



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Tony's Landscaping, Inc.

File: B-283794

Date: November 23, 1999

Manuel Blanco for the protester.

Jerry W. Aldridge, and John W. Huckle, Esq., Department of the Air Force, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency was not required to conduct discussions but could have a limited exchange with proposed awardee pursuant to Federal Acquisition Regulation § 15.306(a)(2) for the purpose of clarifying and correcting proposed awardee's pricing error, where the existence of the clerical error and the price actually intended was clear from the proposal.

DECISION

Tony's Landscaping, Inc. protests the proposed award of a contract to Miranda's Landscaping, Inc. under request for proposals (RFP) No. F04684-99-R-0006, issued by the Department of the Air Force for grounds maintenance at Vandenberg Air Force Base, California. The protester complains that the Air Force improperly allowed Miranda's Landscaping to correct its proposal price.

We deny the protest.

The RFP, issued as a competitive, section 8(a) set-aside, sought proposals to perform a variety of grounds maintenance services for a base year with 4 option years. For each contract year, offerors were requested to provide fixed prices under section I of the RFP under four service categories (for example, grounds maintenance (contract line item (CLIN) 0001), tree line maintenance (CLIN 0002), roadside maintenance and herbicide application (CLIN 0003), and herbicide/sterilant application (CLIN 0004)). RFP at 3-12. The pricing blanks for these CLINS were marked with an asterisk. Section I included two other CLINS for each contract year: CLIN 0005, task

orders, whose pricing blanks were marked with a double asterisk, and CLIN 0006, a cost-reimbursable item for which a \$60,000 estimated price per year was provided for evaluation purposes. Section I also included the following notation:

NOTE: Items/Columns with an * notation are to be completed by offerors. Item with ** notation is funded by individual Task Orders.

Instructions as to how task orders would be issued and priced were provided in appendix G of the RFP. In this regard, the appendix requested, for each contract year, offerors' burdened labor rates for specified labor categories and provided for each labor category an estimated number of hours against which the proposed labor rate would be multiplied to calculate the offerors' evaluated task order costs. RFP app. G, at 16-21.

In addition to proposed pricing, the RFP requested that each offeror complete a past performance questionnaire and provide an oral presentation that would describe the offeror's staffing and organization, discuss the offeror's understanding of CLINs 0001 through 0004, and describe the offeror's methodology and approach to implementing a quality system to satisfy the contract requirements. RFP at 18-19.

The RFP provided for award without discussions. RFP at 17 (incorporating by reference Federal Acquisition Regulation (FAR) § 52.212-1). Offerors were informed that for those proposals that were determined to be technically acceptable the Air Force would trade off offerors' past performance risk and evaluated price to determine which offer was the most advantageous to the government. RFP at 21. In this regard, price and past performance risk were stated to be of equal importance. Offeror were informed that the agency would add the fixed prices for all contract years from section I to the estimated costs from section G to determine the lowest total evaluated price. RFP at 22.

Five proposals were received in response to the RFP. Contracting Officer's Statement at 1. Three proposals, including those of the protester and the proposed awardee, were determined to be technically acceptable. Only the protester's and proposed awardee's proposals were considered for award because the third offeror's price was considered to be too high. The agency then compared the proposed awardee's exceptional past performance risk rating and \$9,144,185 evaluated price to the protester's very good past performance risk rating and \$8,918,249 evaluated price. The Air Force initially concluded that the protester's proposal reflected the best value to the government, given its apparent lower evaluated price, and the offerors were so notified. Id.

Prior to award being made, Miranda's Landscaping complained to the contracting officer that its proposed price was actually lower than the protester's. Id. at 2. The Air Force discovered that Miranda's Landscaping had in fact priced the task orders twice; it provided pricing in section I under CLIN 0005 and the same pricing for the task orders under appendix G, such that when the agency added the section I pricing

of Miranda's Landscaping to its appendix G estimated costs, the proposed awardee's task order pricing was counted twice. The Air Force concluded that the duplication of task order prices was a clerical error that should be corrected under FAR § 15.306(a)(2). When the task order pricing was removed from section I, Miranda's Landscaping's evaluated price of \$8,539,560 was determined to be lower than the protester's. *Id.* Because Miranda's Landscaping's proposal was both the highest-rated under the past performance risk factor and the lowest-priced, the agency determined that it should be selected for award. The parties were notified, and this protest followed.

The protester argues that the agency should not have corrected the proposal pricing error of Miranda's Landscaping as a clerical error, but was required to conduct discussions with the offerors and request best and final offers. We disagree.

Pursuant to FAR § 15.306(a)(2), agencies may have limited exchanges with an offeror for the purpose of clarifying "certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors." These limited exchanges do not constitute discussions, which would generally require the conduct of discussions with all offerors within the competitive range. FAR § 15.306(d); see Joint Threat Servs., B-278168, B-278168.2, Jan. 5, 1998, 98-1 CPD ¶ 18 at 12.

In this case, the existence of the mistake--the proposed awardee's double pricing of the same work--and the price actually intended was clearly established from the RFP and the proposal itself; that is, the same prices for the same work appear in both places. The protester does not contend otherwise. Thus, we agree with the agency that the proposed awardee's pricing error was a clerical error that could be corrected without conducting discussions. See Joint Threat Servs., *supra*, at 12-13. We also note that Miranda's Landscaping could not obtain any advantage from pricing this work twice because the contractor will only be paid for this work based upon the hours actually worked at the labor rates proposed. Under these circumstances, there is simply no basis on this record to object to the agency's clarification and correction of the proposed awardee's proposal.

The protest is denied.

Comptroller General
of the United States