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Decision

Matter of: MCR Federal, LLC

File: B-411977; B-411977.2

Date: November 23, 2015

William A. Roberts, III, Esq., Jennifer S. Zucker, Esq., Richard B. O’Keeffe, Jr., Esq., and Samantha S. Lee, Esq., Wiley Rein LLP, for the protester.
David S. Cohen, Esq., John J. O’Brien, Esq., Gabriel E. Kennon, Esq., and Daniel J. Strouse, Esq., Cohen Mohr LLP, for the intervenor.
Maj. Jason R. Smith, Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly adjusted protester’s labor rates is denied where protester failed to justify its proposed labor rates as required by the solicitation.

DECISION

MCR Federal, LLC (MCR), of Mclean, Virginia, protests the Department of the Air Force’s issuance of a task order to Odyssey Systems Consulting, Ltd. (Odyssey), of Alexandria, Virginia, under Engineering, Professional, and Administrative Support Services (EPASS) request for proposals (RFP) No. 14. MCR asserts that the agency performed an unreasonable cost realism analysis of the offer it submitted.

We deny the protest.

BACKGROUND

The solicitation, for advisory and assistance services for the Air Force Life Cycle Management Center, was issued to concerns holding a General Services Administration One Acquisition Solution for Integrated Services Small Business (OASIS SB) Pool 6, Indefinite-Delivery/Indefinite-Quantity (IDIQ) Multiple Award

Contract.¹ The RFP included cost-plus-fixed-fee, fixed-price, and cost-reimbursement line items. The solicitation provided for the task order to be issued to the offeror that submitted the technically acceptable offer with the lowest evaluated price.² RFP at 218. Cost/price proposals were to be evaluated for reasonableness, realism, and balance. RFP at 218-21. With respect to the realism evaluation, the solicitation explained that the government would compute a most probable cost by adjusting unrealistic proposed direct labor rates and indirect rate percentages upward, but that no adjustments would be made to the proposed skill mix or hours. RFP at 220.

The solicitation listed labor categories, labor mix, and security clearance requirements that offerors were required to propose for each listed location. RFP, Amend. 1 at 217, att. 6, Contract Manpower Equivalent (CME). Labor categories were defined by experience and education level. RFP, Amend. 2 at 20; Oasis Contract at 61; Amend 2. at 34-34, 57-58.³ The agency developed a most probable direct labor rate for each of the 43 combinations.

As relevant to this protest, offerors were required to propose an unburdened direct labor rate for each of the 43 labor category combinations for each period of performance. RFP, Amend. 2 at 109. Offerors were also instructed to provide a summary of proposed costs, a synopsis of the estimating methodology and data

¹ The estimated value of the task order at issue is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task and delivery orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e).

² The total evaluated price was computed by adding for the base year and all option years: (1) the sum of proposed cost-plus-fixed-fee line items after most probable cost adjustments; (2) the Air Force provided not-to-exceed amount for studies and analyses; (3) the Air Force provided not-to-exceed amount and any proposed burden for travel costs, plus any most-probable-cost adjustment; (4) the Air Force provided amount for the fixed-price transition objective performance initiative; and (5) a GSA contract access fee plus any most-probable-cost adjustment. RFP at 219.

³ Offerors were permitted to deviate from the definitions but were required to clearly identify any such deviations. For example, while the solicitation defined a junior employee for other than engineering or security support as one with fewer than three years of experience, an offeror could explain that its junior employees had more than three years of experience. Oasis Contract at 61.

sources used to develop proposed costs, and any assumptions on which the costs were predicated. Id. at 112.

In addition, with respect to labor rates, the solicitation instructed offerors as follows:

When submitting cost/price data for justification of direct labor rates, Offerors may use . . . historical data . . . or market survey data to justify their rates. Rates submitted without justification in some form are subject to be adjusted without discussions or further investigation. Rates that are determined to be unreasonable or unrealistic despite presence of justification are subject to be adjusted.

Historical data includes . . . payroll/pay stubs, prior invoices to government or private buyers, or previous contracts price catalogs. . . Any historical contractual reference should be made fully available without redactions as part of the proposal submission. . . .

An Offeror may use market survey/public index data from available sources to justify submitted rates. However, Offerors utilizing such data shall submit the following in addition: a clear mapping between proposed labor category wage rates and wage rates listed in the databases, a clear mapping between labor category titles proposed to labor category titles in the market survey, narrative justification for specific percentile range chosen for the proposed wage rates, and narrative justification for how the percentile ranges chosen from open market data are adequate for unique government requirements.

RFP, Amend. 2 at 113-14. The offerors were required to submit cost information for the prime offeror, and any major subcontractor (one that would perform more than 10 percent of the total effort). Id. at 109.

Twelve offerors responded to the solicitation and seven, including MCR and Odyssey, were found technically acceptable. COS at 12. MCR proposed a cost/price of \$--[DELETED], while Odyssey proposed a cost/price of \$100,355,838. Proposal Analysis Report at 262.

The agency conducted a cost/price realism analysis, which resulted in a most probable cost of \$--[DELETED] for MCR's proposal, and \$107,395,793 for Odyssey's. Id. In this regard, MCR proposed two major subcontractors-- [DELETED]--and four minor subcontractors.⁴ COS at 15. MCR, the prime

⁴ The fully-burdened labor rates of minor subcontractors were included with the prime contractor rates and also evaluated for realism. One of MCR's minor subcontractors proposed, without an explanation, rates that the agency viewed as
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contractor, provided direct labor rates for 28 combinations of labor skill, location, and clearance level. COS at 16. The government found that for 24 of the combinations, MCR proposed rates below the most probable cost developed by the agency for those rates; it concluded that for 23 of the combinations, MCR did not provide adequate justification for its low rates. *Id.* at 19-61. Accordingly, the agency adjusted the proposed direct labor rates for these 23 categories to the government's most probable labor rates. The agency also adjusted the rates for 4 out of 8 labor categories proposed by MCR's major subcontractor, [DELETED], and for 8 of 9 labor categories proposed by MCR's major subcontractor, [DELETED], to the government's most probable cost rates. COS at 50. In all, the agency increased MCR's cost/price by \$--[DELETED].

Following the adjustment, Odyssey was the lowest cost/price, technically acceptable offeror and was issued the task order. This protest followed.

DISCUSSION

MCR argues that the agency failed to conduct the realism analysis contemplated by the solicitation. In this regard, MCR asserts that it described its basis of estimate as required by the solicitation, stating that its direct rates were based on an [DELETED]. MCR further asserts that it was unreasonable for the agency to find its proposed rates unrealistic, given that the solicitation states that offerors could rely on salary survey data.⁵

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Alion Sci. & Tech. Corp., B-410666, Jan. 22, 2015, 2015 CPD ¶ 91 at 7. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency. *Id.*; see Federal Acquisition Regulation (FAR) §§ 15.305(a)(1), 15.404-1(d)(1). An

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below the government's most probable cost; those rates were adjusted upward by \$ [DELETED]. COS at 16.

⁵ MCR also asserts that the agency should have held discussions given the difference between the agency's rates and those proposed by offerors under the solicitation. However, there is no obligation for an agency to conduct discussions where, as here, the solicitation specifically instructs offerors that award may be made on the basis of initial proposals. Mare Island Dry Dock, LLC, B-410821, Feb. 26, 2015, 2015 CPD ¶ 100 at 5; Warren Pumps, Inc., B-248145.2, Sept. 18, 1992, 92-2 CPD ¶ 187.

offeror's proposed costs should be adjusted, when appropriate, based on the results of the cost realism analysis. See FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary, and adequately documented. See Alion Sci. & Tech. Corp., supra.

The cost adjustment to MCR's proposal included an increase of \$ [DELETED] to the proposed costs for MCR's subcontractor, [DELETED]. This adjustment was comprised of upward adjustments to the proposed direct labor rates for eight labor categories. The agency raised the labor rates which were below its computed most probable cost labor rates because it determined that [DELETED] did not provide sufficient substantiating data to support the rates. MCR disagrees, arguing that, in fact, [DELETED] proposal substantiated its rates.

In its proposal, with respect to its offered rates, [DELETED] provided:

[DELETED]

[DELETED] Cost/Price Analysis at 7.

In contrast to [DELETED] general discussion of how it determined what direct rates to propose for its employees, the solicitation required specific information and substantiating data. That is, as noted above, the solicitation required that "[w]hen submitting cost/price data for justification of direct labor rates, offerors may use . . . historical data," which "includes . . . Historical payroll/pay stubs." RFP, Amend. 2 at 113-14. Where an offeror utilized historical data to substantiate its rates the offeror was required to make that data available as part of the proposal submission. Id. Despite this clear instruction to provide substantiating data for its proposed labor rates, [DELETED] failed to do so. Accordingly, we conclude that the agency reasonably adjusted the direct rates of [DELETED] to the government's most probable cost for those rates.

MCR also complains that in numerous other instances the agency upwardly adjusted its proposed direct rates for failure to substantiate them, when in fact it did substantiate them as required by the solicitation. However, when the \$ [DELETED] adjustment to MCR's proposed price/cost based on [DELETED] rates is added to MCR's proposed cost/price of \$ [DELETED], MCR's total evaluated cost/price becomes \$ [DELETED] which is higher than Odyssey's total evaluated price of \$107,395,793. Accordingly, given that the task order was to be issued on a lowest-priced, technically acceptable basis, even if MCR is correct that every other adjustment to its proposal was erroneous, MCR would not be in line for award and therefore would not be prejudiced. We therefore need not address MCR's other challenges to its price/cost evaluation since our Office will not sustain a protest absent a showing of competitive prejudice, i.e., where the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving

award. Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 11.⁶

The protest is denied.

Susan A. Poling
General Counsel

⁶ MCR also protests that the solicitation contained a latent ambiguity or that the government changed the requirements or used undisclosed evaluation criteria in performing the cost/price realism analysis. MCR bases this allegation on the fact that the agency adjusted the rates of 6 offerors that submitted technically acceptable proposals. MCR, however, has not pointed to anything that it believes was ambiguous and has not explained what criteria it believes was undisclosed, or what requirements were changed. Given that the only issue raised by this protest is the upward adjustment to proposed rates, that the solicitation clearly explained what was required in terms of proposed rates and supporting documentation, and how the agency planned to evaluate cost realism, we find no merit to this allegation.