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United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: American Roofing & Metal Company, Inc.

File: B-406117.2

Date: June 6, 2012

David F. Barton, Esq., and Elizabeth H. Connally, Esq., Gardner Law, for the protester.
Lt. Col. Patrick L. Vergona, Department of the Army, for the agency.
Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency's rejection of the protester's low-priced proposal as unbalanced was reasonable, where the agency found the offer contained significantly overstated and understated line item prices and represented an unacceptable risk to the government.

DECISION

American Roofing & Metal Company, Inc., of San Antonio, Texas, protests the award of a contract to L.D. Tebben Company, Inc., of Austin, Texas, under request for proposals (RFP) No. W911RX-11-R-0003, issued by the Department of the Army, Mission & Installation Contracting Command, for roof repair and replacement services at Fort Riley, Kansas.

We deny the protest.

BACKGROUND

In October, 2010, American Roofing was awarded a $13 million indefinite-delivery/indefinite-quantity (ID/IQ) contract for roof repair and replacement services at Fort Riley, Kansas. Protest, B-406117, at 6. The Army states that, after award, it became apparent that some of the contract's line-item prices were 33-65 percent higher than the prices submitted for these services by the next low offeror, and were 68-78 percent higher than the independent government estimate (IGE) for these services. See Protest, B-406117.2, Tab F, Agency-Level Protest Decision, at 1-2. The Army concluded that, because it was ordering more of these particular services than it had expected, the agency would be paying significantly more under this contract than was anticipated. The Army asked American Roofing to renegotiate these line-item prices. American Roofing refused to renegotiate its prices, and the Army terminated the contract for the convenience of the government. Id. at 2.

On June 6, 2011, the Army issued this RFP for the award of a fixed-unit-price, ID/IQ contract for roof repair and replacement services at Fort Riley for a base year and 3 option years. Offerors were informed that award would be made on a lowest-priced, technically acceptable basis and that technical/price tradeoffs would not be considered in making the selection decision. RFP at 80. The RFP listed three evaluation factors: mission capability, performance risk, and price. With respect to price, the solicitation stated that price would be assessed for reasonableness and evaluated based on the offeror's total price for all line items, using price analysis techniques set forth in the Federal Acquisition Regulation (FAR) Part 15.404-1.

Five firms, including American Roofing and Tebben, submitted offers, which were evaluated by the agency's source selection evaluation board (SSEB). A competitive range was established that included all offers. Written discussions were conducted, and revised proposals received and evaluated. The Army concluded that only American Roofing's and Tebben's proposal remained in the competitive range. Agency Report (AR) at 3.

The agency's cost/price analyst evaluated the protester's and awardee's proposed prices. Tebben proposed a total price of $23,659,624 and American Roofing proposed $18,928,453. The independent government estimate (IGE) for this procurement was $13,452,722.[1] AR, Tab 10, Price Negotiation Memorandum, at 3. The agency evaluated the firms' contract line item (CLIN) pricing, identifying instances where an offeror's CLIN pricing was 50 percent less than, or more than 150 percent greater than the IGE's CLIN price estimate. AR at 3. Of the RFP's 276 CLINs, the Army identified 122 CLINs where American Roofing's pricing was either 50 percent below the associated IGE's pricing, or was 150 percent above. The agency identified 58 CLINs where the awardee's proposed pricing was either 50

[1] The Army did not consider the firms' total prices to be either extraordinarily high or low compared to the IGE.

percent below or 150 percent above the IGE's pricing. The distribution of the firms' CLIN prices that significantly differed from the IGE is as follows:

		Tebben	American Roofing
50% below		13	58
150% above		45	64
	150 - 349%	44	46
	350 - 549%	0	10
	550 - 999%	1	7
	1,000% or greater	0	1

AR, Tab 10, Price Negotiation Memorandum, at 4.

The agency conducted price discussions with Tebben and American Roofing, during which the agency provided the firms with the opportunity to address CLIN prices that the agency viewed as posing the highest degree of risk (that is, CLIN prices that were 50 percent below or 150 percent above the IGE's pricing). In this regard, the firms were provided with a list of the CLIN prices that the agency considered unbalanced in their respective proposals. Id. at 5.

In response to discussions, Tebben reduced its overall price from $23,659,624 to $19,938,286. The agency found that Tebben had also revised its CLIN pricing such that its pricing for only two CLINs was found to be outside the acceptable range, or unbalanced. With respect to these two CLINs, the Army found that Tebben provided explanations from which the agency concluded that the remaining price risk was acceptable. Id. at 17.

In contrast, American Roofing slightly increased its overall price from $18,928,453 to $18,990,218. The Army found, however, that American Roofing still had 80 CLIN prices that the agency considered unbalanced. With respect to these 80 CLINS, the agency found that American Roofing had provided acceptable explanations for its pricing of 30 CLINs.[2] The agency found that American Roofing's revised pricing for

[2] American Roofing's explanations for these 30 CLINs included, for example, that for some CLINs the estimated quantities were too small for economies of scale to allow a reduction in price; or that certain materials were dangerous and associated additional safety measures increased the cost; or that the price for a particular material was volatile and difficult to predict. The agency did not accept the protester's explanation where, for example, the "economies of scale" argument overlooked that the industry practice was to perform that CLIN in conjunction with other work; or, if the price was several times the IGE price, the agency found that it
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50 CLINs was unbalanced and posed a significant risk to the government. Id. at 17,18.

The distribution of the firms' revised CLIN prices that significantly differed from the IGE is as follows:

		Tebben	American Roofing
50% below		1(validated)	33 (24 validated)
150% above		1(validated)	47 (6 validated)
	150 - 349%	1 (validated)	32 (6 validated)
	350 - 549%	0	7
	550 - 999%	0	7
	1,000% or greater	0	1

Id. at 5.

The SSEB recommended that American Roofing's proposal be rejected as posing an unacceptable risk and that award be made to Tebben. Id. at 18. The source selection authority agreed. Award was made to Tebben as the lowest-priced, technically acceptable offeror. AR, Tab 11, Source Selection Decision, at 7.

Following a debriefing, American Roofing filed an agency-level protest, challenging various aspects of the agency's evaluation and award decision. The Army denied the agency-level protest, and American Roofing protested to our Office. After filing its report in response to the protest, the Army decided to take corrective action by reevaluating the firms' price proposals and reassessing any risk posed by the firms' unbalanced CLIN pricing. We dismissed the protest as academic.

The Army reevaluated Tebben's and American Roofing's price proposals and analyzed them for risk in accordance with FAR § 15.404-1.[3] AR at 5; AR, Tab 18,

(...continued)
was not warranted or justified by the protester's assertions. See AR, Tab 13, Evaluation of American Roofing Discussion Responses.

[3] FAR § 15.404-1(g) provides in pertinent part:

> (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis

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Price Analysis. In performing its price analysis, the Army created a number of detailed spreadsheets showing, among other things, the offerors' prices, market prices, and IGE prices for each of the CLINs. See AR, Tab 15, Market Price Analysis; Tab 16, Delivery Order Analysis. The Army also prepared an abstract of the Price Analysis Spreadsheet, showing samples of CLINs where American Roofing's prices were significantly higher than the mean IGE price. In this regard, the record shows that the protester's final prices for 19 CLINs were three to ten times that of the IGE. See AR, Tab 19, Addendum to Source Selection Decision, at 3. For example, under CLIN 0029 (installation or replacement of a type of roof insulation board), the agency found that American Roofing's proposed unit price of $925 was 1053 percent of the IGE of $87.82 for this CLIN. American Roofing's unit price for this CLIN was also much more than the other offerors' unit prices, which ranged from $50-$110 and more than its own 2010 price of $30.[4] AR, Tab 15,

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> techniques. The greatest risks associated with unbalanced pricing occur when—
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> (iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.
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> (2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—
>
> (i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and
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> (ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.
>
> (3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

[4] In its revised comments, American Roofing noted for this CLIN (and several other similar CLINs) that the material's price was "extremely volatile and difficult to predict," and that it was also bulky and required a large labor force and equipment. AR, Tab 13, Evaluation of American Roofing Discussion Responses, at 3. The Army rejected this, noting that the price was not warranted.

Market Price Analysis, at 1. As another example, under CLIN 0030 (installation or replacement of another type of insulation board), American Roofing's unit price of $935 was much greater than the IGE of $127.82, and its own 2010 price of $45. Id.

The Army also conducted a number of other price analyses to consider the impact of the firms' pricing. The agency analyzed how the firms' final revised unit prices for the base period compared to actual delivery orders that were issued by Fort Riley between 2006 and 2010 for similar roof repair services. See AR, Tab 18, Price Analysis, at 5-7; Tab 19, Addendum to the Source Selection Decision, at 1. This analysis showed that the past delivery orders, if placed under American Roofing's current proposed prices, would have cost the government over $1.1 million more than if ordered under Tebben's proposed prices. The agency also considered the differences in the firms' pricing approaches, noting, for example, that while American Roofing's prices were lower for shingled roofs, their prices for line items associated with modified bitumen roofs were much higher. In this context, the Army analyzed the types of roofs used at Fort Riley, in terms of the number (or percentage) of roofs by material or type, and the square footage, in order to analyze what the actual requirements were likely to include and thereby further assess risk. From this analysis, the agency concluded that the protester's "significantly unbalanced pricing for Modified Bitumen materials would cost the Government over $1M." AR, Tab 19, Addendum to Source Selection Decision, at 5.

Finally, the agency also assessed whether the firms' CLIN prices would present a significant price risk in the future, by applying the average price per type of roof to three different hypothetical ordering scenarios. The scenarios represented differing ordering levels (i.e., amount spent per year), and amount and types of roofs (e.g., shingled asphalt, modified bitumen, etc.). In each scenario, American Roofing's overall price was found to be more than Tebben's. See id. The agency concluded that this resulted from American Roofing's higher prices associated with modified bitumen roofs, and the fact that 61 percent of the roofs are this type, and are therefore likely to require a proportionally high percentage of the repairs.

The Army concluded that American Roofing's unbalanced prices would cause the Army to assume an unacceptable degree of risk that it would pay unreasonably high prices for these services. AR at 6. The Army affirmed its decision to reject American Roofing's offer and to make award to Tebben. AR, Tab 19, Addendum to the Source Selection Decision, at 7. This protest followed.

DISCUSSION

American Roofing raises numerous arguments objecting to the agency's rejection of its low-priced proposal as unbalanced and risky. The protester complains that the agency accepted Trebben's explanations with respect to its unbalanced prices and not American Roofing's.

FAR § 15.404-1(g)(1) provides that unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated, as indicated by the application of cost or price analysis techniques. While unbalanced pricing may increase risk to the government, agencies are not required to reject an offer solely because it is unbalanced. W.B. Constr. And Sons, Inc., B-405818, B-405818.2, Jan. 4, 2012, 2012 CPD ¶ 17, at 6. Rather, where the contracting officer receives an unbalanced bid or offer, the contracting officer is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, and whether a contract will result in unreasonably high prices for contract performance. FAR § 15.404-1(g)(2). An offer properly may be rejected if the contracting officer determines that the lack of balance in the bid or offer poses an unacceptable risk to the government. FAR § 15.404-1(g)(3); L. W. Matteson, Inc., B-290224, May 28, 2002, 2002 CPD ¶ 89 at 3. Our Office will review for reasonableness both an agency's determination as to whether an offeror's prices are unbalanced, and an agency's determination as to whether an offeror's unbalanced prices pose an unacceptable risk to the government. Semont Travel, Inc., B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3; L. W. Matteson, Inc., supra, at 4; Enco Dredging, B-284107, Feb. 22, 2000, 2000 CPD ¶ 44 at 6.

Here, American Roofing has provided no basis to question the Army's determination that American Roofing's offer was unbalanced, given that there were many unit prices in the protester's offer that were outside the IGE range and the significant amount by which many of the protester's prices exceeded that range. While American Roofing insists that its prices are neither overstated nor understated, its disagreement in this regard does not show that the agency's judgment was unreasonable.[5] Moreover, although American Roofing argues that its prices reflect "current market conditions for highly price volatile petroleum based, metal and wood products and the required quantities as stated in the Solicitation," Comments at 4, as noted by the agency, the protester has not provided any online market research, historical data from its own experience or other technical expert validation available

[5] Contrary to American Roofing's contention that the record does not provide a reasonable basis for the IGE, see Comments at 2, the agency's report describes the price/cost analyst's methodology for preparing the IGE, including the price/cost analyst use of historical pricing data and sources-sought market research. See Contracting Officer's Statement at 11.

to substantiate that its price is fair and reasonable. AR, Tab 18, Price Analysis, at 9. The protester neither produced such evidence when its prices were challenged during discussions, nor has it done so in its protest. We therefore conclude that the agency's determination that American Roofing's prices were unbalanced was reasonable.

As noted above, an agency is not required to reject an offer solely because it is unbalanced, but is required to consider the risks to the government associated with the unbalanced pricing. See FAR § 15.404–1(g). Here, the record shows that the Army reasonably considered the risks posed by American Roofing's unbalanced prices. The Army analyzed the protester's unbalanced pricing for risk in a variety of ways and found that American Roofing's prices, although apparently low in the aggregate, would likely result in the government paying significantly higher prices under a contract with American Roofing. In this regard, the agency concluded that American Roofing's total price for line items associated with modified bitumen roofing work, the most prevalent type of roofing anticipated under this requirement, was significantly higher than any of the other offerors'. Contracting Officer's Statement at 14.

The Army also considered the accuracy of its estimates in considering the impact of American Roofing's unbalancing. In this regard, the agency states that, although it prepared its estimate in good faith using historical experience, the Army was also cognizant that such things as differing site conditions, availability of funding, and acts of nature can cause the quantities to fluctuate, and asserts that because of these factors, there is higher risk associated with unbalanced line item prices.[6] In support of this argument, it notes that the inherent risk associated with fluctuating quantities and individual line item pricing is evident from the fact that 30 percent of the quantity estimates in the previous contract were proven inaccurate by 50 percent or more. AR at 6. The FAR cautions in this regard that the "greatest risks associated with unbalanced pricing occur when . . . [t]he evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract." See FAR § 15.404-1(g)(1)(iii).

We have considered all of the protester's numerous arguments, although we only address the most significant ones, and find that the agency reasonably determined

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[6] We have noted that in the context of an ID/IQ contract, as here, a key consideration is the accuracy of the government's quantity estimates; if the estimates are reasonably accurate, then evidence of unbalancing generally is less likely to present a risk that the government will pay unreasonably high prices for contract performance. See Accumark, Inc., B-310814, Feb. 13, 2008, 2008 CPD ¶ 68 at 4.

that American Roofing's proposal presented unbalanced pricing that posed a significant risk to the agency.[7]

The protest is denied.

Lynn H. Gibson
General Counsel

[7] The protester also argues that the agency treated the firms disparately where the agency accepted Tebben's explanation for the 2 CLINs that were found unbalanced but rejected the protester's explanations for 50 CLINs that the agency determined were unbalanced. There is no merit to this argument. As described above, the firms were not similarly situated, given that Tebben only had 2 CLINS that were outside the IGE price range and American Roofing had 80 CLINs. Rather than demonstrating disparate treatment, the record shows that the agency considered each firm's explanations with respect to its unbalanced pricing.