it submitted with its proposal. MPG Comments at 4 (citing AR, Tab 15, MPG

Proposal (South Korea), at 1054). MPG, points out, however, that it did list “MPG West, LLC” in the “payment” box of the SF 1449. Id. MPG also explains that its use of the name “Parma Fruit MPG West” stems from its relationship with another firm, Parma Fruit, Inc. Id. This relationship was explained in the proposal as follows: “MPG West was established in 2007 in partnership with Parma Fruit to exclusively handle [Department of Defense] business.” AR, Tab 15, MPG Proposal (South Korea), at 1054. Lastly, MPG emphasizes that other than MPG West, LLC, no legally extant entity--Parma Fruit, Inc. or otherwise--was identified as the offeror in the proposal. See id. at 4-5.

Uncertainty as to the identity of an offering entity renders an offer technically unacceptable, since ambiguity as to an offeror’s identity could result in there being no party bound to perform the obligations of the contract. See Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 6; W.B. Constr. & Sons, Inc., B-405874, B-405874.2, Dec. 16, 2011, 2011 CPD ¶ 282 at 4. The information readily available, such as CAGE codes and DUNS numbers, must reasonably establish that differently-identified entities are in fact the same concern. See Intelligent Inv., Inc., B-406347, B-406347.2, Apr. 27, 2012, 2012 CPD ¶ 193 at 4-5; W.B. Constr. & Sons, Inc., supra. As a general matter, the entity awarded the contract should be the entity that submitted the initial proposal. See Raytheon Co., supra; W.B. Constr. & Sons, Inc., supra, at 5.

CAGE codes are assigned to discrete business entities by the Defense Logistics Agency and are used to dispositively establish the identity of a legal entity for contractual purposes. See Federal Acquisition Regulation (FAR) § 4.1801; Gear Wizzard, Inc., B-298993, Jan. 11, 2007, 2007 CPD ¶ 11 at 2. Similarly, DUNS numbers are established by Dunn & Bradstreet Information Services for purposes of establishing the precise identification of an offeror or contractor. See FAR §§ 2.101, 4.605(b); URS Group, Inc., B-402820, July 30, 2010, 2010 CPD ¶ 175 at 4. CAGE codes and DUNS numbers are used to identify the entity that is the offeror for a given procurement. See W.B. Constr. & Sons, Inc., supra.

Here, Raymond has not sufficiently established that there is ambiguity regarding MPG’s identity that could result in no party being bound to perform the obligations of the contract. While it is true, as Raymond points out, that MPG’s proposal referred to the offering entity using various--albeit similar--names, the record reflects that the proposal listed only one CAGE code and only one DUNS number: those of MPG West, LLC. As stated above, CAGE codes and DUNS numbers dispositively establish the identity of a legal entity for contractual purposes. Further, although the award document includes an errant name and address for the awardee, it identifies the legal entity that is bound to perform the contractual obligations by listing the only CAGE code and the only DUNS number that appeared in the proposal. Finally, the contracting officer and MPG have stated on the record that MPG West, LLC was understood to be the intended offeror. See Contracting Officer’s Statement at 6-7; MPG Comments at 4. Given these circumstances, we find that the record is

sufficiently clear to show that MPG West, LLC was the offeror and the awardee, and that MPG West, LLC is bound by the obligations of the contract. Raymond's claim regarding the identity of the awardee is denied.⁷

Price Reasonableness and Realism

With regard to the evaluation of price reasonableness and price realism, Raymond first argues that the agency improperly failed to evaluate the offerors' high volume FF&V item unit pricing on an item-by-item basis. See Comments at 7-9; Supp. Comments at 6, 20-21. As relevant to this claim, the record shows that the first step in the agency's process for evaluating the offerors' high volume FF&V item unit prices was to add each offeror's unit prices together. See AR, Tab 37, SSDD, at 23. Thus, as Raymond asserts, the agency did not evaluate unit pricing on an individual basis, but instead evaluated unit pricing on a collective basis. However--and as discussed in detail below--the solicitation is reasonably read to permit this type of evaluation. Therefore, we find Raymond's claim to be both without merit and untimely.

As previously stated, the solicitation required offerors to provide their week-of-December 8, 2014 unit prices for a group of 35 high volume FF&V items. RFP at 5-10; RFP, amend. No. 0006, at 3. As also previously stated, regarding the evaluation of the unit prices, the solicitation provided as follows:

The proposed unit prices . . . will be analyzed for price reasonableness and the accuracy of the application of the proposed Price (minimum percentage of patron savings). . . . The Government will analyze the . . . unit prices provided by offerors for the specified period for price reasonableness or realism

RFP, amend. No. 0006, at 3.

The solicitation provision above is silent with regard to whether the agency would evaluate the unit prices on an individual or collective basis. Hence, we read the provision to provide the agency with discretion to evaluate the unit prices either way. Therefore, we see no merit to Raymond's claim regarding this aspect of the evaluation. Further, given the language of the provision, together with the fact that offerors were to submit a large number (35) of individual unit prices, we think it was apparent from the solicitation that the agency might evaluate the unit prices collectively. To the extent Raymond believed the agency should not be permitted to

⁷ Although we deny the protest, the agency should expediently correct the error on the award document--as the contracting officer has represented she will do--by, for example, issuing a unilateral administrative modification that lists MPG's correct name and address.

do so, it could have, but did not, protest this provision of the solicitation prior to the solicitation's closing date. Thus, Raymond's claim also is untimely. 4 C.F.R. § 21.2(a)(1) (2015).

Next, Raymond contends that in evaluating the high volume FF&V item unit pricing, the agency improperly used the aggregate--i.e., the sum--of the offerors' unit prices instead of applying a weighted average to account for the differing estimated quantities that might be ordered for each item. Comments at 9-11; Supp. Comments at 6-7, 22-24. Raymond claims that the agency's use of aggregate pricing produced illogical data regarding the reasonableness and realism of the offerors' unit pricing. Comments at 9-13; Supp. Comments at 6-7, 21-24.

The agency responds that its evaluation was consistent with the solicitation (and that Raymond's claim is therefore untimely) because a passage within solicitation's commercial terms and conditions section states that during performance, the agency would use aggregate pricing to monitor the reasonableness of the successful offeror's monthly unit prices. See Supp. AR at 5-8 (citing RFP, amend. No. 0004, at 5).

We disagree with the agency's timeliness argument. Nothing in the solicitation's price evaluation section refers to the use of aggregate unit pricing, see RFP, amend. No. 0006, at 3, and we do not think the solicitation passage regarding the monitoring of price reasonableness during performance is reasonably read to apply to the wholly separate section of the solicitation that addresses the agency's price evaluation in the competitive phase of the procurement.

Before returning to Raymond's claim, we observe that the purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. See FAR § 15.404-1(b); Per Aarsleff A/S; Copenhagen Arctic A/S; Greenland Contractors I/S, B-410782 et al., Feb. 18, 2015, 2015 CPD ¶ 86 at 18-19. Conversely, a price realism review is to determine whether prices are too low, such that there may be a risk of poor performance. FAR § 15.404-1(d); Per Aarsleff A/S; Copenhagen Arctic A/S; Greenland Contractors I/S, supra.

As discussed in the background section of this decision, the solicitation included estimated quantities of the agency's weekly requirement for each of the high volume FF&V items. RFP at 83-94. Had the agency evaluated the reasonableness or realism of the unit prices on an individual basis, accounting for these quantities within the overall analysis might not have been necessary. However, since the agency decided to evaluate the unit prices collectively, it was necessary for the agency to take the quantities into account in order to achieve a meaningful result. Since the agency did not do so, we agree with Raymond that the agency's calculations were flawed. Nevertheless, for the reasons discussed below, we will

not sustain the protest because the record reflects that Raymond was not prejudiced by the agency's actions.⁸ Competitive prejudice is an essential element of every viable protest; where the record establishes no reasonable possibility of prejudice, we will not sustain a protest, even if a defect in the procurement is found. See Wyle Labs., Inc., B-288892, B-288892.2, Dec. 19, 2001, 2002 CPD ¶ 12 at 18; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

The record shows that in the course of its evaluation, the agency in fact calculated the offerors' total unit prices in a manner that accounted for the estimated quantities. In other words, the record reflects that the agency calculated the offerors' "total weighted pricing," precisely as Raymond argues the agency was required to do. More specifically, the record includes bar graphs that show the total weighted unit pricing for each offeror, and for each geographic requirement. AR, Tab 34, High Volume FF&V Item Price Evaluation, at 2208, 2236, 2238, 2269, 2271, 2302, 2304, 2335. The bar graphs also show total weighted pricing based on unit prices that DeCA found at its own commissary stores. Id. However, there is nothing to show whether or how the agency used this data for purposes of evaluating price reasonableness or realism. Rather, the record reflects that the contracting officer documented bottom-line conclusions regarding both the reasonableness and realism of the offerors' pricing, and that these conclusions were based on the skewed calculations discussed above. See AR, Tab 37, SSDD, at 20, 23-24.

Despite the agency's reliance on these skewed calculations in its decision document, the bar graphs in the record show that for each geographic requirement, MPG's and IDI's total weighted pricing was reasonably comparable to the pricing at the DeCA commissary and/or to the pricing submitted by one or two of the other offerors. AR, Tab 34, High Volume FF&V Item Price Evaluation, at 2208, 2236, 2238, 2269, 2271, 2302, 2304, 2335. Hence, we see no reasonable possibility that the agency would have concluded MPG's or IDI's total weighted pricing was unrealistically low. The bar graphs also show that Raymond's total weighted pricing was consistently, and in some cases significantly, higher than the awardees' pricing. Id. Thus, if the agency had concluded that the awardees' total weighted pricing was unreasonably high, it also would have made the same conclusion regarding Raymond's pricing.

Finally, although the record reflects that the agency used the skewed calculations to find Raymond's pricing for one geographic requirement (Guam) unreasonably high,

⁸ The agency's methodology suffers other infirmities, particularly with regard to how percentages are calculated and used. See AR, Tab 37, SSDD at 23-25. As discussed in this decision, however, because the record reflects that Raymond was not prejudiced by the agency's actions, these issues do not provide a basis on which to sustain the protest.

see AR, Tab 37, SSDD, at 24, the record also reflects that this finding did not play a role in the agency's determination to award the Guam requirement to IDI. Id. at 26. Rather, the record reflects that the contracting officer decided to award the Guam requirement to IDI because the Raymond, MPG, and IDI proposals were rated essentially equal under the nonprice factors, but IDI offered a higher patron savings discount percentage. Id. at 26. Based on the foregoing, we deny Raymond's claims regarding the agency's price evaluation.

Past Performance

Finally, Raymond challenges the agency's evaluation of MPG's and IDI's past performance on various grounds. Raymond first argues that the evaluation was flawed because the agency did not document individual determinations regarding the relevancy of each past performance effort of each offeror. Comments at 14-16. As relevant to Raymond's claim, the solicitation stated that "[t]he offeror's Past Performance in each contract will be evaluated" and that "Past Performance information will be used to determine how relevant a recent effort . . . is to the effort to be acquired [under the solicitation]." RFP at 23.

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7.

The record does not include documentation of individual determinations regarding the relevancy of each past performance effort of each offeror. It does, however, include an SSEB "consensus" evaluation document for each offeror. E.g., AR, Tab 30, MPG Past Performance Evaluation. The consensus evaluation document for MPG lists the firm's consensus relevancy rating as very relevant. Id. at 2116-18. The document also sets forth detailed findings regarding MPG's past performance efforts. Id. These findings appear to be consistent with the past performance information found in MPG's proposal. Compare id., with AR, Tab 15, MPG Proposal (S. Korea), at 1216-36. Additionally, the findings describe aspects of MPG's past efforts that appear similar in nature and scope to the effort contemplated by the solicitation here.

In its comments on the agency report, Raymond has not meaningfully challenged the substance of the agency's past performance findings for MPG. Instead, Raymond has argued that the agency improperly failed to document individual relevancy assessments for MPG's past performance efforts. Since Raymond has not shown how the agency's ultimate relevancy determination for MPG's proposal was somehow unreasonable, and since the overall relevancy determination appears

to be reasonable, Raymond's claim regarding the relevancy of MPG's past performance is denied.⁹

As stated above, Raymond also challenges the agency's evaluation of IDI's past performance. We dismiss this aspect of Raymond's protest.

A protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it would not be in line for award, if its protest was sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57 at 2.

As shown above, the Raymond and MPG proposals were rated essentially equal under the nonprice factors, but MPG offered a higher patron savings discount percentage for the Guam requirement. AR, Tab 37, SSDD, at 26. Hence, even if we were to sustain Raymond's claims regarding the agency's evaluation of IDI's past performance, MPG, and not Raymond, would be line for award.

The protest is denied.

Susan A. Poling
General Counsel

⁹ Raymond raises other arguments regarding the agency's evaluation of MPG's past performance. We have reviewed all of them, and we find that none furnishes a basis on which to sustain the protest.