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Decision

Matter of: Red River Service Corporation

File: B-282634; B-282634.2

Date: July 15, 1999

Johnathan M. Bailey, Esq., Law Office of Theodore M. Bailey, for the protester.
Ross L. Crown, Esq., Eastham Johnson Monnheimer & Jontz, for Phillips National, Inc., an intervenor.
Richard Welsh, Esq., Naval Facilities Engineering Command, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award based on proposal that included unbalanced pricing was proper where agency specifically and reasonably determined that the unbalancing did not pose an unacceptable risk to the government and would not result in the government's paying unreasonably high prices.

DECISION

Red River Service Corporation protests the award of a contract to Phillips National, Inc., under request for proposals (RFP) No. N62467-98-R-1037, issued by the Department of the Navy for multi-family housing maintenance services in Millington, Tennessee. Red River argues that the proposal submitted by Phillips should have been rejected because it contains unbalanced pricing.

We deny the protest.

The solicitation, for a base period with four 1-year options, provided that a contract would be awarded on the basis of the best value to the government, with the combined technical evaluation factors (past performance, experience, methods and understanding, and resources), being approximately equal in weight to price. RFP § M.2. The solicitation consisted of definite- and indefinite-quantity line items, for both of which offerors were to propose fixed unit prices. RFP § B.

The Navy received seven proposals. A technical evaluation board (TEB) rated the technical proposals as highly satisfactory, acceptable, marginal or unacceptable under each factor. Agency Report Legal Statement (ARLS) at 2-3. A price evaluation board (PEB) evaluated the price proposals. Following two rounds of discussions, Phillips's and Red River's proposals were the highest-rated (ranked first and second, respectively), ARLS at 4-6, and Phillips's final proposed price, $[deleted], was substantially lower than Red River's, $[deleted]. The source selection board (SSB) concluded that Phillips's proposal represented the best value to the government. SSB Memorandum, Apr. 13, 1999, at 3. The source selection authority (SSA) concurred with this determination and award was made to Phillips. Id.

Red River protests that Phillips's proposal contained substantially overstated prices for some items--especially many of the definite quantity line items--and substantially understated prices for others--especially the indefinite quantity line items, and also that many line items were front-loaded, with higher prices in the base year than in the option years. Red River concludes that Phillips's offer should have been rejected as unbalanced.[1]

Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. Federal Acquisition Regulation (FAR) § 15.404-1(g)(1). While unbalanced pricing may increase risk to the government, agencies are not required to reject an offer solely because it is unbalanced. Id. Rather, where the contracting agency receives an unbalanced offer, the contracting officer is required to consider the risks to the government associated with the unbalanced pricing in making the source selection decision, and whether a contract will result in unreasonably high prices for contract performance. FAR § 15.404-1(g)(2). Reflecting these regulatory provisions, the solicitation here specifically provided that a proposal could be rejected if the agency determined that, due to unbalanced pricing, the proposal posed an unacceptable risk to the government. RFP § L.5(f)(8).

The Navy does not dispute that Phillips's offer contained unbalanced pricing. In this regard, the Navy reports that, during its initial review, the PEB was concerned with various aspects of Phillips's price proposal, including its overall low price, low prices

[1]Red River also initially argued that: (1) the evaluation of its proposal under the experience factor was improper; (2) the agency failed to provide it with meaningful discussions; (3) Phillips's proposal was improperly evaluated under the past performance factor; and (4) Phillips's proposal failed to comply with the requirements of the solicitation regarding the staffing of a service desk. In its report on the protest, the Navy specifically addressed these arguments, and Red River did not attempt to rebut the agency's positions in its comments on the report. We therefore consider these issues abandoned. Ariav Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3 at 1 n.1.

for the indefinite-quantity work, and high prices for some items and low prices for others. ARLS at 7. The PEB also noted that Phillips based its pricing on its own risk assessment, but did not explain in the proposal what that risk assessment was. Pre-Negotiation Business Clearance Memorandum at 7; Price Evaluation Team Memorandum, Dec. 4, 1998, at 4-5. During discussions, the agency asked Phillips to justify both its proposed prices for certain fixed-price line items, Pricing Questions for Phillips National, Inc. at 1, questions 1, 2, and 3, and its prices for many of the indefinite quantity line items, as well as its overall low price for the indefinite quantity line items. Id. at 1-2, question 4. The Navy also advised Phillips that the estimated quantities provided in the solicitation were realistic estimates of the quantities to be ordered during the term of the contract, and that it was concerned that Phillips's strategy of unbalancing its proposal could result in an unacceptable risk to the government.

In response to the agency's expressed concerns, Phillips changed some of its prices, but left many unchanged. Phillips also acknowledged that some of its prices were low and others high. Response to Discussion Questions, Feb. 12, 1999, at 2-4. Phillips explained that its pricing was based on its own competitive pricing strategy, and its many years of experience performing housing maintenance contracts, as well as a site visit, pictures of the housing to be maintained, the RFP, and its belief that, because the [deleted]. Finally, Phillips assured the Navy that it was comfortable that its total price was sufficient to perform all work required, and that all required work would be performed.

The Navy was satisfied, based on Phillips's response and Phillips's extensive experience performing housing maintenance contracts, that the rationale behind Phillips's pricing was sound, and that Phillips was aware of the risks involved in that strategy. The Navy also concluded from Phillips's explanation that its pricing was fair and reasonable. ARLS at 7. While Red River disagrees with the Navy's conclusions, in our view, the Navy could reasonably conclude that Phillips's pricing represented a legitimate business judgement that did not pose an unacceptable risk to the government, and that it would not pay an unreasonably high price for performance. Accordingly, the Navy was not required to reject Phillips's proposal.

Red River also challenges the agency's evaluation of Phillips's proposal under the methods and understanding factor, arguing that the agency did not properly consider that Phillips would be unable to perform at the prices offered for certain line items. Under this factor, the agency was required to evaluate offerors' staffing and staffing rationale for certain tasks. RFP § M.2(c). However, the solicitation did not indicate that proposed prices would be used to evaluate offers under this (or any other) technical factor. Accordingly, the agency properly did not consider price in evaluating Phillips's proposal under the methods and understanding factor. See Computer Sys. Dev. Corp., B-275356, Feb. 11, 1997, 97-1 CPD ¶ 91 at 3.

The protest is denied.

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of the United States