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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Analytic Strategies

File: B-404840

Date: May 5, 2011

James R. Wimmer for the protester.
Janet N. Repka, Esq., and Marina M. Kozmycz, Esq., Department of Defense, for the agency.
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DIGEST

Agency's evaluation of the protester's proposed low price as posing performance risk was consistent with the terms of the solicitation and reasonably based where the solicitation sought specific cost and price information and provided for a price realism analysis, and the protester's labor rates were significantly below the agency's independent government estimate and the other offerors' proposed labor rates.

DECISION

Analytic Strategies, of Vienna, Virginia, protests the award of a contract to Defense Planning Corporation, also of Vienna, Virginia, under request for proposals (RFP) No. HQ0034-11-R-0008, issued by the Department of Defense, for analytical and information technology support services. Analytic Strategies protests that the agency's evaluation of its proposal and selection of Defense Planning for award were unreasonable.

We deny the protest.

The RFP, issued as a total small business set-aside, provided for the award of a fixed-price contract, with a base period of 1 year and four 1-year option periods. RFP at 38. The solicitation informed offerors that award would be made to the offeror submitting the proposal determined to represent the best value to the government based upon the following evaluation factors: technical approach, personnel, past performance, organizational capacity, management approach, and price. RFP at 68, 71. The RFP noted here that the evaluation factors were listed in descending order of importance, with the exception of the organizational capacity and management approach factors, which were equal in importance. RFP at 68. Offerors were further informed that the agency intended to evaluate proposals and award a contract without conducting discussions, and that the offerors' initial proposals should thus include the offerors' best terms from a price and technical standpoint. Id.

The agency received proposals from six offerors, including Defense Planning (the incumbent contractor) and Analytic Strategies. Agency Report (AR), Tab 5, Procurement Summary/Source Selection Memorandum, at 1. Defense Planning's proposal was evaluated as "high confidence" under the past performance factor, "excellent" under the technical approach, personnel, organizational capacity and management approach factors, and "excellent" overall, at a proposed price of $7,078,823. Id. at 2, 7. Analytic Strategies' proposal was evaluated as "confidence" under the past performance factor, "acceptable" under the technical approach, personnel, organizational capacity and management approach factors, and "acceptable" overall, at a proposed price of $4,616,475 Id.

The contracting officer noted in the source selection decision that Analytic Strategies' "low price was the result of very low labor rates which were determined to be unrealistic for the approach proposed." AR, Tab 5, Procurement Summary/Source Selection Memorandum, at 11. The contracting officer added that the low labor rates "present[] a significant risk to the Government that there could be a relatively high turnover rate among the assigned staff due to low salaries, potentially resulting in less than satisfactory performance," and concluded that "[t]his prevents [Analytic Strategies'] proposal from being the best value to the Government." Id. The agency ultimately selected Defense Planning's proposal for award, and after requesting and receiving a debriefing, this protest followed.

Analytic Strategies argues that the solicitation did not provide for a price realism evaluation, and that the agency's evaluation of the protester's proposed price for realism was thus inconsistent with the solicitation's terms. The protester also argues that, in any event, its proposed price was realistic, and the agency's determination to the contrary was unreasonable.

Before awarding a fixed-price contract, an agency is required to determine whether the price offered is fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making this determination in a fixed-price environment is primarily whether the offered prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. An agency may, in its discretion, provide for a price realism analysis for the purpose of assessing whether an offeror's price is so low as to evince a lack of understanding of the contract requirements or for assessing risk inherent in an offeror's approach. METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 6. However, offerors competing for award of a fixed-price contract must be given reasonable notice that a business decision to submit a low-priced proposal will be considered as reflecting on their understanding or risk associated with their proposal. Milani Constr. LLC, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 5-6; CSE Constr., B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 4-5. Where a solicitation for a fixed-price contract omits a provision for realism but requests detailed cost or pricing information, we have found that an agency may properly consider whether an unreasonably low price poses proposal risk if the solicitation, in either the technical or price factors, provides for the evaluation of an offeror's understanding of the requirements. See METAG Insaat Ticaret A.S., supra; SEEMA, Inc., B-277988, Dec. 18, 1997, 98-1 CPD ¶ 12 at 5. Conversely, where the solicitation lacks either a technical or price evaluation factor that provides for the offerors' understanding of the requirements, and the solicitation also does not require detailed cost or pricing information, then the agency may not consider whether unreasonably low prices pose proposal risk. Milani Constr., Inc., supra.; CSE Constr., supra.

The RFP's price proposal preparation instructions provided in relevant part as follows:

> For each proposed labor category, the offeror shall indicate the unit price (hourly rate) for labor being proposed. The price proposal shall be based on the direct labor rates and shall address all other direct costs related to the work being proposed, broken out by cost element. . . . The price proposal shall identify all labor categories, the number of hours for each labor category, and any materials or supplies to be used in performing the requirement. . . . The offeror should clearly identify in the proposal the overhead and [general and administrative] rate, if applicable, to the travel costs and [other direct costs] under the time and material [contract line item numbers].

RFP at 67. With regard to the evaluation of proposals under the price factor, the solicitation provided as follows:

> Proposed costs for the contract will be evaluated to determine whether they are reasonable for the conduct of the proposed contract, reflect a clear understanding of the requirements, and are consistent with the methods of performance described in the offeror's quotation. The overall evaluated price based on the proposal for the contract will be used to develop the relative price rankings of the proposals.

RFP at 69.

Thus, the RFP required that price proposals include price information as well as considerable direct and indirect cost information. The solicitation also provided that the proposals would be evaluated under the price factor for understanding and consistency with the offeror's proposed approach to contract performance. Accordingly, the RFP provided adequate notice to the offerors that low prices could be considered as reflecting on their understanding or risk associated with their proposals. See METAG Insaat Ticaret A.S., supra.

In evaluating price proposals, the agency analyzed "the proposed labor mix and skill associated with the provided labor rates and fixed unit prices . . . to determine if the prices proposed" were "reasonable and realistic for the type of work proposed." AR, Tab 5, Procurement Summary/Source Selection Memorandum, at 5. In doing so, the agency calculated a blended labor rate for each offeror, and compared each offeror's blended labor rate to the blended rates of the other offerors and the agency's independent government cost estimate (IGCE). Id. at 6-7. The record reflects that the blended labor rates of all of the offerors, other than Analytic Strategies, were relatively close to each other and to the IGCE. Analytic Strategies' proposed blended labor rate was significantly less than those proposed by the other offerors and the IGCE. As noted previously, the agency determined that Analytic Strategies' low labor rates "present[] a significant risk to the Government that there could be a relatively high turnover rate among the assigned staff due to low salaries," and concluded that "[t]his prevents their proposal from being the best value to the Government." Id. at 11.

Although Analytic Strategies disagrees with the agency's conclusion and asserts that its personnel will be able to perform the contract at the rates proposed, the fact remains that, as found by the agency, Analytic Strategies' labor rates were significantly lower than the IGCE, as well as the labor rates proposed by all of the remaining offerors. Based on our review, we cannot find the agency's evaluation to be unreasonable.

The protester argues that certain other aspects of the agency's evaluation were not reasonably based, and that the record evidences bias against Analytic Strategies. We have considered these remaining contentions regarding the agency's evaluation, and find them to be insignificant in view of our other findings, or without merit based upon the record as a whole. In this regard, the record reflects that the agency did not select Analytic Strategies' proposal for award because of the performance risk posed by its low pricing, a determination which we have addressed above and found to be reasonably based. With regard to the protester's assertion that the record evidences bias against Analytic Strategies, we note that Government officials are presumed to act in good faith and a protester's claim that contracting officials are motivated by bias or bad faith must be supported by convincing proof. Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Brian X. Scott, B-310970; B-310970.2, Mar. 26, 2008, 2008 CPD ¶ 59 at 4. The protester has not provided such convincing proof, and we disagree with the protester's assertion that the record here evidences bias.

The protest is denied.

Lynn H. Gibson
General Counsel