



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Graybar
File: B-411229.2
Date: June 22, 2015

Ron Drescher, for the protester.
William L. Walsh, Jr., Esq., and Christina K. Scopin, Esq., Venable, LLP, for
Science Applications International Corporation, the intervenor.
Nicole M. Franchetti, Esq., Defense Logistics Agency, for the agency.
Stephanie B. Magnell, Esq., and Jonathan L. Kang, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where there is no evidence that the agency acted in bad faith, the agency did not err in its price evaluation, and the agency's evaluation of the awardee's past performance was reasonable.

DECISION

Graybar, of Lanham, Maryland, protests award by the Defense Logistics Agency (DLA) of a supply services contract to Science Applications International Corporation (SAIC), of McLean, Virginia, under request for proposals (RFP) No. SPM8E3-14-R-0004. Graybar contends that DLA evaluated its proposal in bad faith, erred in its evaluation of items from the price evaluation list (PEL), and improperly evaluated SAIC's past performance.¹ Protest at 1-3.

¹ Graybar was not represented by counsel in this protest. Accordingly, our Office did not issue a protective order, and Graybar was provided a redacted version of the agency report. In resolving the protest, we reviewed unredacted copies of all evaluation and source selection documents *in camera*, and we have based our decision on the full record. As much of the information reviewed by our Office is source selection sensitive and proprietary in nature, our discussion of the evaluation is necessarily limited. Additionally, although we do not address every argument raised by the protester, we have reviewed each issue and find that none provides a basis to sustain the protest.

We deny the protest.

BACKGROUND

On October 10, 2013, DLA issued the RFP, which anticipates the award of two 5-year, indefinite-delivery/indefinite quantity (ID/IQ) contracts for maintenance, repair, and operations (MRO) supply items and related services, to be performed in DLA's southwest region. The two anticipated contracts will cover different geographic areas within DLA's southwest region, which have been termed zone 1 and zone 2. RFP at 7. The solicitation permitted offerors to submit proposals for one or both zones, although the offerors were precluded from receiving the contracts for both zones, in order to ensure the presence of multiple MRO supply sources within DLA's southwest region. Id. at 8. The solicitation anticipated the issuance of fixed-price orders. This protest concerns the award for zone 2.

Eight offerors submitted proposals for each of the zone 1 and zone 2 contracts by the closing date of December 19, 2013. Agency Report (AR), Tab 6, RFP, Amend. 0005; Tab 13, Source Selection Decision Document (SSDD) (Feb. 5, 2015), at 1. Five offerors, including Graybar and SAIC, were included in the competitive range for each zone. Tab 13, Source Selection Decision Document (SSDD) (Feb. 5, 2015), at 1.

The RFP explained that the non-price evaluation included two factors: (1) past performance-confidence assessment (factor I), and (2) technical evaluation (factor II). RFP at 71. The past performance-confidence assessment was more important than the technical evaluation. Id. No subfactors were identified under the past performance evaluation factor, but offerors were informed that the agency would assess both the relevance and quality of an offeror's past performance. RFP at 71. The solicitation stated that award would be made using a best value tradeoff, with non-price evaluation factors being significantly more important than price. Id. As offerors' non-price ratings became more equal, price increased in importance. Id.

As relevant here, the solicitation stated that the agency would "consider the degree to which the offeror met the terms of delivery, quality standards, **socio-economic/subcontracting** goals. . . ." AR, Tab 8, RFP, Amend. 0007, at 2 (emphasis in original). The agency's source selection plan, i.e., its internal evaluation guidance, provided that, within the past performance factor, a performance rating of outstanding would be awarded if, inter alia, "the offeror exceeded their subcontracting goals," while a performance rating of good would be awarded if "the offeror has met or exceeded their subcontracting goals and/or worked with the Contracting Officer/small business representatives and made a good faith effort to meet the goals." AR, Tab 11, Source Selection Plan, at 11.

The solicitation also required offerors to “submit a firm fixed Acquisition Ceiling Price expressed as a per unit dollar amount **for a minimum of 90% of the items in the PEL** for each pricing period.” RFP at 67 (emphasis in original).

As relevant here, in relation to the agency’s price evaluation, the solicitation required offerors to submit their prices for a minimum of 90 percent of the items on the agency’s PEL. The solicitation provided that the agency would evaluate price proposals for each zone based on the items in common to all offerors, as follows:

I. Each proposal will be reviewed to determine if alternate items are acceptable and if Acquisition Ceiling Prices were submitted for a **minimum of 90% of the line items in the PEL** or Acceptable Alternates. For Zone 1, proposals will also be reviewed to determine if Acquisition Ceiling Prices were submitted for all Navy Public Works Storefront line items highlighted in yellow, as part of **the required minimum of 90% of items to be priced**. An offeror that does not meet the **90% minimum** of acceptable quoted PEL items may have its proposal rejected.

* * * * *

VI. The Total Evaluated Price for each Zone is based on the following formula: **Overall Aggregate Acquisition Ceiling Price of Commonly offered PEL Line Items and Acceptable Alternates** + Overall Aggregate Distribution Ceiling Price (Distribution Matrix) + Total Acquisition Price for the Incidental Service + Overall Aggregate Burdened Wage Rate = Total Evaluated Price.

Common Line items are line items on the PEL where all offerors submitted an Acquisition Ceiling Price for the PEL Line Item or Acceptable Alternate. An Aggregate Acquisition Ceiling Price of Commonly Offered PEL Line Items and Acceptable Alternates will be determined by multiplying the offerors’ Acquisition Ceiling Price by the estimated annual quantity for each commonly offered line item and adding the totals for all commonly offered line items in the PEL for each applicable pricing period. An Overall Aggregate Acquisition Ceiling Price of Commonly offered PEL Line Items and Acceptable Alternates will be determined by adding the Aggregate Acquisition Ceiling Price of Commonly offered Items from Pricing Period 1, the Aggregate Acquisition Ceiling Price of Commonly Offered Items from Pricing Period 2, and the Aggregate Acquisition Ceiling Price of Commonly Offered Items for Pricing Period 3.

RFP at 75, 76 (emphasis added).

On November 4, the agency finalized the pre-negotiation briefing memorandum. AR, Tab 10, Pre-Negotiation Briefing Memorandum (Nov. 4, 2014), at 93. On January 15, 2015, the Source Selection Evaluation Board (SSEB) completed its non-price evaluation. AR, Tab 12, SSEB Report (Jan. 15, 2015). On February 2, 2015, the agency finalized the Price Negotiation Memorandum.

On February 5, the SSA finalized the source selection decision document. The SSA directed award of the zone 2 contract to SAIC. AR, Tab 13, SSDD, at 49-50. Within the agency's final non-price evaluation for zone 2, SAIC was the highest-ranked offeror, and Graybar was the lowest-ranked offeror. Id. at 43. Specifically, under the past performance-confidence assessment, SAIC received a rating of substantial confidence, and Graybar received a rating of satisfactory confidence. Id. Under the technical merit evaluation factor, SAIC received a rating of outstanding, while Graybar received a rating of good. Id. SAIC's final total evaluated price was \$21,068,623.37, and Graybar's was \$24,094,181.23. There were two other technically acceptable offerors between SAIC and Graybar; these intervening offerors were more highly rated on the non-price evaluation factors than Graybar and had lower total evaluated prices than Graybar.² Id.

On February 19, the agency awarded the zone 1 and zone 2 contracts. AR at 11. On March 3, the agency provided Graybar with written post-award debriefings in accordance with Federal Acquisition Regulation (FAR) § 15.506(e). AR, Tab 14, Debriefing (Mar. 3, 2015). This protest followed.

DISCUSSION

Graybar first argues that DLA did not seriously intend to consider its proposal. Protest at 1. The protester bases this allegation on emails sent prior to contract award that discuss procedures to follow if Graybar, the incumbent contractor providing these services in zone 2, is not successful in the competition. Id. Graybar also claims that the agency's price evaluation was flawed and inconsistent with the RFP because, the protester contends, its PEL items were not properly evaluated. Id. at 2. Finally, the protester maintains that the agency's evaluation of SAIC's past performance was not reasonable, given the awardee's failure to meet the RFP's socio-economic and/or subcontracting goals. Id. at 2-3.

Allegations of Bias

In alleging that the agency did not intend to seriously consider its proposal, the protester, in essence, alleges that agency employees were biased against it. Graybar rests its allegation on emails in which, according to Graybar, DLA

² Because one offeror had been awarded the zone 1 contract, in accordance with the solicitation it was eliminated from consideration in the zone 2 competition.

employees addressed issues--before the award decision was made--that might arise if Graybar was unsuccessful in the competition. Protest at 1-2.

As a general matter, government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by clear and convincing evidence. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Global Integrated Sec. (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375. See also Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 28-29. Not only has the protester made no such showing, but our review of the record has found no evidence of bias on the part of the agency against Graybar or in favor of SAIC.

Here, there is no dispute that certain emails between employees of the Department of the Navy and DLA³ prior to the award decision discuss the possibility of Graybar's departure as the zone 2 contractor. See generally, AR, Tab 17a, Agency email; Tab 17b, Agency email; Tab 17c, Agency email. For example, in October 2014, a DLA customer account specialist wrote to a DLA contracting officer, noting that he had "[h]ad a discussion with [a Navy employee] regarding the MRO contract closeout," and asking "how long will Graybar get to move material out of the Shop Stores once the new award is in place?" AR, Tab 17c, Agency email (Oct. 3, 2014) at 2-3. Yet a later email from the same DLA contracting officer to the DLA customer account specialist clearly shows that award to Graybar remained a possibility: "[i]f Graybar does not get follow up award . . ." AR, Tab 17a, Agency email (Oct. 23, 2014), at 3. Further, there are other emails that consider the possibility of Graybar's award. Specifically, the DLA customer account specialist stated that, after the expiration of the extension, "orders will be placed with the new vendor . . . or with Graybar again if they are the awardee." AR, Tab 17b, Agency email (Oct. 31, 2014), at 1. As a result, we disagree with the protester's contention that emails in the record establish that the agency did not seriously consider the Graybar proposal.

Furthermore, Graybar has not cited to any evidence of bias in the evaluations themselves, nor has Graybar alleged bias on the part of the individual evaluators. Based on our review of the record, we do not find evidence of bias on the part of the agency.

³ The Department of the Navy is the customer in these DLA-administered contracts. RFP at 7.

PEL Analysis

Next, Graybar claims that DLA's evaluation of the PEL items was in error. As discussed above, the price evaluation was to be performed on the items for which all offerors listed prices. During its debriefing, Graybar was advised that the agency ultimately excluded 188 items from the common basket of 500 items for offerors. The protester argues that the agency likely erred in its PEL analysis--and ultimately the calculation of offerors' evaluated prices--because the high number of excluded items suggests there was improbably low overlap between offerors. Protest at 2.

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 reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We conclude that the agency's evaluation here was consistent with the terms of the solicitation.

The solicitation allowed offerors to exclude 10 percent of the 500-item market basket. RFP at 67 ("Offerors shall submit a firm fixed Acquisition Ceiling Price expressed as a per unit dollar amount **for a minimum of 90% of the items in the PEL** for each pricing period") (emphasis in original). See also RFP at 75 ("Each proposal will be reviewed to determine . . . if Acquisition Ceiling Prices were submitted for a minimum of 90% of the line items in the PEL or Acceptable Alternates"). As a result, the solicitation required offerors to quote a minimum of 450 unique items, i.e., the solicitation permitted offerors to omit quotes for up to 50 items. Thus, eight offerors could have excluded up to 400 items, presuming there was no overlap in excluded items.

The record shows that for the zone 2 procurement, a total of 153 items were excluded from the initial price evaluation. AR, Tab 9, Price Negotiation Memorandum, at 7. Between the initial evaluation and final proposals, offerors in the competitive range excluded an additional 33 items. AR, Tab 18, PEL Analysis Spreadsheet, worksheets 4, 5, 6. As a result, a total of 188 items were excluded from the final price evaluation. AR, Tab 9, Price Negotiation Memorandum, at 7. See also AR, Tab 18, PEL Analysis Spreadsheet, worksheet 6. Our review of the record shows that the agency performed its analysis of item pricing in the manner it identified in the solicitation. As a result, we have no basis to find that the agency erred in excluding these items from its price evaluation. To the extent that Graybar now argues that DLA should have used a different price evaluation in the solicitation, this issue should have been raised prior to the date set for receipt of proposals; at this point the issue is untimely. 4 C.F.R. § 21.2(a)(1).

SAIC's Past Performance Rating

Finally, Graybar challenges DLA's award of a rating of substantial confidence to SAIC for its past performance, on the basis that "SAIC has failed to meet it[s] socio-economic and/or subcontracting goals under four of the five contracts it submitted for evaluation." Protest at 3.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion that we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Dalma Tech² Co., B-411015, Apr. 22, 2015, 2015 CPD ¶ 135 at 7. Green Earthworks Constr., Inc., B-410724, B-410724.2, Feb. 2, 2015, 2015 CPD ¶ 68 at 4. Agencies are required to evaluate offers in accordance with the solicitation's stated requirements. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 38.

As to past performance, the solicitation stated that the agency would "consider the degree to which the offeror met the terms of delivery, quality standards, **socio-economic/subcontracting** goals. . . ." AR, Tab 8, RFP, Amend. 0007, at 2 (emphasis in original). The source selection plan provided that, within the past performance factor, a performance rating of outstanding would be awarded if, inter alia, "the offeror exceeded their subcontracting goals," while a performance rating of good would be awarded if "the offeror has met or exceeded their subcontracting goals and/or worked with the Contracting Officer/small business representatives and made a good faith effort to meet the goals." AR, Tab 11, Source Selection Plan, at 11.

Even if we were to agree with Graybar that the agency erred in the adjectival rating assigned to SAIC's past performance, we would not find any prejudice to Graybar. In this regard, 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. Here, Graybar had the lowest technical ratings of the offerors in the competitive range for Zone 2. AR, Tab 13, SSDD, at 25. Furthermore, Graybar's final evaluated price was the highest of the offerors in the competitive range, specifically, 14 percent higher than SAIC's. Id. Therefore, even if SAIC's past performance rating were equal to Graybar's, SAIC would still have a higher technical rating and a substantially lower price than Graybar, and thus, according to the agency's stated best-value tradeoff method, Graybar would not be awarded the contract. Moreover, there were two offerors

(Offeror 4 and Offeror 5) ahead of Graybar, even if SAIC were excluded from the competition. Id. at 43. On this record, we find no possible prejudice to the protester.

The protest is denied.

Susan A. Poling
General Counsel