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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Robinson's Lawn Services, Inc.

File: B-299551.5

Date: June 30, 2008

Kenneth M. Bruntel, Esq., Charlotte E. Gillingham, Esq., and Jon D. Levin, Esq., Crowell & Moring LLP, for the protester.

Timothy H. Power, Esq., Timothy H. Power Law Office, for R-CON Construction, Inc., an intervenor.

David L. Nimmich, Esq., Naval Facilities Engineering Command, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency's evaluation and source selection decision were flawed is denied where the record shows that both the evaluation and the resulting selection decision were reasonable and consistent with the solicitation's evaluation factors.
 2. Agency performed a sufficient price analysis where the awardee's prices under a fixed-price contract were compared to the prices of the other offerors, and to the government estimate, and all prices received were within a narrow range.
 3. Protest allegation that the agency conducted misleading discussions by advising the protester that its prices were too low, and then making award at prices very similar to those proposed by the protester before discussions, is denied where the record shows that the agency repeatedly advised both the protester and the awardee that their unit prices for the indefinite-delivery/indefinite-quantity portion of this effort were significantly lower than the government's estimate, and seemed unrealistic, and ultimately offered the competitors a final option of either increasing their prices, or providing detailed support for their pricing; when both provided the requested support, the agency reviewed it, and reasonably concluded the offerors had provided an acceptable justification for their prices.
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DECISION

Robinson's Lawn Services, Inc. protests the award of a contract to R-CON Construction, Inc. under request for proposals (RFP) No. N40085-06-R-1112, issued by the Department of the Navy, for ground maintenance services at the Naval Air

Station, Oceana, Virginia Beach, Virginia, and at the Norfolk Naval Shipyard, Portsmouth, Virginia. Robinson's essentially objects to the agency's evaluation of proposals, argues that discussions were misleading, and challenges the best value determination.

We deny the protest.

BACKGROUND

The RFP, issued as an 8(a) set-aside on March 15, 2006, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base period, with 4 option years and 5 award option years. Award was to be made on a "best value" basis, considering technical and price evaluation factors. RFP § M.2. The technical evaluation factor included the following equal subfactors: technical approach/methods; corporate experience; management; and past performance.¹ The technical evaluation factors, combined, were equal in weight to price. With respect to price, the agency was to consider reasonableness, realism and completeness; offerors were advised that proposals offering unreasonable, unrealistic, or unbalanced prices could be downgraded or considered unacceptable. In this regard, realism was defined as follows: "Prices are compatible with the scope of solicitation performance requirements and proposed technical approach." Id.

With respect to the corporate experience and past performance evaluation subfactors, the RFP stated that the government would consider whether the offeror has demonstrated a satisfactory or better history of performing work similar in size, scope, and complexity to the RFP. RFP ¶ M.2. The purpose of the past performance evaluation was to determine the extent of performance risk through an evaluation of information supplied by the offeror, information obtained from references, and relevant past performance information obtained from other sources and data bases. Id.

The agency received six proposals by the May 26, 2006 closing date. The technical evaluation board (TEB) evaluated the initial technical proposals and provided a report to the source selection board (SSB). The SSB recommended that all offerors' proposals be included in the competitive range and that discussions be held. After the discussions, revised proposals were received and evaluated by the TEB. After reviewing the TEB report, the SSB eliminated two offerors' proposals from the competitive range and the agency conducted a second round of discussions with the four remaining offerors. The second round of discussions only dealt with pricing issues. On February 7, 2007, the SSB determined that R-CON's proposal represented

¹ Under the technical factor, the agency used the following ratings: excellent, good, satisfactory, marginal, or unacceptable. Agency Report (AR), Tab 30, Source Selection Plan, at 8.

the best value to the Navy and recommended award to R-CON. The source selection authority (SSA) agreed and award was made to R-CON on March 6.

Robinson's and Superior Landscaping, Inc., another unsuccessful offeror, protested to our Office and challenged various aspects of the agency's first selection decision. The agency decided to take corrective action, to include amending the solicitation, seeking revised price proposals from all offerors, reevaluating the proposals, and making a new source selection decision. We subsequently dismissed that protest on April 12.

To implement the corrective action, the agency issued amendment No. 9, which clarified the basis for the price evaluation. Specifically, the amendment provided that prices would be evaluated by totaling base and option year pricing for both the fixed-price and ID/IQ portions of this effort. The amendment also advised that the fixed and ID/IQ prices would be compared to the government estimate and/or other independent price information. After receipt of revised pricing information, the SSB reviewed the technical ratings and revised pricing, and again concluded that R-CON's proposal offered the best value. The SSA agreed and award was again made to R-CON on June 26.

This second award was also challenged in a protest to our Office. Specifically, Superior Landscaping alleged that discussions regarding price realism during the first corrective action were misleading and that the agency improperly relied entirely upon a comparison of the offered prices in its evaluation. Again, the agency decided to take corrective action by proposing to conduct additional discussions, obtain new price proposals, and perform a new evaluation of proposals, including an assessment of price reasonableness, price realism, and any related impact of pricing on the agency's overall risk analysis. As a result, we dismissed the challenge to the second award on August 8.

By letter dated October 12, the agency advised all offerors that it intended to compare offered pricing to the government estimate when analyzing price realism and reasonableness. AR, Tab 14, Second Corrective Action Letter. Offerors were also advised to disregard any prior discussion questions regarding their pricing, and disregard any of the pricing information released during the agency's previous attempts to award the contract. Id. On the subject of price, both Robinson's and R-CON were advised that the agency had determined that their ID/IQ pricing was far below the government estimate and was therefore unrealistically low. Both offerors were advised to revise their proposals accordingly if they wished to be considered for award.

After receiving responses from the offerors—either revising or affirming their prices—the SSB again decided to eliminate two of the offerors' proposals from the

competitive range.² Discussions concerning pricing were held with the four remaining offerors, and the agency received revised pricing information from all four on December 14, 2007. In reviewing the revised pricing information, the agency still had concerns and issued another set of discussion questions. Although offerors had raised their ID/IQ prices twice, Robinson's and R-CON were again advised, on January 28, that their ID/IQ pricing was considered unrealistically low by the agency, and both were given the opportunity to either revise their pricing upward, or provide the agency with a justification explaining why they felt they could provide the ID/IQ services at the offered prices. In response, both Robinson's and R-CON again raised their ID/IQ pricing and directed the agency to the pricing rationale they had submitted in earlier submissions. AR, Tabs 24 and 25. By letter dated February 11, the offerors were given one last opportunity to revise their pricing; however, no revisions were received by the agency.

The SSB reviewed the technical ratings and the final pricing proposals. The final technical evaluation results were as follow:

	R-CON	Offeror A	Robinson's	Offeror B
Technical Approach	Satisfactory	Satisfactory	Satisfactory	Satisfactory
Corporate Experience	Very Good	Very Good	Satisfactory	Satisfactory
Management	Satisfactory	Satisfactory	Satisfactory	Satisfactory
Past Performance	Very Good	Excellent	Satisfactory	Satisfactory
OVERALL RATING	Very Good	Very Good	Satisfactory	Satisfactory
PRICE³	\$24.0 million	[DELETED]	\$24.3 million	[DELETED]

Id. at 6.

The SSA reviewed the evaluation results and noted that R-CON had one of the highest-rated proposals and lowest price. As a result, the SSA determined that

² When the agency reopened this competition after one of the earlier protests, it included the two previously excluded offerors' proposals in the competitive range.

³ The agency states that since adequate price competition was obtained, only price analysis was applied to the price proposal. AR, Tab 27, Final SSB Report, at 5. The government estimate for this work was [DELETED].

R-CON's proposal represented the best value to the government, and awarded the contract to R-CON on March 18. After Robinson's received a debriefing, it filed this protest with our Office on March 24, which it supplemented on May 2.

DISCUSSION

Robinson's maintains that the agency failed to perform a proper price realism analysis, unreasonably evaluated Robinson's technical proposal, conducted misleading discussions, and failed to perform a proper best value determination.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Price Evaluation

Robinson's protests that the agency did not perform an adequate price realism evaluation of R-CON's ID/IQ prices as required by the RFP.⁴ The protester maintains that R-CON's ID/IQ price was [DELETED] percent lower than the government estimate making it unrealistic on its face.

Where, as here, an agency evaluates proposals for the award of a fixed-price contract, in which the government's liability is fixed and the contractor bears the risk and responsibility for the actual costs of performance, a solicitation may provide for a price realism analysis for such purposes as measuring an offeror's understanding of the solicitation requirements and assessing the risk inherent in an offeror's proposal. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. The government may use various price analysis techniques and procedures to determine whether prices are reasonable and realistic, including the comparison of the prices received with each other and with the independent government estimate, and analysis of pricing information provided by the offeror. Federal Acquisition Regulation (FAR) § 15.404-1(b)(2). The nature and extent of a realism analysis ultimately are matters within the sound exercise of the agency's discretion, unless

⁴ In its initial protest, Robinson's also generally questioned whether the agency reviewed the offerors' proposals for price reasonableness as required by the RFP. After review of the agency's report submitted in response to the protest, the protester did not comment, and we consider this issue abandoned and will not address it. Datum Timing, Div. of Datum, Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328 at 5.

the agency commits itself to a particular methodology in the solicitation. Id. We will review an agency's price realism evaluation only to determine whether it was reasonable and consistent with the solicitation requirements. Id.

The RFP, as amended, provided that ID/IQ prices would be compared to the government estimate and or other independent price and cost information. The agency evaluated price realism by comparing price proposals to each other as well as to the government estimate. The agency has adequately documented its price analysis and reasonably determined, based on a comparison of the prices received—and based on a comparison of those prices to the government estimate—that R-CON's prices were fair and realistic.

Specifically, the agency recognized that R-CON's ID/IQ pricing was significantly below the government estimate (about [DELETED] percent lower), but noted that R-CON's pricing was very close to the ID/IQ pricing of other offerors, including Robinson's, which proposed an ID/IQ price [DELETED] percent below the government estimate. The agency concluded that R-CON's rationale for its pricing provided sufficient basis to conclude that the pricing was realistic. R-CON claimed that it could provide the ID/IQ services at a price lower than the government estimate because: (1) it planned to utilize equipment that had been included in its fixed-price estimate; (2) it would retain its management team year-round and utilize managers during the winter months to accomplish some of the work; and (3) the company has significant experience performing these types of services.⁵

While the protester maintains that the agency abandoned the government estimate in performing the price evaluation, the record shows that this was not the case. As explained above, the agency compared R-CON's price to the government estimate and recognized that while it was significantly lower, R-CON's prices were comparable to those of the other offerors. As a result, we think the agency reasonably accepted R-CON's explanations as to how it could perform at its proposed prices. Moreover, the depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion; we find no legal requirement for the agency to have done a more in-depth analysis than was undertaken here. Redcon, Inc., B-285828, B-285828.2, Oct. 11, 2000, 2000 CPD ¶ 188 at 9.

⁵ We note for the record that Robinson's provided similar justifications in support of its ID/IQ pricing.

Technical Evaluation

The protester argues that the agency's evaluation of its past performance and corporate experience unreasonably failed to consider the protester's grounds maintenance projects in violation of the terms of the RFP.⁶

As set forth above, the RFP required offerors to demonstrate experience and past performance on contracts similar in size, scope, and complexity to the work here. The record shows that Robinson's itself had limited corporate experience in grounds maintenance contracts, and that its experience was with work that was not similar in size, scope or complexity to this effort. The protester received a satisfactory rating under this subfactor, however, because its proposed subcontractor demonstrated relevant experience in contracts of similar size, scope and complexity.

Specifically, the record shows that in addressing past performance, Robinson's identified eight prior contracts, three which it performed as a subcontractor, and that the value of these contracts ranged from \$10,125 to \$294,000. Robinson's Proposal, at 52-54. There is little room for dispute that these contracts were significantly smaller than the contract at issue here, or that the work involved in these projects did not involve the same complexity or scope as the work here. Further, although the record shows that the protester was rated excellent by two of its references, these contracts simply were not of the same size and complexity as this one. We therefore see no basis to question the agency's conclusion that the protester had limited experience with grounds maintenance contracts of this magnitude.⁷

⁶ In its initial protest, Robinson's also argued that the agency unreasonably refused to consider the past performance and corporate experience information of its proposed subcontractor, and improperly downgraded the protester's proposal for failing to address how so-called "prestige areas" would be handled and how trees would be protected from damage during weed trimming. The agency report clearly demonstrated that the agency did, in fact, consider the subcontractor's information and recognized that the protester satisfied all RFP requirements. AR, Tab 5, TEB Report and Tab 6, SSB Report at 9. After reviewing the agency report, the protester did not address the agency's response in the firm's comments, and we consider these protest grounds to be abandoned. Dynamic Instruments, Inc., B-291071, Oct. 10, 2002, 2002 CPD ¶ 183 at 4.

⁷ The protester also contends that the TEB report contains other flaws and prejudicial errors. We have reviewed each of these allegations and conclude that they involve, at best, minor errors that do not affect the agency's conclusion concerning the satisfactory rating of the Robinson's proposal.

Misleading Discussions

Robinson's also alleges that the agency conducted unequal discussions resulting in disparate treatment. Specifically, Robinson's maintains that it was misled during discussions into raising its ID/IQ unit prices, only to see R-CON receive the award with overall ID/IQ prices nearly equal to those proposed by Robinson's before discussions.

While an agency may not mislead or coerce an offeror into raising its price, see Johns Hopkins Univ., B-233384, Mar. 6, 1989, 89-1 CPD ¶ 240, here, the record does not support Robinson's allegation that it was misled. During several rounds of discussions, the agency repeatedly advised both Robinson's and R-CON that their ID/IQ unit prices were unrealistically low. Both offerors were also repeatedly asked to revise their pricing. Finally, by letters dated January 28, 2008, both offerors were instructed that their ID/IQ prices remained unrealistically low and that they should review the pricing and adjust accordingly. AR, Tab 22 and 23. However, this time the agency told both offerors that if no additional changes were made to the ID/IQ price structure, they should provide detailed support for their pricing. Id.

In response, both Robinson's and R-CON made minor upward adjustments to their ID/IQ pricing and both provided similar explanations of how they could perform at their proposed prices. Specifically, as explained above, R-CON stated that it was planning to utilize some of the equipment offered in response to the fixed-price portion of the requirement, and that it would retain its management team year-round and utilize managers during the winter months to accomplish some of the work. AR, Tab 20. While Robinson's justification for its ID/IQ pricing was more detailed than R-CON's, we do not think the difference in detail means the agency could not accept R-CON's explanations. Here both offerors received the same instruction with respect to their ID/IQ pricing, and we see nothing unfair or improper about the agency's discussions.

Source Selection Decision

Finally, the protester argues that because of the flaws in the underlying evaluation the best value decision was arbitrary. Here, as discussed above, we have concluded that the agency's evaluation was reasonable and consistent with the evaluation criteria. The SSA selected R-CON for award because R-CON's proposal received a technical rating superior to the technical rating of Robinson's proposal, and offered a lower price. We have no basis to question this determination.⁸

⁸ In its comments on the Agency's Supplemental Report, filed on May 19, the protester challenges the evaluation of the R-CON's corporate experience on the basis that the company identified two relevant contracts that it had only been performing for 8 months prior to the TEB evaluation. We find this issue to be untimely since it

Based on our review of the record, we conclude that the agency's evaluation, and the source selection decision that resulted, were reasonable and in accordance with the terms of the solicitation.

The protest is denied.

Gary L. Keplinger
General Counsel

(...continued)

was not raised until more than 10 days after the basis of protest was known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2008). Moreover, the record shows that not only did R-CON provide two relevant contract references for itself, but it provided four relevant contracts references for its proposed subcontractor which were relied on by the agency in its evaluation. AR, Tab 5.