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Decision

Matter of: Lifecycle Construction Services, LLC

File: B-406907

Date: September 27, 2012

William A. Roberts III, Esq., Richard B. O'Keeffe Jr., Esq., and Samantha S. Lee, Esq., Wiley Rein LLP, for the protester.

Terence Murphy, Esq., Patrick H. O'Donnell, Esq., and Karla J. Soloria, Esq., Kaufman & Canoles, P.C., for Rand Enterprises, Inc.; and Robert L. Magrini, Esq., and Alan W. Bardell, Esq., Hayes Magrini & Gatewood, for Trend Construction, Inc., the intervenors.

Mary Louise Ashby, Esq., Department of the Army, Corps of Engineers, for the agency.

Paul N. Wengert, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's proposal as unreasonably low priced is sustained where the agency based its conclusion on a comparison of the protester's price to the median price proposed by other offerors--including offerors whose proposals were determined to be unacceptable, ineligible for award, or priced unreasonably high.

DECISION

Lifecycle Construction Services, LLC, of Fredericksburg, Virginia, protests the award of multiple task order contracts to four firms¹ by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912HN-11-R-0030 for general construction and design/build construction in the Corps's South Atlantic Division, primarily in North Carolina. Lifecycle argues that the Corps unreasonably rejected Lifecycle's proposal on the basis that its proposed price for a portion of the

¹ The Corps awarded contracts to Billy W. Jarrett Construction Company, Inc., of Montgomery, Alabama; Chavis, Inc., of Maxton, North Carolina; Rand Enterprises, Inc., of Newport News, Virginia; and Trend Construction, Inc., of Orlando, Florida.

contract requirements was more than 15 percent below the median price proposed by other offerors for one portion of the contract requirements.

We sustain the protest.

BACKGROUND

The Corps issued the RFP on April 25, 2011, and anticipated the award of multiple indefinite-delivery/indefinite-quantity contracts under a set-aside for Historically Underutilized Business Zone (HUBZone) small businesses. The RFP stated that the Corps intended to award up to five contracts, and expected to subsequently place up to \$100 million in task orders with the awardees during a 3-year base period and two 1-year option periods. RFP at 1.

Although the RFP provided for best value awards, offerors were not required to submit any information regarding their respective approaches to meeting the requirements; rather, the RFP provided that proposals would only be evaluated on the basis of experience, past performance, and price. RFP at 25. Specifically, the RFP established three non-price factors--corporate relevant specialized experience, past performance, and design experience--and stated that these factors would be rated adjectivally as outstanding, above average, satisfactory, marginal or unacceptable.² RFP at 20-24.

With respect to price, the RFP required offerors to submit a "coefficient" for each of 14 locations where work will be performed,³ as well as applicable overhead rates.⁴

² The first two non-price factors (corporate relevant specialized experience and past performance) were equally important; the design experience factor was less important. When combined, the non-price factors were equal in importance to price. Id. at 25.

³ The 14 locations are: Fort Bragg, Pope Air Force Base, Seymour Johnson Air Force Base, Camp MacKall Air Force Base, and Military Ocean Terminal Sunny Point (referred to as MOTSU), in North Carolina; Fort Jackson, South Carolina; and Fort Gordon, Fort Benning, Fort Stewart, Hunter Army Airfield, Fort McPherson/Fort Gillem, Warner Robbins Air Force Base, Moody Air Force Base, and Dobbins Air Force Base, in Georgia. Id. at 14.

⁴ In placing a task order for work at a particular location, the applicable coefficient will be multiplied by the estimated cost for each element of work. The estimated costs will be established by the current edition of the R.S. Means Construction Cost Data book--a trade publication that provides comprehensive construction cost information. See JBlanco Enters., Inc., B-402905, Aug. 5, 2010, 2010 CPD ¶ 186 at 2 n.1. For example, the RFP described how the coefficient would be used to determine a contractor's price for a task that included installing 500 doors. In that situation, the R.S. Means book will be used to look up the item prices for one door,

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RFP at 5. With regard to evaluation of price, the RFP provided estimates of the total work to be performed at each of the 14 locations, to which the offeror's proposed coefficients would be applied. RFP at 8-9. The RFP also stated that the Corps would "perform a price analysis . . . in accordance with Federal Acquisition Regulation (FAR) § 15.404-1, to determine fairness and reasonableness as well as to assure an understanding of the work and ability to execute task orders at the price proposed."⁵ RFP at 26.

In June 2011, the Corps received 19 timely proposals, including Lifecycle's. Thereafter, one offeror withdrew; five proposals were rejected because those offerors were evaluated as having marginal or unacceptable experience or past performance; three offerors were deemed ineligible because they were no longer located in a HUBZone; and two proposals were rejected because the offerors declined to extend the expiration of their proposals. AR, Price Negotiation Memorandum, at 3-4.

Lifecycle's proposal described its experience and past performance, and provided similar information for the firm's subcontractors. The Corps evaluated Lifecycle's proposal as: above average under the corporate relevant specialized experience factor; satisfactory under the past performance factor; satisfactory under the design experience factor; and satisfactory overall. AR, Tab E, Source Selection Evaluation Report, at 53-55.

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the labor to install it, and the cost of any required equipment, which will then be multiplied by the quantity (500 doors), and then multiplied by the contractor's coefficient, after which the contractor's profit and overhead will be added, resulting in the contractor's price for that task. RFP at 7. In this context, offerors were permitted to propose a coefficient above, at, or below the R.S. Means cost estimate, and were advised not to include profit or overhead in the co-efficient because those elements would be added separately. Id. at 5-6.

⁵ FAR § 15.404-1 identifies several analytical techniques, including: "price analysis," "cost analysis," and "cost realism analysis." The FAR does not use the term "price realism," although it does provide that cost realism analysis may be used to evaluate fixed-price proposals. Team BOS/Naples--Gemmo S.p.A./DeJen, B-298865.3, Dec. 28, 2007, 2008 CPD ¶ 11 at 12 (citing FAR § 15.404-1(d)(3)). In generally, price reasonableness is an assessment of whether a price is unreasonably high; price realism is an assessment of whether the price is too low. See, e.g., Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3; WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. Here, we believe the RFP adequately advised offerors that the Corps would consider both the reasonableness and realism of what are essentially fixed prices.

With regard to price, Lifecycle proposed pricing coefficients for each of the 14 locations as follows:

Location	Coefficient
Fort Bragg, NC	[Deleted]
Pope Air Force Base, NC	[Deleted]
Seymour Johnson Air Force Base, NC	[Deleted]
Camp MacKall Air Force Base, NC	[Deleted]
MOTSU, NC	[Deleted]
Fort Jackson, SC	[Deleted]
Fort Gordon, GA	[Deleted]
Fort Benning, GA	[Deleted]
Fort Stewart, GA	[Deleted]
Hunter Army Airfield, GA	[Deleted]
Fort McPherson/Fort Gillem, GA	[Deleted]
Warner Robbins Air Force Base, GA	[Deleted]
Moody Air Force Base, GA	[Deleted]
Dobbins Air Force Base, GA	[Deleted]

Protest, Tab B, Lifecycle Proposal, vol. I, at 5.

Following submission of proposals, a contracting specialist performed an analysis of the offerors' proposed prices, relying on 15 of the 19 proposals--including proposals that the agency ultimately determined to be unacceptable for various reasons.⁶ The contracting specialist began the analysis by comparing the offerors' coefficients for just one of the 14 locations (Fort Bragg⁷) to the government estimate. Id. That comparison showed that the offerors' coefficients for Fort Bragg varied widely--from 14 percent below to 65 percent above the government estimate. Id. The analyst then consulted a government cost estimator, who advised that prices within 15 percent above or below the government estimate would be reasonable. Although none of the offerors' coefficients for Fort Bragg was more than 15 percent below the government estimate (including Lifecycle's), four of the firms proposed coefficients that were more than 15 percent above the government estimate. Id.

⁶ Only four of the 19 proposals were not considered in this price analysis. Of these, one had been withdrawn and three had erroneously included coefficients without decimals--for example, entering a coefficient as [Deleted] instead of [Deleted]--rendering their proposed prices 100 times higher than they apparently intended. AR, Tab F, Price Analysis Report, at 2-3.

⁷ The agency explains that the largest amount of the work is expected to be performed in the Fort Bragg area. Id.

Rather than relying on the government's estimate, the contracting specialist calculated the median⁸ of all 15 offerors' coefficients for the Fort Bragg location, asserting that the median price was a better representation of "the cost the government can expect to pay for construction services." Id. at 3 The median coefficient for Fort Bragg was materially higher than the government estimate, and resulted in Lifecycle's Fort Bragg coefficient (which was **[Deleted]**, as shown above) being evaluated as **[Deleted]** lower than the median. Id. Since Lifecycle and one other offeror submitted a coefficient for Fort Bragg that was more than 15 percent below the median, the contracting specialist concluded that those firms' prices were "excessively low and may indicate a lack of understanding of the requirements." Id. Four other offerors' coefficients were deemed excessively high.⁹ The analyst therefore concluded that only nine firms (not including Lifecycle) had submitted reasonable and realistic prices. Id. at 4.

On February 24, the source selection official prepared a source selection decision document, which reflected a price analysis similar to that discussed above. After comparing Lifecycle's proposed coefficients to the government estimates, the source selection official concluded that "fair market pricing" would be established by comparison to the median of the 15 coefficients¹⁰ proposed for the combined Fort Bragg/Pope Air Force Base locations;¹¹ that coefficient was **[Deleted]**. AR, Tab G, Source Selection Decision, at 3-4. In this regard, the source selection official noted that a "specialty" contract had recently been awarded to a firm that proposed a coefficient of **[Deleted]**, and that the firm had failed to successfully perform that contract.¹² Id. He also stated that he was aware that two successful contractors at Fort Bragg had coefficients of **[Deleted]** and **[Deleted]**. Id. Based on those considerations, the source selection official concluded that the coefficients proposed

⁸ In other words, the contracting specialist listed the 15 offerors in order of the size of their Fort Bragg coefficients, and selected as the "median" the coefficient of the firm in the middle (eighth of the 15).

⁹ These four offerors' coefficients had also been found to be more than 15 percent above the government estimate. Nonetheless, they had been considered for purposes of calculating the median price.

¹⁰ The 15 coefficients included those in proposals that were evaluated as ineligible, unacceptable, and/or unreasonably high-priced, which had also been the case for the price analysis report discussed above.

¹¹ We understand that the Fort Bragg and Pope Air Force Base locations are within 5 miles of each other.

¹² The source selection official acknowledged that: "Due to the difference in the way the coefficient is used for these specialty contracts, this coefficient would be equivalent to a coefficient of **[Deleted]** for a general construction contract." Source Selection Decision at 4.

by Lifecycle and a second firm reflected a lack of understanding of the work, which meant that the firms “would not be able to execute task orders at the prices proposed.” Accordingly, Lifecycle’s proposal was not further considered for award. Id.

The source selection official then narrowed his consideration to eight proposals with overall non-price ratings of satisfactory or higher, and listed each firm’s overall experience/past performance rating and coefficient, as follows:

Offeror	Overall Rating	Bragg/Pope Coefficient	% Above/Below Median Coefficient of [Deleted]
Chavis	Outstanding	[Deleted]	[Deleted]
Jarrett	Above Average	[Deleted]	[Deleted]
Rand	Above Average	[Deleted]	[Deleted]
[Offeror A]	Satisfactory	[Deleted]	[Deleted]
Trend	Satisfactory	[Deleted]	[Deleted]
[Offeror B]	Satisfactory	[Deleted]	[Deleted]
[Offeror C]	Satisfactory	[Deleted]	[Deleted]
[Offeror D]	Satisfactory	[Deleted]	[Deleted]

Id. at 5-6.

The source selection official determined that three of those eight (shown above as Offerors B, C, and D) had proposed coefficients that were more than 15 percent higher than the median coefficient, and concluded that they reflected “unreasonable pricing.” Id. at 6. He then selected the five remaining proposals for award. Id. at 6-7.

Although the source selection decision was finalized on February 24, the Corps concluded that it would not award contracts by March 31, the date when the proposals would expire. Therefore, on March 19, the Corps asked all offerors to extend their proposals to May 30. One of the intended awardees (designated as Offeror A above) declined to extend its proposal.

On April 3, the source selection official prepared an addendum to his source selection decision, noting that Offeror A’s proposal had expired, making the firm ineligible for award. Although the RFP stated that the Corps would award up to five contracts, the source selection official stated that he would not select Lifecycle for award--Lifecycle was next in line after Offeror A--because of his original determination that the firm’s price coefficient posed a risk to the government that Lifecycle would be unable to perform. Id. at 9.

On June 1, the Corps notified Lifecycle that its proposal had not been selected for award. Lifecycle requested a debriefing, after which it filed an agency level protest. Protest attach. 4, Agency Level Protest, at 1. Following a telephone discussion with

the agency during which Lifecycle concluded that the agency would not sustain its agency-level protest, the firm filed this protest with our Office.

ANALYSIS

Lifecycle argues that the Corps conducted a price evaluation that was unreasonable and failed to conform to the terms of the RFP; accordingly, Lifecycle maintains that its proposal was improperly rejected.¹³ More specifically, Lifecycle argues that the agency improperly rejected its proposal by relying on a comparison to the median coefficient proposed by 15 offerors for only two of the RFP's 14 locations. Lifecycle asserts that its proposed coefficients were realistic, and reflected careful judgments regarding the costs of performance. Protest at 4. Further, Lifecycle maintains that the detailed data from the R.S. Means database shows that coefficients below the nationwide average are typical in the region where the RFP seeks services; for example, the firm argues that the weighted average city cost index for Fayetteville, North Carolina is 77.6 percent (that is, a coefficient of 0.776). Id.

The Corps argues that the rejection of Lifecycle's proposal was reasonable. The contracting officer states that she compared Lifecycle's prices to the government estimate and to the R.S. Means averages, and in doing so found that the firm's price was "too low," and was "more than 15% below existing contracts." Contracting Officer's Statement at 3-4. More specifically, the contracting officer states that Lifecycle's coefficient for the Fort Bragg/Pope Air Force Base area was [~~Deleted~~] below the median of other offered coefficients for this area, concluding that this reflected Lifecycle's lack of understanding of the work and an inability to perform at the prices proposed. Id. at 4.

In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the terms of the solicitation.¹⁴ Nova Techs., B-405982.2, May 16, 2012, 2012 CPD ¶ 172 at 9.

¹³ There does not appear to be any dispute that Lifecycle's non-price factor ratings of satisfactory or better did not affect the Corps's decision to reject Lifecycle's proposal. Consistent with this understanding, the agency selected one offeror (Trend) with ratings of satisfactory under the non-price evaluation factors (similar to Lifecycle's ratings) on the basis that it had proposed sufficiently high-priced coefficients. Contracting Officer's Statement at 3.

¹⁴ Although the record reflects use of the term "unreasonable" in describing Lifecycle's price, it is apparent that the Corps's concern was whether Lifecycle's coefficients reflected an understanding of the work--i.e., price realism. We note that our cases in this area recognize that, as with cost realism analysis, an agency's assessment of price realism requires consideration of the offeror's technical approach, e.g., Team BOS/Naples-Gemmo S.p.A./DelJen, supra, at 12-16, and that an agency may not mechanically apply its own estimates to an offeror's proposal

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Based on our review of the record here, we conclude that the Corps unreasonably rejected Lifecycle's proposal. We reach this conclusion, first, because the median was materially higher than the government estimate due to the inclusion of proposed prices that the agency, itself, determined were unacceptable, ineligible for award, and/or unreasonably high. That is, while the contracting officer and the source selection official assert that the median represented the "fair market pricing," they also acknowledge that three of the price coefficients used to establish that benchmark were, themselves, unreasonably high, and several others were proposed by offerors/proposals that were determined to be unacceptable or ineligible for award. Accordingly, in our view, the median could not reasonably be relied upon as a valid benchmark for comparison. Further, even if the agency's calculation of the median had been rational, the agency comparison to that benchmark did not consider the coefficients proposed for 12 of the 14 locations identified in the RFP. Nothing in the RFP advised offerors that the prices proposed for the locations other than the Fort Bragg/Pope Air Force Base area would not be meaningfully considered.¹⁵

Finally, we are troubled by the source selection authority's reliance on the agency's earlier experience with an unidentified contractor that failed to successfully perform under a different type of contract. Nothing in the record presented to this Office reasonably addresses the circumstances surrounding the Corps's decision to terminate that prior contract. Accordingly, we have no basis to assess whether that contractor's prior unsuccessful performance is relevant to Lifecycle's capability to perform here.

The protest is sustained.

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without considering the offeror's unique approach. Honeywell Tech. Solutions, Inc.; Wyle Labs., Inc., B-292354, B-292388, Sept. 2, 2003, 2005 CPD ¶ 107 at 11-12. Here, however, the RFP did not request offerors to submit (or provide for evaluation of) a technical approach.

¹⁵ Our decision here addresses the most clearly apparent flaws in the Corps's price realism analysis. We do not reach a judgment in this decision as to whether a percentage range above or below a median of offered prices is an appropriate method for determining that prices are unrealistic. However, mechanical approaches to evaluation and source selection are generally disfavored. See, e.g., I.M. Sys. Group, B-404583, Feb. 25, 2011, 2011 CPD ¶ 64 at 10 (mechanical price realism); Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 4-5 (mechanical tradeoff); Jonathan Corp.; Metro Machine Corp., B-251698.3, B-251699.4, May 17, 1993, 93-2 CPD ¶ 174 at 11, recon. denied, Moon Eng'g Co., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ 233 at 6 (mechanical cost realism).

RECOMMENDATION

We recommend that the Corps reasonably reevaluate Lifecycle's proposal under the price factor. While the Corps retains significant discretion under the terms of the RFP in conducting that reevaluation, we recommend that the evaluation not include comparing Lifecycle's coefficients to those of offerors whose prices the agency has determined to be unreasonable or whose proposals are otherwise unacceptable. After completing that reevaluation,¹⁶ the Corps should then make a new source selection decision.

We also recommend that Lifecycle be reimbursed its costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2012). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

Lynn H. Gibson
General Counsel

¹⁶ In addition, consistent with the RFP being set aside for HUBZone small businesses, if the Corps concludes that there is reason to doubt the ability of Lifecycle to perform this work at its proposed prices, the Corps should consider whether that determination is, in effect, an adverse responsibility determination regarding a small business, which requires referral to the Small Business Administration for consideration under its certificate of competency process. See 15 U.S.C. § 637(b)(7) (2006 & Supp. V 2011); FAR § 19.602-1(a).