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Decision

Matter of: REB ROWE Services, LLC; General Services Administration--
Reconsideration

File: B-410001.6; B-410001.7

Date: April 4, 2016

Kenneth B. Weckstein, Esq., Brown Rudnick LLP, for REB ROWE Services, LLC; and Leigh Ann Bunetta, Esq., for General Services Administration, the requesters. Johnathan M. Bailey, Bailey & Bailey, P.C., for Alcazar Trades, Inc., the protester. Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision challenging an agency's evaluation of an awardee's staffing approach and the related price realism analysis is denied where the protester does not show that the prior decision contains errors of fact or law that warrant reversal or modification of the decision.

DECISION

REB ROWE Services, LLC, of Reading, Pennsylvania, and the General Services Administration (GSA) ask that we reconsider our decision in Alcazar Trades, Inc.; Sparkle Warner JV, LLC, B-410001.4; B-410001.5, April 1, 2015, 2015 CPD ¶ 123, in which we sustained a protest by Alcazar Trades, Inc. (ATI), of San Antonio, Texas. ATI protested the award of a contract to REB ROWE under request for proposals (RFP) No. GS-08P-14-JA-C-0021, issued by the GSA for custodial services at the Denver Federal Center in Lakewood, Colorado.¹ REB ROWE and GSA argue that the basis on which we sustained ATI's protest was untimely raised.

We deny the request for reconsideration.

¹ Our decision consolidated protests filed by Alcazar and Sparkle Warner. Sparkle Warner's protest is not relevant to this reconsideration request and will not be discussed here.

BACKGROUND

The RFP provided for the award of a single fixed-price contract to furnish custodial services for buildings that were previously serviced under two separate contracts, one of which was performed by ATI. Award was to be made on a best-value basis, considering price and the following non-price evaluation factors: management plan, past performance, and experience. The non-price factors, when combined, were approximately equal to price. Price was to be evaluated to ensure an offer's pricing was not "unbalanced, unreasonable, or unrealistic." RFP at 105.

Proposals were submitted in June, 2014. ATI's proposal was eliminated from the competitive range, in part because the agency "considered ATI's proposed price to be insufficient to provide adequate staffing for the contract." ATI's Supp. Protest (B-410001.3) at 4. The contracting officer provided a written debriefing, informing ATI that its proposal was excluded "because price proposal and employee breakdown provided was deemed unrealistic for the required services" Debriefing Letter of June 25, 2014, at 2.² ATI protested to our Office, arguing that the agency's evaluation of ATI's proposed staffing was based on errors of fact, including inaccurate assumptions regarding the actual staffing levels under ATI's incumbent contract. In this regard, ATI argued that GSA's methodology was improperly based on "simple rote comparison to incumbent staffing and pricing." ATI's Supp. Protest (B-410001.3), at 5. GSA decided to take corrective action by re-evaluating proposals, which rendered ATI's protest academic, and ATI withdrew its protest (B-410001.2; B-410001.3) on this basis.

The re-evaluation resulted in ATI's proposal being included among the most highly-rated proposals. ATI's proposal offered the lowest price, \$7,645,151, and was given a technical rating of 3 on a 5-point scale. The source selection authority (SSA) noted in the selection decision that ATI's price was unrealistic and could "put the government at risk if the Offeror tried to perform the services with inadequate funding." The SSA selected REB ROWE's proposal for award, based on its second-lowest price, \$10,097,664, and highest overall technical rating (4.3 points). Agency Report (AR), exh. 14, Source Selection Decision Document (SSDD), at 9.

ATI protested the agency's evaluation and source selection decision on December 22, 2014 (B-410001.4). The protester asserted that the agency's re-evaluation of proposals was not meaningfully different from the original evaluation that ATI had protested, and that the evaluation was based on the same errors of fact alleged in ATI's prior protest. ATI Protest of Dec. 22, 2014, at 9, 10.

² ATI states that it was told during its debriefing that the agency's evaluation of ATI's staffing was "based on incumbent contractor staffing, and in general [by] comparison of incumbent contract scope and pricing to this Solicitation." ATI's July 1, 2014 Protest (B-410001.2), at 7.

When GSA filed its agency report, it included documents from which information concerning the evaluation and source selection had been redacted--despite the fact that our Office had issued, and counsel for ATI was admitted to, a protective order covering this protest. The protester objected to the agency's redactions, and our Office requested that the agency provide additional portions of the redacted documents. Because of the delay in establishing the record here, we permitted the parties a 1-day extension for filing comments on the agency report. ATI filed its comments on February 3, 2015, in compliance with this extension.

Our Office sustained ATI's protest. In essence, we found the agency failed to consider ATI's unique staffing approach (ATI proposed a significantly lower number of staff than the agency's own staffing estimate), and instead simply compared ATI's price to the government estimate and other offerors' prices. Based on the agency's failure to reasonably address the basis for ATI's different staffing approach, our Office concluded that the agency's price realism analysis was unreasonable. We also found that ATI's management subfactor rating was at least partially based upon the mistaken belief that ATI had not proposed any backup for its project manager. The request for reconsideration followed.

ANALYSIS

GSA and REB ROWE ask that we reconsider our prior decision sustaining ATI's protest. While neither GSA nor REB ROWE argue that our substantive conclusion about the price realism review was in error, both requesters argue that ATI did not timely protest the agency's price realism evaluation. The crux of the requesters' argument in this regard is that ATI did not challenge the agency's price realism analysis in the context of the re-evaluation until it filed its comments, 11 days after receiving the agency's report. See, e.g., ATI's Recon. Request, Apr. 13, 2015, at 5; GSA's Recon. Request, Apr. 13, 2015, at 2. Characterizing the price realism issue as a new basis for protest, the agency and REB ROWE argue that a new protest on this basis had to be filed within 10 days of when the protester received the agency report in order to be timely, pointing out that an extension of the due date for comments, such as was granted here, does not affect the time within which a new protest must be filed.

To obtain reconsideration, the requesting party must show that our prior decision contains an error of either fact or law, or must present information not previously considered that warrants reversal or modification of our decision. Gordon R.A. Fishman--Recon., B-257634.4, Sept. 9, 1996, 96-2 CPD ¶ 110 at 2-3. We find no such error in our decision.

In reviewing this request, we acknowledge at the outset that the initial protest challenging the agency's re-evaluation of this procurement, filed on December 22,

2014, does not contain any argument, or subsection, that expressly invokes the terms “price realism.” Instead, the initial protest of the re-evaluation argues:

In the evaluation under this solicitation, the agency’s first stated basis for rejection of ATI’s proposal is based upon the agency’s belief that the staffing proposed by ATI was not sufficient to reasonably perform the work required. As stated in ATI’s initial protest, this view is based on several factual assumptions that are simply incorrect.

ATI Initial Protest of Re-evaluation, Dec. 22, 2014, at 11. Nonetheless, the connection between the agency’s concern that ATI was proposing insufficient staffing and its concern regarding ATI’s low price was made: (1) by the agency during the earlier debriefing; (2) by ATI during the earlier protest, and (3) continued to be made in the follow-on protest challenging the re-evaluation.

First, we note that when the agency debriefed ATI in June 2014, it advised the company that its proposal was excluded “because the price proposal and employee breakdown provided was deemed unrealistic for the required services....” Debriefing Letter of June 25, 2014, at 2.

Next, during the original protest (i.e., the protest which led the agency to take its earlier corrective action), ATI generally framed its challenge as an argument that the agency wrongly concluded that the “staffing proposed by ATI was not sufficient to reasonably perform the work required.” Original ATI Protest, June 30, 2014, at 7. Just over one week later, ATI filed a supplemental protest to add arguments that the agency’s erroneous staffing estimate not only led to a flawed government cost estimate (which was the basis for concluding that ATI’s price was too low), but that the agency estimate was further marred by a mistaken understanding of the square footage to be cleaned, and a flawed understanding of the occupancy levels of the buildings to be cleaned. ATI Supp. Protest, Jul. 7, 2014, at 2-4. Regardless of the label ATI applied, its arguments were that the government was wrongly concluding that ATI’s price was too low because it was using a flawed estimate for comparison.

This same focus continued during the follow-on protest. The initial protest filing challenging the outcome of the re-evaluation again argued that the agency had wrongly concluded “that the staffing proposed by ATI was not sufficient to perform the work required.” ATI Initial Protest of Re-evaluation, supra, at 11. As before, the protest of the re-evaluation argued that the agency continued to err in its understanding of the square footage to be cleaned, id. at 12, and failed to properly account for the current occupancy levels of the building, id. at 14. In summary, ATI argued that the impact of these errors was that the agency had calculated a flawed government estimate that it was using to support its conclusion that ATI’s price was too low.

In our view, whether ATI couched its challenges to the government estimate as an argument about price realism, or about adequate staffing, the essential elements in dispute were the same. In ATI's view, the government was concluding in error that the company's staffing was inadequate, and hence its price was too low, which translates to a concern that the company's price was unrealistic.

While the agency and REB ROWE accurately charge that ATI applied the label of "price realism" to its challenges only when it filed its comments on the agency report, we conclude that the protester had essentially raised, before it filed its comments, all of the elements that eventually led us to sustain the protest because the agency performed a flawed review of price realism.³ In conclusion, we reject the premise of these requests for reconsideration--that ATI's December 22, 2014 protest of the re-evaluation was limited to challenging the agency's identification of technical weaknesses in ATI's proposal, and that the protester's challenge of GSA's price evaluation, as expressed in ATI's February 3 comments, represented a new (and therefore untimely) basis for protest.⁴ As described above, the crux of each of ATI's protests was that the agency based its evaluation of the adequacy of ATI's staffing levels--and the realism of the resulting prices--on a government cost estimate that was flawed because it was based on erroneous factual assumptions.

The request for reconsideration is denied.

Susan A. Poling
General Counsel

³ Moreover, while the agency and REB ROWE again accurately note that the protester's comments were filed 11 days after the protester's receipt of the agency report, the filing date was extended in this case because of the agency's decision to heavily redact some of the exhibits appended to its report--despite the issuance of a protective order in this protest. This decision, which generated a document dispute during the comments period, led to a need to extend the due date for filing comments. Here, the disputed documents were produced only one day before the comments were filed.

⁴ Tellingly, our Office did not regard this issue as a supplemental basis for protest when ATI filed its comments, and did not require GSA to address it as such in a supplemental agency report.