



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Volmar Construction, Inc.

File: B-272188.2

Date: September 18, 1996

Bill Cosmas Giallourakis, Esq., for the protester.

Diane D. Hayden, Esq., Department of the Navy, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's rating of awardee's technical proposal on the ground that agency overlooked awardee's alleged lack of prime contractor experience is denied where the record shows that the contracting agency reasonably concluded that awardee's experience performing as both a prime contractor and subcontractor on numerous similar contracts, as well as the excellent ratings by its references and the management experience of its proposed key employees, warranted a highly satisfactory technical rating.
2. Detailed cost analysis is not required in procurement contemplating award of a fixed-price contract where adequate price competition is obtained.
3. Agency's determination that awardee's price is not unrealistic is unobjectionable where: (1) adequate price competition was received; and (2) the agency compared the offerors' proposed prices with each other and the government's price estimate, and reasonably determined that awardee's prices were realistic.
4. Where agency reasonably determined that protester's and awardee's technical proposals were equally ranked, agency properly determined that awardee's lower-priced proposal represented the best value.

DECISION

Volmar Construction, Inc. protests the award of a contract to Omega Service Maintenance Corporation (OSMC) under request for proposals (RFP) No. N68950-95-R-0045, issued by the Department of the Navy for building facilities maintenance and repair services. Volmar challenges the agency's technical evaluation of the awardee's proposal and contends that the agency should have downgraded OSMC's proposal based on its experience and past performance. Volmar also contends that

the Navy performed an improper price realism analysis, and that OSMC's proposed prices were unreasonably low.

We deny the protest.

OVERVIEW

The RFP was issued on January 17, 1996, and contemplated the award of a fixed-price indefinite quantity contract for a base year and 2 option years. Under the solicitation, offerors were required to provide all necessary maintenance and repair services for 931 housing units, 22 multi-unit garages, and 15 commercial/industrial buildings located at the Mitchel Field and Mitchel Manor housing complexes in Garden City and East Meadow, New York.

The RFP required submission of both technical and price proposals, and provided that contract award would be made to the offeror whose proposal was found most advantageous to the government based upon the agency's best value evaluation, under which technical and price factors were equally important. The solicitation provided that technical proposals would be evaluated under the following, equally weighted technical subfactors: management/procedural plan and past performance. Price proposals were to be evaluated to determine reasonableness and realism. The solicitation also incorporated Federal Acquisition Regulation (FAR) § 52.215-16, Alternate II, which advised offerors of the Navy's intent to award the contract on the basis of initial proposals without conducting discussions.

By the March 25 closing date, 11 proposals were received, including those submitted by OSMC and Volmar. From April 1 through April 12, the technical evaluation board (TEB) evaluated technical proposals; both OSMC's and Volmar's received the highest overall technical rating of "highly satisfactory" for their technical proposals.¹ A separate price evaluation board (PEB) concluded its evaluation of pricing proposals on April 15, and rated both Omega's and the protester's "acceptable." On April 16, the results of the TEB's and PEB's evaluations were presented to the source selection board (SSB) for review. On May 24, after reviewing and concurring in the TEB's findings that OSMC's and Volmar's proposals were essentially technically equivalent, the SSB selected OSMC for award based upon its lower proposed price. On June 12, Volmar filed this protest.

¹Both technical and price proposals were evaluated using adjectival ratings of highly satisfactory, acceptable, unacceptable but susceptible to being made acceptable, and unacceptable.

PROTESTER'S CONTENTIONS

Volmar protests both the technical and price evaluation of OSMC's proposal. First, Volmar challenges the "highly satisfactory" rating of OSMC's technical proposal; Volmar argues that because OSMC has operated primarily as a building maintenance repair subcontractor instead of a prime contractor on most of its similar contracts, its technical proposal should not have been rated equally with the protester's since the protester has extensive prime contractor experience. Volmar also contends that the agency improperly failed to perform a cost realism analysis of the awardee's pricing proposal, and that alleged errors in the government estimate caused the PEB to improperly determine that OSMC's prices were realistic.

TECHNICAL EVALUATION

Volmar challenges the technical evaluation of OSMC's proposal on the ground that the "highly satisfactory" rating was not reasonable in light of OSMC's lack of prime contractor experience; its lack of experience in performing contracts worth more than \$1.5 million; and its smaller size. Additionally, Volmar contends that OSMC's technical proposal did not warrant a "highly satisfactory" rating because its personnel's work experience was gained solely during in-house employment for the Navy.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation criteria. ESCO Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. Id. Further, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results subject only to the tests of rationality and consistency with the RFP's evaluation criteria. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In this case, although Volmar contends that OSMC's alleged lack of prime contractor experience and smaller size render the agency's "highly satisfactory" rating of its technical proposal unreasonable, our review of OSMC's technical proposal and the agency's rationale for the rating shows the agency's evaluation to be reasonable.

As noted above, the RFP set out two equally weighted technical evaluation factors. The first, management/procedural plan, had three equally weighted subfactors, one of which was experience. The second technical evaluation factor was past performance. Volmar's and OSMC's proposals received "highly satisfactory" ratings under each of the subfactors and factors, for overall ratings of "highly satisfactory."

With respect to Volmar's challenge to the agency's evaluation of OSMC's experience and past performance, the RFP did not limit offerors to demonstrating only prime contractor experience. On the contrary, the solicitation made it clear that all relevant experience and past performance would be evaluated and specifically directed offerors to submit information on all contracts and subcontracts completed during the last 3 years.

As evidence of relevant experience, OSMC submitted a list of 17 contracts with corresponding details, including the contract price, completion date, any claims submitted, and the type of work performed. To demonstrate its specific building maintenance expertise, OSMC listed 10 facilities and housing maintenance contracts, most performed at Navy facilities. To demonstrate its expertise with boiler and heating, ventilation, and air conditioning maintenance, OSMC listed four Navy contracts. OSMC also listed three Navy grounds and maintenance contracts. Although Volmar correctly points out that OSMC worked as a subcontractor under several of the listed contracts, as explained below, the TEB took this into account, and, we find, reached reasonable conclusions.

First, for the majority of the listed contracts, OSMC served as the prime contractor. Next, all of the contract references listed in OSMC's proposals were contacted; these references advised the TEB that OSMC had a "superior record of performance" and "rated [OSMC's] quality of work, timeliness and cooperation no lower than excellent." The TEB also noted that regardless of OSMC's past subcontractor status, its proposed key personnel demonstrated direct supervisory and management experience which is essentially analogous to the type of project control and oversight typically exercised by a prime contractor. For example, OSMC's proposed project manager has served as a project manager for facilities maintenance contracts at two Navy installations in New Jersey; additionally, OSMC's proposed quality control and safety supervisors have successfully managed the daily operations at a public works contract office and the facility maintenance requirements at a Navy construction training center in California. Even OSMC's proposed service call and preventative maintenance foremen have relevant oversight responsibility and work experience in similar types of project work.

Moreover, although Volmar views the fact that OSMC's experience is almost exclusively on Navy contracts as a weakness, in light of OSMC's familiarity with Navy operations and the Navy's quality control techniques, we think the TEB reasonably concluded that OSMC's experience on Navy procurements in fact constituted a significant technical strength. Moreover, although Volmar contends that OSMC's smaller size and lack of experience on procurements worth more than \$1.5 million warrants concern as to OSMC's capabilities and resources, we think the TEB could reasonably reach the conclusion it did in light of OSMC's positive performance record notwithstanding these concerns.

In sum, given the fact that OSMC does in fact hold prime contractor experience, and in light of its strong references and the noted strengths of its proposed personnel, we think the TEB reasonably concluded that OSMC's technical proposal warranted a "highly satisfactory" rating.

PRICING EVALUATION

For their pricing proposals, offerors were required to complete and submit the solicitation's pricing schedule, which required unit and extended prices for 40 fixed-price contract line item numbers (CLIN) and 27 indefinite quantity CLINs. The solicitation also asked offerors to submit the following cost/price information: a breakdown of direct labor costs; direct material costs (identifying the quantity, type, and unit price); subcontracting costs; overhead costs; general and administrative costs; profit; and a FAR § 52.230-1 disclosure statement.² With regard to price evaluation, as noted above, the RFP provided that price proposals would be evaluated "to determine reasonableness and realism of price."

Volmar contends that the Navy improperly evaluated OSMC's prices, which, Volmar argues, are unreasonably low. In making this argument, Volmar contends that because the RFP required submission of cost data, the Navy was required to perform a cost realism analysis of OSMC's proposal.

As a preliminary matter, there is simply no requirement that a cost realism analysis be performed in every instance where an RFP requires offerors to submit cost data. Research Management Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352. Rather, where, as here, adequate price competition is achieved, and a fixed-price contract is contemplated, contracting agencies are not required to assess cost realism. Id. This is because cost realism (a measurement of the likely cost of performance in a cost reimbursement contract) is generally not a factor in the evaluation of proposals where a fixed-price contract is to be awarded because the government's liability is fixed, and the risk of cost escalation is borne by the contractor. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366.

However, since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a price realism analysis in the solicitation of fixed-price proposals. The FAR provides a number of price analysis techniques that may be used to determine whether prices are reasonable

²FAR § 52.230-1 requires contractors to submit a disclosure statement to ensure that the contractor's accounting practices are in compliance with the Cost Accounting Standards and any applicable cost regulations.

and realistic, including comparison of the prices received with each other, FAR § 15.805-2(a) (FAC 90-39), and comparison of proposed prices with an independent government estimate. FAR § 15.805-2(e). The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Cardinal Scientific, Inc., B-270309, Feb. 12, 1996, 96-1 CPD ¶ 70.

In this case, the record shows that in order to assess price realism and reasonableness, the PEB performed five separate price analyses during its evaluation of pricing proposals. First, the PEB compared each offeror's total price (base year and 2 option years) to the government estimate. Next, the PEB evaluated what percentage of each offeror's proposed prices was allocated to the 15 highest-priced CLINs in the solicitation. The PEB then analyzed the ratio in each offeror's pricing proposal between its fixed-price CLINs and indefinite quantity CLINs and compared this figure to the fixed-price/indefinite quantity CLIN ratio in the government estimate. Finally, the PEB compared each offeror's total price by CLIN to the average and the mean of the CLIN prices in all 11 proposals.

The evaluation of OSMC's proposals showed that its proposed prices were reasonably close to the mean and average proposal prices and the government estimate. OSMC's total proposed price constituted 73 percent of the government estimate; the other prices ranged from 55 percent to 191 percent of the government estimate. Additionally, almost 90 percent of OSMC's proposed prices were allocated to the 15 highest-priced CLINs. This was within the general range of proposed prices, all of which exceeded the ratio in the government estimate, ranging from 74 percent to 97 percent, compared to 60 percent in the government estimate. OSMC's fixed-price work/indefinite quantity work ratio--58 percent--was comparable to the government estimate ratio--51 percent, and within the range of the ratios in the other proposed prices, which ran from 32 percent to 62 percent. Finally, OSMC's total price and individual CLIN prices were 73 percent of the mean and 71 percent of the average prices. Based on this evaluation, which found OSMC's proposed CLIN and total prices consistent with or reasonably close to its competitors' and the government estimate, the PEB concluded that OSMC's proposed price was realistic and reasonable.

In its protest, Volmar contends that the pricing evaluation performed by the PEB was unreasonable because of alleged errors in the government estimate. Specifically, Volmar contends that the Navy based the government estimate on wage rates that do not reflect the applicable wage rates required by the Service Contract Act (SCA), 41 U.S.C. §§ 351- 358 (1994), and the Davis-Bacon Act (DBA), 40 U.S.C. § 276a(a) (1994).

Contrary to Volmar's contentions, we are not persuaded that the agency used incorrect SCA and DBA wage rates in its government estimate calculation. Whereas Volmar insists the government estimate is erroneous because it did not rely on the

highest wage rate for each job category, for many of the CLIN job categories lower wage rates can be--and in preparation of the government estimate were--applied. For example, whereas Volmar contends that the SCA "General Maintenance Worker" wage (\$15.05 per hour) must be used for the grounds maintenance CLINs, the agency points out that the lower-priced SCA "Gardener" (\$11.84) or "Laborer, Grounds Maintenance" (\$10.28) wage rate also could be applied. The record shows that throughout the protester's examples, wherever a choice existed between wage categories, Volmar consistently selected a more expensive category than relied upon by the government. The agency also points out that where CLIN work can be fulfilled by supervisory or management positions, SCA and DBA wage standard compliance is not mandatory. Given the different reasonable approaches which may be followed in assigning labor wage rates to the CLIN work required under the RFP, we see no basis to conclude that the government estimate is flawed in this case.

In view of the agency's use of FAR-authorized price analysis techniques, and given the number of proposals submitted and the proximity of OSMC's proposed prices to the mean and average prices and the government estimate, we have no basis to question the agency's determination that OSMC's proposed prices were realistic. See Northern Virginia Serv. Corp., B-258036.2; B-258036.3, Jan. 23, 1995, 95-1 CPD ¶ 36; PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381.

CONCLUSION

Our review of the record shows that the agency reasonably rated OSMC's technical proposal as "highly satisfactory" and performed a reasonable price analysis. Under these circumstances, where OSMC's technical proposal was equally ranked with Volmar's, the contracting agency properly selected OSMC for award based on its lower-priced proposal. See Koba Assocs., Inc., B-251356, Mar. 25, 1993, 93-1 CPD ¶ 267.

The protest is denied.

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of the United States

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