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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Systems, Studies, and Simulation, Inc.

File: B-295579

Date: March 28, 2005

Gary L. Rigney, Esq., for the protester.
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DIGEST

Agency's evaluation of the protester's quotation under the solicitation's "pricing structure" evaluation criterion as posing "moderate risk" was reasonable where the quotation included the protester's Federal Supply Schedule labor rates, and the protester's rates were slightly to significantly lower than the agency's calculated historical rates, and the specific services to be performed are highly complex in nature.

DECISION

Systems, Studies, and Simulation, Inc. (S³) protests the rejection of its quotation under request for quotations (RFQ) No. W31P4Q-04-T-0564, issued by the Department of the Army, for advisory and assistance services in support of the Army Aviation and Missile Command.¹

We deny the protest.

The RFQ informed vendors that the Army "intends to award a minimum of four BPAs [blanket purchase agreements] to responsible BPA teams whose quotations are considered most advantageous to the government" based on the following five evaluation criteria: performance capability, teaming and business arrangements,

¹ Our discussion in this decision is necessarily general because a protective order was not issued in connection with this protest.

socio-economic benefits, pricing structure, and past performance.² RFQ at 47. The solicitation stated that the awards would “be made to those BPA Teams demonstrating the best overall capabilities and value to the government based upon the evaluation criteria,” and specified that “awards may be made to other than the lowest priced BPA Teams.” RFQ at 47. Vendors were informed that the BPAs would be “entered into pursuant to the terms of the BPA holder’s [Federal Supply Schedule] FSS contract number,” and that under the BPAs the agency would award fixed price and/or fixed-rate, time-and-materials or labor-hour task orders to the vendors whose quotations in response to the task order solicitations were found to represent the best value to the government. RFQ at 3, 8.

The solicitation provided detailed instructions for the preparation of quotations for the BPAs, and requested that each quotation include a general information volume, a business and performance capabilities volume, a pricing structure volume, and a past performance volume. RFQ at 44. The solicitation “cautioned that ‘parroting’ of the functional requirements with a statement of intent to perform does not reveal understanding of the requirement or the capability to perform it,” and advised in this regard that “[t]he quotation should demonstrate that the BPA team can perform at an acceptable level of risk.” RFQ at 44. The RFQ notified vendors that although “the government has not formally ‘set-aside’ the small business awards under procedures set forth in [Federal Acquisition Regulation] FAR Subpart 19.5,” the agency anticipated awarding two BPAs to small businesses, one BPA to a small disadvantaged business, and one BPA to a “large” business. RFQ at 47.

The RFQ was issued to “seven selected contractors,” with each of the selected vendors, including S³, submitting a quotation. Contracting Officer’s Statement at 1-2. The quotations were evaluated, and the quotation submitted by S³ (a small business) was evaluated as “green/very good” under the performance capability, teaming and business arrangements, and socio-economic benefits criteria, “yellow/moderate risk” under the pricing structure criterion, and “blue/outstanding” under the past performance criterion.³ AR, Tab I, Source Selection Decision, at 17. The agency

² The solicitation further informed vendors that the performance capability criterion was the most important criterion and was slightly more important than the teaming and business arrangements and socio-economic benefits criteria. The teaming and business arrangements and socio-economic benefits criteria were stated to be equal in importance, and slightly more important than the pricing structure criterion, which in turn was more important than the past performance criterion. RFQ at 47.

³ The agency evaluated proposals as either “blue/outstanding,” “green/very good,” “yellow/satisfactory,” “red/marginal,” or “black/unacceptable” under the performance capability, teaming and business arrangements, and socio-economic benefits criteria. Quotations were evaluated as “blue/low risk,” “yellow/moderate risk,” or “red/high risk” under the pricing structure criterion, and “blue/low risk,” “yellow/moderate
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ultimately selected the quotations of one large business, one small business, and two small disadvantaged businesses, for award of the BPAs. *Id.* at 19. The record evidences that the reason that S³'s quotation was not accepted for award was its moderate risk rating for the pricing structure criterion.

After requesting and receiving a debriefing, and filing an agency-level protest (which was denied), S³ filed this protest with our Office. The protester argues that the agency's evaluation of its quotation under the pricing structure criterion as "moderate risk" was unreasonable, contending that the agency's "cost realism methodology compared [S³'s] proposed loaded rates against other loaded rates without consideration to the load factors" and without reasonably considering any "objective historical evidence." Protest at 6; Protester's Comments at 2. The protester asserts that it "presumed that the contracting officer would conduct a cost realism analysis" in evaluating quotations under the pricing structure evaluation criterion, and that in doing so the agency would gather additional information so that it could "analyze indirect loads, evaluate unloaded hourly rates, as well as the benefit package included in the overhead burden to permit a risk analysis consistent with the purposes set forth in the RFP." Protest at 5. The protester also argues that the methodology used by the agency in evaluating S³'s quotation under the pricing structure criterion was flawed in that it "assumed a uniform labor mix without consideration to the . . . historical or projected requirements for critical labor categories or highly-qualified personnel." Protest at 8. Additionally, the protester points out that its quotation included "its undiscounted minimum qualifying GSA schedule rates," which in accordance with FAR § 8.404(d) have previously been determined to be "fair and reasonable," and that as evidenced by the agency's evaluation of its quotation under the past performance criterion as "blue/outstanding," it has "successfully performed \$61 million . . . of task orders for [Army] customers using its GSA rates." Protester's Supplemental Comments at 3.

The RFQ (at 48) provided as follows with regard to the pricing structure evaluation criterion:

The government will evaluate the BPA Team's overall ability to support task order requirements with highly qualified personnel as evidenced by the BPA Team's GSA schedule pricing structure. The evaluation will consist of a risk analysis including a comparison to historical averages adjusted for anticipated future changes in market conditions. The risk analysis will consider price realism and reasonableness as an indicator of risk associated with the BPA team's understanding of the requirements of the Statement of Work. Pricing structures considered too low to support anticipated task order requirements with highly

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risk," "red/high risk," or "white/neutral" under the past performance criterion. Agency Report, Tab G, Evaluation Plan, at 8.

qualified personnel may receive a higher risk rating due to increased risk.

To facilitate this evaluation, the RFQ required that vendors complete two attachments to the solicitation, each of which essentially provided for the inclusion of the vendor's name, the labor categories proposed, and their FSS and BPA prices on an hourly basis for each proposed labor category. RFQ attachs. 4, 10.

The record reflects that the agency evaluated the quotations received under the pricing structure criterion by determining that the labor categories proposed were equivalent to those set forth in the solicitation in terms of education, experience, and description of duties, ensuring that no critical labor categories were omitted from the quotations, and comparing the rates proposed to "historical averages." Contracting Officer's Statement at 7. Specifically, with regard to the vendors' proposed labor rates, the agency calculated an "average mapped rate" for each vendor based upon the vendor's quoted labor rates for the labor categories set forth in their quotations, and compared the vendor's "average mapped rate," as well as the vendor's rates for each labor category included in its quotation, to the historical averages experienced by the agency. AR, Tab D, Evaluation of Quotations. The agency explains that its calculated historical averages were developed based upon "[o]ver 100 prime and subcontractor rates . . . currently available for each baseline labor category identified in the RFQ" from predecessor contracts that were awarded for the same services in the area where the services are to be performed. Contracting Officer's Statement at 7-8.

With regard to S³'s quotation, the agency found as a "strength" that S³'s "offered pricing structure provided coverage for the required critical skills." AR, Tab D, Evaluation Report for S³ Pricing Structure Criterion, at 1. However, the agency also found as "weaknesses" that S³'s quotation offered rates "for four of the labor categories were slightly lower than corresponding rates used in a historical model," and rates for "an additional six labor categories were moderately to substantially lower than the rates used in the historical model." *Id.* For example, the agency found that S³'s proposed labor rates for an "Engineer/Scientist," "Entry Level Engineer/Scientist," and "Administrative Support" personnel were, respectively, 4, 29 and 21 percent lower than the agency's calculated historical averages for these same positions. The agency ultimately concluded that because certain of S³'s quoted labor rates and its "average mapped rate" were slightly to substantially lower than the rates set forth in the agency's historical model, "there [was] some doubt that the offeror's pricing structure will support the . . . requirements with highly qualified personnel," and as mentioned previously, evaluated S³'s quotation under the pricing structure evaluation criterion as "yellow/moderate risk." AR, Tab D, Evaluation Report for S³ Pricing Structure Criterion, at 1, Rate Analysis.

Although the protester clearly disagrees with the agency's evaluation methodology as well as the agency's ultimate conclusion that S³'s pricing structure posed "moderate risk," we cannot find either unreasonable. In this regard, the agency

performed its pricing structure evaluation precisely as it explained it would in the RFQ.⁴ That is, the agency developed an estimate for each labor category set forth in the vendors' proposals based upon the loaded rates from predecessor contracts for the same services, and compared the loaded labor rates quoted to the agency's calculated historical loaded rates.⁵ Further, the methodology employed by the agency in its pricing structure evaluation was consistent with the type of solicitation issued and the information the solicitation requested. That is, the solicitation contemplated the issuance of BPAs providing for the award of task orders on a fixed-price or fixed-rate basis to FSS vendors, and requested from the vendors only their loaded FSS and BPA rates—the solicitation did not request that vendors provide any cost data or information.

As noted, the protester claims that the agency was required to perform a “cost realism analysis” as part of the evaluation of quotations under the pricing structure criterion. The concept of cost realism applies to cost-reimbursement contracts where a request for proposals requires the submission of cost data and it is important for the government to measure the likely cost of performance before choosing among competitors for the contract.⁶ Acepex Mgmt. Corp., B-279173.5, July 22, 1998, 98-2 CPD ¶ 128 at 7. A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. FAR § 15.404-1(d)(1); Advanced Communication Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5.

⁴ Contrary to the protester's argument, under the RFQ's evaluation scheme S³'s successful past performance, which was considered under a separate evaluation criterion, was not to be considered under the pricing structure criterion.

⁵ The stated methodology did not indicate that the various labor categories would be variously weighted in the evaluation under the pricing structure criterion, as the protester suggests should have been done, but indicates that all of the labor categories listed in the RFQ would be considered.

⁶ When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not considered controlling, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FAR § 15.404-1(d)(2); TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 612 at 5.

In contrast, where, as here, with regard to a BPA contemplating fixed-price or fixed-rate task orders to be issued against the vendors' GSA FSS contracts, the "realism" of vendor's proposed pricing is not ordinarily considered because the fixed-price contracting vehicle places the risk and responsibility for contract costs and ensuing profit or loss on the contractor. See Camber Corp., B-293930; B-293930.2, July 7, 2004, 2004 CPD ¶ 144 at 4; OMNIPLEX World Servs. Corp.; B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 9. However, because there is a risk of poor performance in certain circumstances, such as where a contractor fails to obtain and keep qualified personnel, an agency may, in its discretion, provide for a price realism analysis in a solicitation that contemplates the issuance of a BPA against the vendors' GSA FSS contracts. OMNIPLEX World Servs. Corp., *supra*. Here, the methodology used by the agency in evaluating quotations under the pricing structure criterion was consistent with that provided in part 15 of the FAR for the performance of price realism analyses--the comparison of proposed prices, in the form of loaded labor rates, with prior contract prices for the same or similar services and with an independent government cost estimate. See Acepex Mgmt. Corp., *supra*, at 8; FAR § 15.404-1(b).

As noted, the agency's conclusion that S³'s quotation warranted a "moderate risk" rating under the pricing structure criterion is not only consistent with the RFP evaluation scheme but is reasonably supported by the record. As indicated, the agency's evaluation of quotations under the pricing structure criterion was relatively detailed, and included an analysis of the labor rate quoted for each of the labor categories set forth in S³'s quotation. S³'s quoted rates in some instances were substantially lower, and overall were slightly lower, than the agency's calculated historical rates for the same positions, and as such, we believe that the agency reasonably determined that there was "some doubt that [S³'s] pricing structure will support the [agency's] requirements with highly qualified personnel." AR, Tab I, Source Selection Report, at 16. S³ has not showed that the loaded rates reflected in the historical averages were erroneous, unreasonable or unrealistic or that the comparison of S³'s loaded rates to the historical averages was flawed.

We also agree with the Army and GSA that the Army's determination that S³'s undiscounted FSS rates posed "moderate risk" was not inconsistent with GSA's previous finding that S³'s rates were "fair and reasonable." See FAR § 8.404(d). As noted by GSA, "the scope and complexity of an activity's requirement is frequently an important factor when establishing multiple BPAs," and the ordering activity, here the Army, is in the best position to determine its needs. GSA Report at 3. As to the Army's specific requirements, the record reflects that the services here will be provided "in the distinct, highly technical area of aircraft and missiles" and require a "high level of expertise." Agency Supplemental Report at 4-5. Accordingly, we cannot disagree with the Army's position that it needed to ensure, through the pricing structure evaluation criterion, that the vendors' proposed labor rates "could support every requirement with highly qualified personnel." *Id.* Nor can we disagree with GSA's position that the vendors' FSS rates "negotiated by GSA are the building blocks used by ordering activities," and the position of both agencies that the Army's

determination that S³'s FSS rates posed "moderate risk" under the unique circumstances of this procurement was thus not inconsistent with GSA's previous determination that S³'s FSS rates are "fair and reasonable." GSA Report at 3-4.

The protester argues for the first time in its comments on the agency report that the Army did not make a reasonable "best value" determination that adequately considered S³'s past performance or cost to the government. Our Bid Protest Regulations provide that where, as here, a protest has been initially filed with the contracting agency, we will consider a subsequent protest if the initial protest was timely filed. 4 C.F.R. § 21.2(a)(3) (2004). Because our regulations do not provide for the unwarranted piecemeal presentation of protest issues, where a protester initially files a timely agency-level protest, and subsequently files a protest with our Office which includes additional grounds, the additional grounds must independently satisfy our timeliness requirements. Wilderness Mountain Catering, B-280767.2, Dec. 28, 1998, 98-2 CPD ¶ 4 at 5.

The record reflects that the agency informed S³ at the debriefing of, among other things, the ratings its quotation received under each of the solicitation's evaluation criteria, as well as the ratings of the four quotations selected for issuance of the BPAs, and the agency's selection decision. AR, Tab K, Debriefing Slides and Questions and Answers. S³ should have been aware from the debriefing of the evaluation criteria used by the agency in evaluating quotations and determining which quotations represented the best value to the agency, and the relative ratings of S³'s quotation and the quotations of the vendors that were selected for issuance of the BPAs. Thus, S³'s protest that the agency did not make a reasonable best value determination that adequately considered S³'s past performance and cost to the government was required to be filed within 10 days of its debriefing, and this protest contention, first raised in S³'s comments on the agency report, is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

The protest is denied.

Anthony H. Gamboa
General Counsel