Decision

Matter of: Southwind Construction Services, LLC

File: B-410333.2

Date: January 21, 2015

Marvin Laws, Esq., Robert L. Magrini, Esq., and Sarah Brockhaus, Esq., Hayes Magrini & Gatewood, for the protester.
Matthew R. Keiser, Esq., Lauren Williams, Esq., Ronald Goodeyon, Esq., Department of the Army, Corps of Engineers, for the agency.
Peter D. Verchinski, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency’s price evaluation is denied where the evaluation was based on the offerors’ price proposals for an initial seed project task order, in accordance with the solicitation, and where the agency reasonably found the awardee’s price, as well as the awardee’s rates, to be fair and reasonable.

2. Protest challenging agency’s determination that the proposals of the protester and awardee were technically equal is denied where the agency’s evaluation considered the qualitative aspects of each proposal and was not based upon a mechanical counting of the strengths and weaknesses.

DECISION

Southwind Construction Services, LLC, of Edmond, Oklahoma, protests the award of a contract to HGL Construction, Inc., of Midwest City, Oklahoma, under request for proposals (RFP) No. W912BV-14-R-0064, which was issued by the Department of the Army, Corps of Engineers, for various design build and construction services within the Corps’ southwestern division boundaries, and the Tulsa district.
Southwind argues that the agency failed to conduct the price evaluation consistent with the RFP’s stated evaluation criteria, and that the agency conducted an unequal and unreasonable technical evaluation.

We deny the protest.
BACKGROUND

The RFP, which was issued on April 22, 2014, as a small business set-aside, contemplated a single-award indefinite-delivery, indefinite-quantity (ID/IQ) task-order contract (which the agency terms a “SATOC”) on a fixed-price basis for a 1-year base period and four 1-year options.¹ RFP at 3-000010.² The RFP also anticipated the issuance of an initial “seed project” task order in conjunction with contract award. Id. at 3-000021.

The RFP established a two-phased competition. During the first phase, firms were to submit performance capability proposals, which were to be evaluated using three evaluation factors (listed in descending order of importance): specialized experience, past performance, and organization/technical approach. RFP at 3-000020, 24. Firms were informed that the agency would select up to five firms to continue to the second phase of the competition. Id. at 3-000020. Price was not an evaluation factor during this phase. Id. at 3-000024, 32.

During the second phase, firms were to submit technical and price proposals addressing an initial seed project task order, which consisted of installing heating, cooling, and ventilation for a building at Fort Sill, Oklahoma. RFP amend. 3 at 11-000008. The RFP provided that award would be made on a best-value basis, considering the following four factors: (1) design technical; (2) remaining performance capability; (3) phase 1 proposal roll-up rating; (4) and price. RFP amend. 3 at 11-000011. The design technical factor was comprised of three subfactors: building mechanical; building electrical; and testing, adjusting, and balancing. Id. The remaining performance capability factor was also comprised of three subfactors: proposed contract duration and summary schedule; key subcontractors; and key personnel. Id. For evaluation purposes, the RFP stated that the design technical evaluation factor was more important than the combined weight of the other three evaluation factors. Id. Of the three other evaluation factors, remaining performance capability was more important than the phase 1 proposal roll-up rating, which was more important than price. Id.

With regard to the price evaluation, the RFP informed offerors that the evaluated price for the SATOC would be based on an offeror’s price for the initial seed project task order. RFP at 3-000021. The solicitation explained that the agency would evaluate price to ensure the proposed prices were fair, reasonable, and not

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¹ The contract had an estimated value of $15 million. Contracting Officer (CO) Statement at 1; RFP at 3-000010.

² The agency used a Bates numbering system in preparing the agency’s report. Citations in this decision use the Bates numbers assigned by the agency.
unbalanced. RFP amend. 3 at 11-000008. With regard to general and administrative (G&A) and overhead rates, the RFP stated that the rates would be assessed “to allow the Government to evaluate the total cost impact to the government and its customers for the life of the total $15 million SATOC Contract.” RFP at 3-000021.

In phase one of the procurement, the agency received 14 proposals. CO Statement at 2. Five offerors, including Southwind and HGL, were selected to compete in phase two. Id. The five firms subsequently submitted phase two proposals, which were evaluated by the agency’s source selection evaluation board (SSEB). Southwind’s and HGL’s proposals were evaluated as follows:³

<table>
<thead>
<tr>
<th>Factor</th>
<th>Southwind</th>
<th>HGL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Technical</td>
<td>Outstanding</td>
<td>Outstanding</td>
</tr>
<tr>
<td>Building Mechanical</td>
<td>Outstanding</td>
<td>Outstanding</td>
</tr>
<tr>
<td>Building Electrical</td>
<td>Outstanding</td>
<td>Outstanding</td>
</tr>
<tr>
<td>Test, Adjust, Balance</td>
<td>Outstanding</td>
<td>Outstanding</td>
</tr>
<tr>
<td>Remaining Performance Capability</td>
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<td>Outstanding</td>
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<tr>
<td>Contract Duration</td>
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<td>Outstanding</td>
</tr>
<tr>
<td>Key Subcontractors</td>
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<tr>
<td>Key Personnel</td>
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</tr>
<tr>
<td>Phase 1 Roll-Up Rating</td>
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<td>Phase 2 Overall Rating</td>
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</tr>
<tr>
<td>Price</td>
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<td>$112,278</td>
</tr>
</tbody>
</table>

AR, Tab 31, Source Selection Decision Document (SSDD), at 31-000006, 8. The evaluators’ adjectival ratings were supported by narrative explanations, which identified significant strengths, strengths, and weaknesses in the firms’ respective proposals. AR, Tab 20, SSEB Report; Tab 30, Supp. SSEB Report. HGL’s

³ The design technical, remaining performance capability, and phase 1 roll-up rating evaluation factors were assigned one of the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. RFP amend. 3 at 11-000019; RFP at 3-000033.
proposal received 18 strengths (3 significant) and 2 weaknesses under the first evaluation factor (design technical), and 10 strengths (3 significant), and no weaknesses under the second factor. AR, Tab 31, SSDD, at 31-000007. Southwind’s proposal received 16 strengths (6 significant), and 1 weakness under the first factor, and 11 strengths (2 significant), and 1 weakness under the second factor. Id.

The source selection authority (SSA) reviewed the SSEB’s findings and concurred with the SSEB. AR, Tab 31, SSDD, at 31-000009. The SSA determined that the proposals of Southwind and HGL were technically equivalent, and concluded that HGL’s lower-priced proposal offered the best value to the government. Id. at 31-000014-15. On September 15, the agency awarded the $15 million SATOC, and the initial seed project task order to HGL. 4 CO Statement at 6. After receiving a debriefing, Southwind filed the current protest.

DISCUSSION

Southwind primarily raises two challenges to the agency’s evaluation of proposals. Southwind first asserts that the agency’s price evaluation was unreasonable. The protester also contends that the SSA improperly concluded that the proposals of Southwind and HGL were technically equal. 5 We find neither allegation provides a basis to sustain the protest.

Price Evaluation

The protester asserts that the agency’s price evaluation was flawed because the evaluation was unreasonably based upon the price for the initial seed project task.

4 The agency originally awarded the contract to a different firm, Red Cedar Enterprises, Inc. However, Red Cedar withdrew its proposal from consideration after Southwind and HGL filed challenges to Red Cedar’s small business size status. AR, Tab 31, SSDD, at 31-000009.

5 Southwind’s protest also alleges several improprieties relating to the agency’s initial award of the contract to Red Cedar. Protest at 4-6. Our Office determined that these arguments failed to state a valid basis, and they were dismissed. 4 C.F.R. § 21.5(f) (2014). Furthermore, Southwind’s protest challenges procedural aspects of the agency’s award to HGL, such as the agency’s alleged failure to timely provide information and documents to the protester and the adequacy of the agency’s debriefing. Our Office also dismissed these protest grounds, as our jurisdiction does not extend to administrative or procedural matters that do not affect the validity of the award. See e.g., Evans Sec. Solutions, Inc., B-311035, Mar. 19, 2008, 2008 CPD ¶ 58 at 3 n.3; The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2
order, and failed to consider the offerors’ labor burden and G&A rates as required by the RFP. Specifically, Southwind argues that it was improper for the agency to base its award decision on the initial task order price, rather than the overall estimated $15 million price of the SATOC. The protester also contends that the terms of the RFP required the agency to calculate the dollar value impact of the offerors’ rates over the life of the contract. In this regard, Southwind asserts that “[w]hen calculated based on the life of the $15 million SATOC contract, Southwind’s overhead costs for labor burden and G&A are significantly less than HGL’s, potentially anywhere from [DELETED] to [DELETED].” Comments at 3.

With regard to the protester’s first assertion—that it was improper for the agency’s price evaluation to rely upon the price of the initial seed project task order—we find the protester’s untimely attempt to challenge the terms of the solicitation unavailing. As described above, the solicitation stated that the price of the initial task order project would be used to evaluate price for the basic SATOC contract. RFP at 3-000021. The agency evaluated price in accordance with the solicitation terms. Accordingly, we dismiss Southwind’s challenge to the solicitation’s price evaluation criteria because the protester failed to submit its protest by the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2014).

With regard to Southwind’s challenge to the agency’s evaluation of the offerors’ G&A and overhead rates, we find that the agency’s evaluation was reasonable and consistent with the solicitation terms.

The manner and depth of an agency’s price analysis is a matter within the sound exercise of the agency’s discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Gentex Corp.-Western Operations, B-291793 et al., Mar. 25, 2003, 2003 CPD ¶ 66 at 21. In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations. Id.

Here, the RFP required the agency to evaluate price information for fairness, reasonableness, and unbalanced pricing. RFP amend. 3 at 11-000008. The solicitation advised offerors to submit a labor burden percentage rate and a G&A rate that would be utilized throughout the life of the SATOC contract. The solicitation explained that these rates would be evaluated to allow the agency to assess the total cost impact over the life of the SATOC.

The agency’s evaluation determined that, with the exception of one proposal, the G&A and overhead rates proposed by the offerors were fair and reasonable. AR, Tab 21, Final Competitive Range, at 21-000008. The record establishes that in
reaching this conclusion, the agency compared the rates of the offerors to each other, and also determined that the proposed rates were in line with rates provided on similarly awarded ID/IQ SATOC contracts. Id. We find nothing unreasonable with the agency’s evaluation; the solicitation did not require the agency to perform the more exhaustive evaluation proposed by Southwind.

Technical Evaluation

Southwind challenges the agency’s conclusion that the proposals of Southwind and HGL were technically equivalent.6 Southwind alleges that the SSA failed to recognize that Southwind was assigned six significant strengths on the most important factor, where HGL was assigned only three. The protester argues that had the SSA considered this information, and applied the stated weights for each factor, he would have concluded that Southwind offered the superior proposal.

Generally, when a protester’s challenge to a source selection decision is based solely on the number of evaluated strengths, weaknesses, or other discriminators that are identified by an agency during its evaluation, the challenge fails to state a valid protest basis, since a contracting agency’s ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11. More specifically, the evaluation of proposals and consideration of their relative merit is properly based on a qualitative assessment of competing proposals characteristics, not a simple count of the relative strengths and weaknesses assigned during the evaluation process. ITT Corp., Sys. Div., B-310102.6 et al., Dec. 4, 2009, 2010 CPD ¶ 12 at 10; Kellogg Brown & Root Servs., B-298694.7, June 22, 2007, 2007 CPD ¶ 124 at 5.

Southwind’s arguments rely heavily on a counting of the strengths and significant strengths assigned to its proposal. Southwind also makes various assumptions with regard to the awardee’s proposal in an attempt to show why its proposal was technically superior. The record demonstrates however, that the agency’s evaluation of the protester’s and awardee’s proposals, did in fact consider the significant strengths, strengths, and weaknesses assigned to each proposal, and the relative weights assigned to the evaluation factors. In this regard, the source

6 In its initial protest, Southwind challenged additional aspects of the agency’s technical evaluation that it failed to pursue in its comments after receipt of the agency report. We therefore deem these issues abandoned. See Israel Aircraft Indus., Ltd.-TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7 (where protester provides a response that merely references or restates the original allegation without substantively rebutting the agency’s position, we deem the originally-raised allegation abandoned).
selection decision establishes that the SSA “closely reviewed the SSEB’s findings" and “compared all the proposals, giving appropriate consideration to the evaluation criteria set forth in the solicitation and their relative importance.” AR, Tab 31, SSDD, at 31-000010. Based upon his comparison of the proposals, the SSA “determined that . . . HGL provides the best value to the Government.” Id. We find that the protester’s arguments here provide nothing more than disagreement with the agency’s reasonable conclusions. General Dynamics, American Overseas Marine, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 10 (where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision.)

The protest is denied.

Susan A. Poling
General Counsel