



Decision

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Matter of: PAE Applied Technologies, LLC

File: B-414624

Date: June 12, 2017

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Christopher S. Cole, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force, for the agency.

Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's failure to conduct a price realism assessment is dismissed where the solicitation did not provide for such an assessment.
 2. Protest challenging agency's analysis of unbalanced pricing is dismissed where the protester does not sufficiently allege prejudice from the agency's actions.
 3. Post-award protest challenging evaluation scheme employed by agency is dismissed as untimely where the evaluation scheme was disclosed in the solicitation.
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DECISION

PAE Applied Technologies, LLC, of Fort Worth, Texas, protests the award of a contract to Vectrus Systems Corporation, of Colorado Springs, Colorado, under request for proposals (RFP) No. FA3002-16-R-0002, issued by the Department of the Air Force for base operations support services at Keesler Air Force Base (AFB). PAE challenges the agency's price evaluation and argues that the agency conducted inadequate discussions.

We dismiss the protest.

BACKGROUND

The Air Force issued the RFP on August 29, 2016, seeking base operations support services at Keesler AFB in Biloxi, Mississippi. The solicitation envisioned issuing a contract with a 45-day mobilization period, a 1-year base period, four 1-year option periods, and two 1-year incentive option periods. The RFP contained 47 fixed-price contract line item numbers (CLINs) and four cost-reimbursable CLINs covering various base operations support services.

The solicitation advised offerors that the agency would award the contract “to the proposal with the lowest evaluated price from among those proposals evaluated to be acceptable.” RFP at 71. The RFP stated that the technical evaluation team would evaluate the technical proposal of the lowest-priced offeror, and, “if needed thereafter, the technical proposal(s) of higher priced offerors, in order of price rank, assigning a rating of Acceptable or Unacceptable.” Id. at 73.

The solicitation instructed offerors not to provide a price for the four cost-reimbursable CLINs, which the agency had identified with not-to-exceed values. Id. at 61. The solicitation stated that price would be evaluated for reasonableness and balance, and that offerors whose total evaluated price was unreasonable or unbalanced may not be considered for award. Id. at 73.

The RFP stated that an offeror’s total evaluated price would be used for award decision purposes and explained that it would be calculated as follows:

The [total evaluated price] will be calculated as the total sum of the unit price times the quantities from inputs taken from the Excel spreadsheet titled “KAFB BOS Pricing Proposal Worksheet Section B” located at Section J, Attachment 19 (Price Proposal Spreadsheet - (Section B)), of CLINs X001 - X047 for the base period and all option periods, to include Mobilization CLIN 0001, but will not include not-to-exceed cost reimbursable CLINs X048 – X051.

Id. (emphasis omitted); see also id. at 61 (“The sum of all [firm-fixed-price] CLINs, for the Base Period and each Option Period, will form the offeror’s Total Evaluated Price.”).

PAE timely submitted a proposal in response to the solicitation. On April 11, 2017, the agency announced that award had been made to Vectrus in the amount of \$97,269,360. The agency rated PAE, whose total evaluated price of \$99,868,476 was the second lowest of all offerors, as technically acceptable.

This protest followed.

DISCUSSION

PAE argues that the agency performed an inadequate evaluation of unbalanced pricing and failed to evaluate the realism of offerors' pricing. The protester further argues that the agency failed to evaluate how offerors chose to allocate costs between the fixed-price CLINs and the cost-reimbursable CLINs. The protester also asserts that, in calculating each offeror's total evaluated price, the agency improperly ignored how offerors would mark up costs on the cost-reimbursable CLINs. Last, PAE argues that the agency failed to conduct meaningful discussions.

Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Cybermedia Techs., Inc., B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

PAE argues that the agency did not evaluate the technical risk posed by each offeror's pricing approach. In support of this argument, the protester asserts that because the RFP states that each offeror's "proposed prices shall be based on the offeror's technical approach" and because the RFP further calls for an assessment of the adequacy of each offeror's proposed staffing, the agency was required to conduct a price realism assessment.

Where there is no evaluation factor providing for consideration of price realism, a determination that an offeror's price is too low generally concerns the offeror's responsibility. PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 6. Accordingly, absent a solicitation provision expressly or implicitly providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 6-7. In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and where the RFP states that a proposal can be rejected for offering low prices. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 14.

Here, we conclude that the solicitation did not provide for a price realism analysis to be conducted or for an evaluation of technical risk based on offerors' pricing. In this regard, the RFP did not expressly advise offerors either (1) that the agency would evaluate proposals to determine the technical risks associated with low pricing, or (2) that the agency could reject proposals based on low pricing. Accordingly, we

conclude that the agency was neither required, nor permitted, to conduct such an evaluation.

PAE also argues that the agency failed to adequately assess whether pricing was unbalanced because the Air Force did not compare proposals to each other in conducting its price balancing determination. The protester asserts that “[w]ithout some benchmark outside the offeror’s own proposal, . . . the Agency had no basis whatsoever for determining whether Vectrus engaged in unbalanced pricing for CLINs addressing the same or similar work.” Protest at 18.

The solicitation here required the agency to analyze whether offerors’ prices were unbalanced as set forth in Federal Acquisition Regulation (FAR) § 15.404. RFP at 73. Unbalanced pricing exists where the prices of one or more contract line items are significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). Ken Leahy Constr., Inc., B-290186, June 10, 2002, 2002 CPD ¶ 93 at 2; see FAR § 15.404-1(g)(1). Where an agency determines that a firm’s pricing is unbalanced, it is required to conduct a risk analysis to evaluate whether award to the firm will result in the government’s paying an unreasonably high price for contract performance. FAR § 15.404-1(g)(2).

Here, we find that the protester has failed to allege a sufficient basis of protest because the protester has not alleged that Vectrus’ prices were overstated or unbalanced. Our Office has explained that, even where an agency acts in error, we will not sustain a protest unless the protester can show that it was prejudiced by the error. See Walbridge Aldinger Co., B-405949.2, Jan. 23, 2012, 2012 CPD ¶ 91 at 6. In this case, the protester has not asserted that Vectrus’ proposal was materially unbalanced or that the comparative price analysis urged by the protester would have resulted in Vectrus’ proposal being found unacceptable. Accordingly, we conclude that the protester has not sufficiently alleged that it was prejudiced by the agency’s allegedly improper price balancing evaluation.¹

PAE also challenges the methodology used by the agency to calculate offerors’ total evaluated prices. In this regard, the protester argues that the agency failed to meaningfully evaluate how each offeror’s differing approach to allocating labor between the fixed-price CLINs and the cost-reimbursable CLINs would impact its total evaluated price. The protester also alleges that the agency inadequately evaluated offerors’ total prices, because the Air Force did not compare each offeror’s proposed burden on the cost CLINs to the burdens proposed by the other offerors.

¹ Additionally, we note that our Office has found that a comparison of an awardee’s prices to those of the protester, without more, is insufficient to show that the awardee’s prices may be unbalanced. N.V. Heathorn, Inc., B-245847, Jan. 2, 1992, 92-1 CPD ¶ 11 at 2.

Our Office has found that post-award challenges to an agency's cost or price evaluation scheme are not timely, if the challenged scheme was set forth in the solicitation, because a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotations or proposals must be filed before that time. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 4; see also Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

Here, while PAE's protest ground is stylized as a challenge to the evaluation methodology used by the agency, in actuality it is a challenge to the evaluation scheme set forth in the solicitation. In this regard, while the protester asserts that the agency should have understood "the different [allocation] approaches when determining each offeror's [total evaluated price]" and should also have "compare[d] how Vectrus' proposed markup compares to PAE's proposed markup and the effect of that comparison on the total evaluated price," Protest at 11, 13, such analyses were not envisioned by the solicitation's evaluation scheme. Instead, the solicitation clearly set forth the methodology that the agency would use to calculate the total evaluated price: the fixed-price unit prices included in each offeror's proposal would be multiplied by the quantities listed in the RFP's price worksheet, and the result would be summed. See RFP at 73. The solicitation was also clear that the cost CLINs would not be part of the calculation of the total evaluated price. See id. at 61. In turn, the total evaluated price would be presented to the source selection authority who would make award to the lowest-priced, technically acceptable offeror. See id. at 71.

Thus, the evaluation scheme did not envision that the agency would make adjustments to the total evaluated price based on either (1) an offeror's approach to allocating work between fixed-price CLINs and cost CLINs, or (2) an offeror's burden rates used for the cost-reimbursable CLINs.² The protester's arguments, which challenge this evaluation scheme, are therefore untimely. See Ball Aerospace & Techs. Corp., supra.³

Last, the protester argues that the agency failed to conduct meaningful discussions because the agency "failed to disclose [its] decisions not to use any benchmark outside of each proposal for determining unbalanced pricing, not to evaluate different approaches to allocation of work between fixed price and cost-type CLINS or to burdens

² We note that such adjustments would have been improper in the context of a solicitation for a fixed-price contract. Cf. Harmonia Holdings Group, LLC, B-413464, B-413464.2, Nov. 4, 2016, 2017 CPD ¶ 62 at 6 (explaining that the FAR does not permit the use of a cost realism analysis for purposes of adjusting a fixed-price proposal's evaluated price).

³ Additionally, without such an adjustment, the protester cannot show that it suffered competitive prejudice since the total evaluated prices would remain the same, and Vectrus would remain the lowest-priced, technically acceptable offeror. We note that PAE does not assert that Vectrus' proposed pricing should have led the agency to find Vectrus' proposal unacceptable.

on cost-reimbursable CLINs, and not to review the technical risk posed by the offerors in relation to pricing approaches.” Protest at 19. We disagree.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, the discussions must be sufficiently detailed and identify the deficiencies and significant weaknesses found in an offeror’s proposal that could reasonably be addressed so as to materially enhance the offeror’s potential for receiving award. FAR § 15.306(d)(3); InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 6. We have previously found that there is no requirement, however, that an agency inform an offeror during discussions that its price may be too high, where the offeror’s price is not considered excessive or unreasonable. Southeastern Kidney Council, B-412538, Mar. 17, 2016, 2016 CPD ¶ 90 at 4.

Here, the evaluation scheme challenged by the protester was not the type of deficiency or significant weakness that was required to be addressed by the agency during discussions. We note, in addition, that PAE was found to be technically acceptable, and that the only reason it did not receive award was because its price was higher than the awardee’s price. There was no requirement, however, for the agency to advise PAE that it was not the lowest-priced offeror. See Southeastern Kidney Council, *supra*. Accordingly, we conclude that the protester has not alleged a legally sufficient protest basis.

The protest is dismissed.

Susan A. Poling
General Counsel