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

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Decision

Matter of: SoniTech NDT

File: B-407115

Date: November 2, 2012

Charles R. Lucy, Esq., and Victoria L. Strohmeyer, Esq., Holland & Hart LLP, for the protester.

Richard G. Olona, Esq., Olona & Associates, P.C., for Sonic Inspection Corporation, an intervenor.

Lucie J. McDonald, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In a negotiated procurement for a fixed-price purchase order, protest that the successful vendor's price is unrealistically low is denied where the solicitation did not provide for the evaluation of price realism.
 2. Protest objecting to the agency's evaluation of the successful vendor's past performance is denied, where the agency considered the vendor's history of relevant past performance and the positive comments made by the vendor's references regarding its past performance.
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DECISION

SoniTech NDT, of Broomfield, Colorado, protests the issuance of a purchase order to Sonic Inspection Corporation, of Castle Rock, Colorado, under request for quotations (RFQ) No. N40085-12-M-5108, issued by the Department of the Navy for testing of fire protection piping systems. The protester objects to the agency's evaluation of the awardee's quotation and selection decision.

We deny the protest.

BACKGROUND

The RFQ, issued as a small business set-aside under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, provided for the

issuance of a fixed-price order for the non-destructive testing of fire protection piping systems using ultrasonic localized guided wave technology within buildings occupied by the Defense Information Systems Agency (DISA) and located at the Naval Support Activity in Mechanicsburg, Pennsylvania. RFQ at 2-3. Vendors were informed that the work concerned five DISA occupied buildings but did not include space within these buildings that was occupied by other tenants. In this regard, the RFP identified the amount of square footage occupied by DISA in each building. RFQ amend. 1, at 2.

Vendors were informed that selection of the successful vendor would be made on a best-value basis, considering past performance and price, which were stated to be approximately equal in value. RFQ at 52. With regard to past performance, vendors were instructed to provide information that demonstrated customer satisfaction for recent (performed within the last 3 years) and relevant contracts performed for federal agencies or commercial customers.¹ Id. at 50. The RFQ provided that the agency would evaluate the vendor's past performance as substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral).² RFQ at 53.

With regard to price, the RFQ requested that vendors provide a total, lump-sum price for all of the requested services. RFQ at 2. The RFQ also provided that if the lowest-priced quotation was found to have a substantial confidence performance rating, that quotation would be deemed to represent the best value to the agency. Id. at 53.

The agency received quotations from only SoniTech and Sonic. Sonic submitted the lowest-priced quotation (\$70,800), and SoniTech submitted the second-lowest priced quotation (\$180,000). Agency Report (AR), Tab 3, SoniTech Quotation, at 2; Tab 6, Sonic Quotation, at 1. The contracting officer evaluated the firms' past performance information, and obtained several completed past performance questionnaires for each vendor. The contracting officer assessed both firms' past performance as substantial confidence. Contracting Officer's Statement at 3.

The contracting officer also assessed the reasonableness of Sonic's low price by comparing Sonic's \$70,800 price with the revised independent government estimate

¹ Relevant past performance was defined as non-destructive testing of fire protection piping systems using ultrasonic localized guided wave technology. RFQ at 52.

² Substantial confidence reflected the government's high expectation, based upon a vendor's recent and relevant past performance, that the vendor would successfully perform the required effort. RFQ at 53.

(IGE) of \$61,392.60.³ The contracting officer concluded that, although Sonic's price was approximately 12 percent higher than the revised IGE, it was within an acceptable range and reasonable. AR, Tab 11, Price Reasonableness Determination.

The purchase order was issued to Sonic as the firm with the lowest-priced quotation that received a substantial confidence past performance assessment. This protest followed a debriefing.

DISCUSSION

The protester raises a number of challenges to the agency's evaluation of Sonic's price and past performance, none of which we find to have merit.⁴

Price Evaluation

The protester first complains that the agency failed to assess the realism of Sonic's low price. The RFQ, however, did not provide for a price realism analysis. Where, as here, the award of a fixed-price contract or order is contemplated, a quotation's price realism is not ordinarily considered, since a fixed-price contract or order places the risk and responsibility for contract costs and resulting profit or loss on the contractor.⁵ Beyel Bros., Inc., B-406640, B-406640.2, July 18, 2012, 2012 CPD

³ The initial IGE was \$99,881.20, which was based in part upon information received from SoniTech. See AR at 3; Tab 8, Declaration of Engineering Technician at 1-2. After receiving quotations, the agency reviewed the IGE and determined that it was erroneously based upon all of the square footage of the five buildings and not just the space occupied by DISA. Contracting Officer's Statement at 2. The IGE was then revised to \$61,392.60.

⁴ SoniTech also argued that Sonic's quotation was submitted late and with inaccurate information. Protest at 6. The agency specifically responded to this allegation in its report. SoniTech abandoned this ground of protest, when it did not address the agency's response in its comments. See Cedar Electric, Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.

⁵ In this regard, SoniTech challenges the adequacy of the IGE and the agency's revision of the IGE after receipt of quotations. Protester's Comments at 5. These arguments also provide no basis to sustain the protest, as they all concern SoniTech's belief that Sonic's price is unrealistically low. We also note that agencies are permitted to change IGEs after receipt of quotations or proposals where a review of the quotations or proposals shows that the initial IGE was incorrect in its assessment of the level of effort necessary to perform the requirement, or in its prediction of fair and reasonable prices as compared to the actual pricing disclosed

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¶ 211 at 4. A price realism evaluation is not required where a solicitation for a fixed-price contract does not include a requirement for such an evaluation. Id.

The protester also argues that the agency's price reasonableness analysis was flawed, because Sonic's own pricing data allegedly reflects that its historical pricing for this project was substantially higher than its price quotation here and more in line with SoniTech's higher price. The purpose of a price reasonableness review in a competition for the award of a fixed-price contract or order, however, is to determine whether the prices offered are too high, as opposed to too low. 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. SoniTech's argument that Sonic's price is too low concerns price realism and not reasonableness. See C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3; SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. As noted above, such an analysis was not required here.

The protester also complains that the agency's affirmative determination of Sonic's responsibility is unreasonable, because Sonic allegedly will not be able to perform the RFQ work within the time required at its low price.⁶ Protest at 6. We generally do not review affirmative determinations of responsibility, except in circumstances not demonstrated here. 4 C.F.R. § 21.5(c) (2012). Moreover, because Sonic is a small business, any issue concerning the awardee's responsibility is a matter for the Small Business Administration under its certificate of competency program.

Past Performance Evaluation

Finally, the protester argues that Sonic's past performance should not have received a substantial confidence rating, because Sonic had not performed a government project of the size and scope contemplated by the statement of work within the past 3 years. Protest at 6; Protester's Comments at 9.

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by competition. Resource Ltd., B-406492, B-406492.2, June 6, 2012, 2012 CPD ¶ 195 at 5.

⁶ SoniTech also argues that Sonic does not have the requisite integrity to be found responsible because Sonic allegedly posted confidential drawings from a past project to its publicly available website in violation of contract terms. Protester's Comments at 9. This argument, which was not raised in SoniTech's protest, is untimely. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. See 4 C.F.R. § 21.2(a) (2012); AINS, Inc., B-405902.3, May 31, 2012, 2012 CPD ¶ 180 at 6 n.12.

In reviewing a protest challenging an agency's past performance evaluation, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluator's judgments. See Citywide Managing Servs. Of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Here, the record does not support SoniTech's complaint. First, contrary to the protester's belief, the RFQ did not provide that the agency would only consider past performance of federal government contracts but stated that the agency would consider past performance of relevant work for federal agencies and commercial customers. See RFQ at 50. Next, the contracting officer found that Sonic had identified seven prior projects for its relevant experience, one of which had a significantly higher value than the RFQ work here or any of the experience identified by SoniTech. The contracting officer received responses to two past performance questionnaires for Sonic's work as a prime contractor, which stated that Sonic's performance was excellent and good, respectively. The contracting officer also received a verbal response for work that Sonic performed as a subcontractor, which indicated that Sonic's performance was good. Contracting Officer's Statement at 3. The contracting officer concluded from this record that Sonic's past performance merited a substantial confidence rating, which we find was consistent with the RFQ criteria. Although SoniTech disagrees with this judgment, this does not demonstrate that the agency's assessment of the merits of Sonic's past performance was unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel