



Decision

Matter of: Roco Rescue, Inc.

File: B-416382

Date: August 9, 2018

Carlton Jones, Esq., Jones Legal, LLC, for the protester.
Richard L. Moorhouse, Esq., and Jozef S. Przygodzki, Esq., Greenberg Traurig, LLP, for Tribalco, LLC, the intervenor.
Colonel C. Taylor Smith, Esq., and Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of proposals is denied where the record shows that the evaluation was consistent with the solicitation and applicable statutes and regulations; remaining allegations concerning the adequacy of discussions need not be addressed because the record shows that the protester was not prejudiced by any errors in this regard.

DECISION

Roco Rescue, of Baton Rouge, Louisiana, protests the award of a contract to Tribalco, LLC, of Bethesda, Maryland, under request for proposals (RFP) No. FA8629-17-R-5003, issued by the Department of the Air Force for tactical recovery kits. Roco, the incumbent contractor, argues that the agency unreasonably evaluated proposals and conducted inadequate discussions.

We deny the protest.¹

¹ Our Office did not issue a protective order in connection with this protest. A complete version of the agency report was provided to our Office, while a redacted version of the report was furnished to the protester. We have reviewed the entire unredacted record in camera. As much of the information reviewed by our Office is source selection sensitive and/or proprietary in nature, our discussion of the evaluation is necessarily limited.

BACKGROUND

The RFP, issued on August 11, 2017, contemplated the award of the Guardian Angel Technical Recovery (GATR) indefinite-delivery, indefinite-quantity contract. Agency Report (AR), Tab 1, Contracting Officer's Statement of Facts (COSF), at 2,5. The GATR contract provides for the acquisition of technical recovery kits, which the agency explains enables its parasrescue personnel to recover isolated personnel and sensitive equipment. Id.

Award was to be made to the firm submitting the lowest-priced, technically acceptable (LPTA) offeror, considering three factors: technical, past performance, and price. AR, Tab 6, RFP § M, at 2. The technical factor was divided into two subfactors: training and system requirements document (SRD) compliance. Id. The agency would assign proposals an adjectival rating of acceptable or unacceptable for each subfactor. Id. at 3.

Relevant here, the SRD compliance subfactor evaluated offerors' ability to provide the pieces of equipment that would comprise technical recovery kits. Id. at 4. To be rated acceptable under the SRD subfactor, offerors were required to propose the brand name pieces of equipment delineated in the RFP. Id. For a subset of the items sought, offerors were permitted to propose an equivalent item, which would be evaluated by the agency to ensure compliance with the required characteristics of that item. AR, Tab 5, RFP § L at 10.

Under the price factor, the RFP stated that, in addition to calculating a total evaluated price (TEP) for each offeror, proposals would be evaluated for completeness, reasonableness, and unbalanced pricing. AR, Tab 6, RFP § M, at 7. Offerors were required to complete a price matrix with their proposed prices for each of the fixed-price contract line item numbers (CLINS) contemplated by the RFP. AR, Tab 5, RFP § L at 13.

Roco and Tribalco submitted proposals in response to the RFP. The Source Selection Evaluation Team (SSET) performed an initial evaluation of proposals. After being briefed on the initial evaluation results, the Source Selection Authority (SSA) decided to include both offerors in the competitive range. COSF at 6. The agency then entered into discussions with the firms. Id.

On March 23, the agency issued a request for final proposal revisions (FPRs) to all of the offerors in the competitive range. Id. at 7. In response, all offerors timely submitted FPRs. Id. The agency evaluated the proposals and made award to Tribalco, at a TEP of \$30,997,676, as the offeror submitting the LPTA proposal. AR, Tab 40, Source Selection Decision Document, at 6. The agency provided Roco with a post-award debriefing on May 2. After submitting follow-up questions, and receiving written responses from the agency, Roco filed the instant protest.

DISCUSSION

Roco challenges the agency's evaluation of Tribalco's proposal under the technical factor. Additionally, Roco alleges that the agency failed to evaluate proposals for unbalanced pricing. Finally, Roco alleges that the agency conducted inadequate discussions. We have considered all of Roco's arguments and find that none provide a basis on which to sustain the protest.

Technical Evaluation

Roco contends that the agency unreasonably evaluated Tribalco's proposal under the SRD compliance subfactor. Roco argues that Tribalco failed to satisfy the RFP's brand name or equal requirements for two specific parts required by the solicitation: a hoistable multi-use bag and a confined space tripod.² Protest at 5-7. To support this allegation, Roco asserts that Tribalco could not have proposed the brand name version of these items and that these two pieces of equipment have no commercial equivalents. Id. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. Franzosini Sud S.R.L., B-415009, Oct. 27, 2017, 2017 CPD ¶ 327 at 3.

As noted above, to be acceptable under the SRD compliance subfactor, offerors had to propose the brand name items identified, or equivalents, where permitted by the RFP. AR, Tab 5, RFP § L at 10; AR, Tab 6, RFP § M at 4. The record shows that Tribalco proposed the brand name version of the hoistable multi-use bag and confined space tripod. AR, Tab 27, Tribalco Final Proposal Revision, at 97. As a result, despite Roco's assertions to the contrary, the record is clear that Tribalco satisfied the RFP's requirements by proposing the brand name item for the pieces of equipment in question. Accordingly, we have no basis to object to the agency's conclusion that Tribalco's proposal was acceptable under the SRD compliance subfactor.³

² In its comments, Roco argues that the agency "incorrectly narrow[ed] the scope" of this protest ground and that these two specific items were only cited as examples of the agency's allegedly unreasonable evaluation. Protester's Comments on Memorandum of Law at 10. To the extent Roco maintains that the agency's "unreasonably cursory evaluation likely extends to many other items," we find that this generalized, and purely speculative, allegation of unreasonable agency action fails to state a legally and factually sufficient basis of protest. Id.; 4 C.F.R. § 21.1(c)(4).

³ While Roco maintains that Tribalco will be unable to provide the brand name items, Tribalco has obligated itself to provide brand name or equivalent products to those

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Price Evaluation

Roco also argues that the agency failed to correctly evaluate proposals for potential unbalanced pricing, as was required by the RFP. Protest at 7. In this regard, Roco argues that, pursuant to Federal Acquisition Regulation (FAR) § 15.404-1(g), the agency was required to assess proposals for unbalanced pricing both at the CLIN and “subCLIN” level. Id. Roco states that because each CLIN here was composed of many individually priced items, to comply with FAR § 15.404-1(g)(2), the agency was required to evaluate proposed prices for balance at the individual item level, not just the CLIN level. Id. For the reasons that follow, we find that this allegation does not provide our Office with a basis on which to sustain the protest.

Unbalanced pricing exists where the prices of one or more line items are significantly overstated or understated, despite an acceptable total evaluated price (typically achieved through underpricing one or more other line items). General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 5. To prevail on an allegation of unbalanced pricing, a protester must show that one or more prices in the allegedly unbalanced proposal are overstated, it is insufficient for a protester to show simply that some line item prices in the proposal are allegedly understated. See First Finan. Assocs., Inc., B-415713, B-415713.2, Feb. 16, 2018, 2018 CPD ¶ 76 at 7-8. While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by the overstatement of prices, because low prices (even below cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing. American Access, Inc., B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 5.

Here, Roco fails to make the threshold showing required to prevail on this allegation, namely that one or more of Tribalco’s prices was over or understated. See InfoZen, Inc., B-411530, B-411530.2, Aug. 12, 2015, 2015 CPD ¶ 270 at 7. Further, our review indicates that, in accordance with FAR § 15.404-1(g), the agency reasonably found that Tribalco’s proposed prices were not unbalanced. Accordingly, on this record, we find the agency’s price analysis unobjectionable.

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identified above. Whether Tribalco will actually be able to deliver a compliant product involves a matter of contract administration, which is the responsibility of the contracting agency, not our Office. See Tom Page & Company, Inc., B-231723, Sept. 14, 1988, 88-2 CPD ¶ 246 at 1.

Discussions and Prejudice

Finally, Roco argues that the agency held inadequate discussions. The firm alleges that the agency dissuaded the firm from proposing a “unique or tailored solution[]” to satisfy the requirements of the RFP. Protest at 2. In light of our findings above, we need not address these allegations because the record shows that even if Roco is correct, the firm was not prejudiced by the agency’s actions.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions; that is, unless the protester demonstrates that, but for the agency’s actions, the protester would have had a substantial chance of receiving award. MSN Services, LLC, B-414900 et al., 2017 ¶ 310 at 9. As discussed above, Roco’s challenges to the agency’s evaluation of Tribalco’s technical acceptability and price are without merit. Moreover, Roco has not alleged that, had the agency held adequate discussions, it would have led the firm to offer a lower price. Therefore, even if these allegations had merit, Tribalco would not be displaced as the firm submitting the LPTA proposal. As Tribalco would remain the awardee even if these allegations had merit, Roco cannot show that it was prejudiced here, even if the agency’s actions arguably were improper.⁴ See Avaya Gov’t Sols., Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 6.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁴ Roco also alleged that the agency improperly disclosed its privileged and confidential information to competitors throughout the course of the competition. Protest at 3-4. Roco asserts that, beginning on September 28, 2016, the agency provided several iterations of draft SRDs to prospective offerors that included Roco’s proprietary approach to meeting the agency’s requirements on a related contract that it had been performing for the agency. Id. Roco argues that this improper disclosure provided its competitors with its confidential information and “destroyed Roco’s own competitive advantages.” Id. at 4. Under our Bid Protest Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). By its own admission, Roco was aware of this allegedly improper disclosure as of September 28, 2016. Accordingly, Roco knew, or should have known, the basis for this protest ground on that date. As Roco did not file its protest until May 15, 2018, well over a year after Roco knew or should have known the basis for this protest ground, it is untimely. 4 C.F.R. § 21.2(a)(2).