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Decision

Matter of: Ripple Effect Communications, Inc.

File: B-413722.2

Date: January 17, 2017

Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., Julia Di Vito, Esq., and Stephen J. Kelleher, Esq., Piliero Mazza PLLC, for the protester.
CPT Sarah E. Park, Department of the Army, for the agency.
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation amendment clarifying that agency will not evaluate fixed prices for price realism is denied where the agency has wide discretion when deciding whether to include a realism evaluation provision in a solicitation for the award of a fixed-price contract.

DECISION

Ripple Effect Communications, Inc., a small business of Rockville, MD, protests the United States Army's proposed corrective action related to a prior protest filed by Venesco, LLC, a small business of Chantilly, VA, of solicitation No. W81XWH-16-R-0023, for program administration and technical support services. The protester contends that the agency's proposed corrective action is unreasonable.

We deny the protest.

BACKGROUND

On March 21, 2016, the agency published the instant solicitation providing for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract. While the solicitation initially provided that price would be evaluated for fairness and reasonableness, subsequent agency answers to industry questions included inconsistent statements regarding the scope of the agency's price evaluation. See RFP at 34-35 and RFP Amendment 0002 at 4. Specifically, the industry questions and answers, which were incorporated in the solicitation via amendment, in some

cases indicated that the agency would assess prices to determine if they were not only fair and reasonable, but also “realistic.” Id.

On September 2, the agency made award to Ripple Effect. On September 7, the agency provided a debriefing letter to Venesco, another offeror, indicating, among other things, that the agency had concluded that Venesco’s price proposal was unrealistic. Venesco Debriefing Letter at 2. Shortly thereafter, Venesco protested the award alleging that the agency’s price evaluation was unreasonable since, among other things, the agency conducted a price realism evaluation in contravention of the terms of the solicitation. Following Venesco’s protest, the agency indicated that it intended to take corrective action by: (1) amending the solicitation to clarify that no price realism analysis would be conducted; (2) allowing offerors to submit new proposals; and (3) performing a new evaluation and source selection. Agency Corrective Action Rationale Memorandum at 1. While Venesco’s initial protest was dismissed as academic on October 17, Ripple Effect protested the proposed corrective action.¹

DISCUSSION

As a preliminary matter, we note that Ripple Effect does not challenge the agency’s decision to take corrective action, but rather the specific form the corrective action will take. Specifically, Ripple Effect challenges the agency’s decision not to include a price realism evaluation in the revised solicitation.² Protester’s Comments on the Agency Report at 1. Ripple Effect maintains that the agency should instead amend the solicitation to explicitly provide for a price realism evaluation given the agency’s concerns with respect to Venesco’s labor rates, which were far below the average of all evaluated proposals for all but one labor category. Id. at 2. According to Ripple Effect, it would be unreasonable for the agency not to consider the risk posed by Venesco’s prices. Id.

The agency responds by noting that it never intended to perform a price realism evaluation. Agency Report at 8. The agency additionally notes that, while it made a “conclusory finding” concerning the price realism of Venesco’s proposal in its award decision, it did not in fact perform a thorough price realism analysis that would support such a conclusion. Id. at 7. The agency argues that, in light of its intent not to perform a price realism analysis, revising the solicitation to clarify the intended scope of the price evaluation, and allowing offerors to submit new proposals, is

¹ Venesco also filed a protest of the proposed corrective action, which was subsequently dismissed where Venesco failed to comment on the agency report.

² Ripple Effect’s protest also requested that all offerors’ prices be disclosed to neutralize the competitive disadvantage caused by the disclosure of Ripple Effect’s pricing following award, but the protester later withdrew that basis of protest. Protester’s Comments on the Agency Report at 3.

appropriate to resolve the identified ambiguity with respect to the scope of the price evaluation in the solicitation. Id. at 6.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. MSC Indus. Direct Co., Inc., B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; Bannum, Inc.--Protest and Recon., B-411074.2, B-411074.3, June 12, 2015, 2015 CPD ¶ 231 at 3. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and our Office will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. DGC Int'l, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; Northrop Grumman Info. Tech., Inc., B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. Additionally, agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular criterion as long as the method chosen reasonably relates to the agency's needs in choosing a contractor and is not otherwise contrary to law or regulation. CACI, Inc.-Federal; Booz Allen Hamilton, Inc., B-413028 et al., Aug. 3, 2016, 2016 CPD ¶ 238 at 13.

Here, as noted above, the protester primarily argues that it is unreasonable for the agency not to include a price realism evaluation where it already knows Venesco's prices to be unrealistic. As an initial matter, the agency argues that it is not clear that Venesco's previously submitted prices were unrealistic, because it did not conduct a thorough price realism analysis. See Agency Report at 7. Moreover, the agency intends to allow offerors to submit new proposals, and the new pricing that offerors propose may differ from the pricing previously considered. Accordingly, the agency's previous evaluation may be of limited probative value, and is, in any case, not relevant to the evaluation of new proposals.

More importantly, the agency represented that it never intended to perform a price realism evaluation. Because the solicitation contemplates the award of a fixed-price contract, the agency's intended evaluation approach is consistent with the Federal Acquisition Regulation (FAR), which establishes that an agency "may ... in exceptional cases," provide for a price realism³ evaluation when awarding a fixed-price contract, but is not required to do so. FAR § 15.404-1(d)(3); Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Given the agency's broad discretion to decide whether to include a price realism

³ Although the FAR does not use the term "price realism," we have consistently used that term to describe the type of analysis provided for in FAR § 15.404-1(d)(3), which involves assessing the realism of fixed-price proposals. See, e.g., IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 11.

evaluation in this instance, we have no basis to conclude that the agency's decision was unreasonable.

The protest is denied.

Susan A. Poling
General Counsel