



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Inside Outside, Inc.

File: B-250162

Date: January 5, 1993

Tom Christensen for the protester,
Lester Edelman, Esq., Department of the Army, for the
agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Since the contracting agency did not consider offeror's price to be too high for the technical approach proposed, the contracting agency was not required to conduct discussions concerning the offeror's price.

DECISION

Inside Outside Inc. protests the award of a contract to Basile Baumann Prost and Associates (Basile) by the Army Corps of Engineers for conducting a study under request for proposals (RFP) No. DACW31-91-R-0079. Noting that the awardee offered a lower price than Inside Outside, the protester contends that the agency should have questioned Inside Outside's price during discussions, and alleges that the awardee will not be able to perform the contract successfully for its offered price. We deny the protest in part and dismiss it in part.

The RFP contemplated the award of a fixed-price contract. The solicitation requested proposals from qualified consultants to evaluate lands at water resource projects owned by the Corps in order to determine the potential of these lands for development of public recreation facilities by private industry. The contract was to be performed in four phases; in the initial phase, the contractor would design the methodology that would be applied in the remaining three phases.

Offerors were required to submit separate technical and cost proposals. The RFP advised that the award would be made to the responsible offeror whose offer conforming to the solicitation would be most advantageous to the government, price and other factors considered. Technical and price were weighted equally.

A Technical Review Committee (TRC) evaluated the technical proposals that were submitted, applying technical evaluation criteria described in the RFP. Inside's and Basile's initial proposals were found technically acceptable and were included in the competitive range. A price evaluation team then reviewed the price proposals submitted by offerors in the competitive range. The team found a wide range of prices, both above and below the government estimate for the project. As a result, the government estimate was reviewed; however, it was not found to be inaccurate in any way. The chairperson of the TRC held discussions with each of the firms in the competitive range, during which he advised the offerors to review their price proposals to be sure that they were "in line with their technical proposals." Best and final offers (BAFOs) were requested and submitted. A technical evaluation committee reviewed the revised proposals and unanimously recommended award to Basile. The contract was so awarded, and this protest followed.

Inside asserts that its own proposal was "the most technically valuable proposal to the government." Since the price it had offered was significantly higher than both the government estimate and the awardee's price, the protester asserts that had it been aware that its price was high, it would have "examined [its] bid accordingly." Inside is arguing, in essence, that the Corps was required to question Inside's price during discussions.

In order for discussions in a negotiated procurement to be meaningful, contracting agencies must advise an offeror of the weaknesses, deficiencies, or excesses in its proposal that must be addressed in order for the offeror to be in line for award, unless to do so would result in technical transfusion or leveling. See Federal Acquisition Regulation (FAR) § 15.610(c) (FAC 90-7); Columbia Research Corp., B-247631, June 22, 1992, 92-1 CPD ¶ 539. Under this standard, the government has an obligation to tell an offeror during discussions that its price is too high unless the government reasonably finds that the price is realistic and reasonable given the technical approach proposed. Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34 at 12.

The record shows that both Inside's and Basile's technical proposals were rated excellent. Inside's proposal received the highest technical score, and the awardee's score was


only 2 points lower than the protester's score. The reviewing officials did not consider Inside's price to be unreasonable for the technical approach the firm was proposing. The RFP contained only performance specifications; for example, the RFP called for development of methodologies, evaluation of projects and sites, and evaluation of strategies within deadlines imposed by law, regulation and the contract. Thus, the RFP invited each offeror to independently propose its own approach to performing the tasks. In fact, Inside concedes in its protest that the scope of work presented in the RFP was drafted in a manner that allowed for a wide range of responses that could have significant price differences, depending on how the offeror proposed to accomplish a certain task.¹ The agency advised Inside, during discussions, to review its price proposal to make sure it was in line with its technical proposal, and then specifically found that Inside's price was reasonable for the particular approach that was proposed in the protester's technical proposal. The fact that it found a less expensive, different approach more advantageous overall does not invalidate that determination. Inside does not question the agency's determination that Inside's price was appropriate for its technical approach; thus, the agency had no basis to tell the protester its price was too high.

Regarding the relationship of Inside's price to the awardee's price, the agency was prohibited by FAR § 15.610(e)(3)(ii) (FAC 90-7) from informing Inside that its price was too high in relation to the price proposed by Basile. In these circumstances, the agency was not required to specifically discuss Inside's proposed price. This portion of the protest is denied.

Inside also contends that Basile will not be able to successfully perform the contract for the price it proposed. However, a protester's claim that a bidder or offeror submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diamaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. An agency decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith on the part

¹The record also shows that the submitted prices ranged from amounts lower than the protester's price and higher than the awardee's price.

of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. Since there is no such showing here, this portion of the protest is dismissed.


for James F. Hinchman
General Counsel