U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548
Comptroller General
of the United States

Decision

Matter of: The Bridge General Trading & Contracting Company

File: B-417085.2; B-417085.4; B-417085.5

Date: July 24, 2019

Fouad Rouh for the protester.
Christopher S. Cole, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force, for the agency.
Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the awardee's proposal is denied where the record reflects that the evaluation was reasonable and consistent with the terms of the solicitation.

2. Protest alleging that the agency erred by not evaluating the protester's proposal is dismissed where the solicitation provided for the evaluation of the three lowest-priced proposals in a procurement conducted using a lowest-priced, technically acceptable evaluation scheme, and where the protester's proposal was not one of the three lowest-priced proposals.

3. Protester challenging the agency's methodology for calculating offerors' total prices is dismissed as an untimely challenge to the terms of the solicitation.

4. Protest alleging that the awardee and other offerors engaged in collusive bidding is dismissed as a matter that is not within the purview of our Office.

DECISION

The Bridge General Trading & Contracting Company (The Bridge Company), located in Kuwait City, Kuwait, protests the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract to Al Qabandi United Company W.L.L. (Al Qabandi), located in Salmiya, Kuwait, under request for proposals (RFP) No. FA5703-18-R-0010, issued by Department of the Air Force, for the lease of non-tactical vehicles. The Bridge Company challenges the Air Force's evaluation of the protester's and awardee's

proposals. The protester also alleges that the awardee and several other offerors have engaged in collusive bidding.[1]

We dismiss the protest in part and deny it in part.

BACKGROUND

On October 5, 2018, the Air Force's 386 Expeditionary Contracting Squadron issued the RFP, which contemplated the award of a single fixed-price IDIQ contract with a 5-year ordering period. RFP at 1, 63. The solicitation sought proposals for the lease of a variety of non-tactical vehicles at Ali Al Salem Air Base in Kuwait. Performance Work Statement (PWS) at 14-15. The maximum value of the IDIQ was $8,295,000 Kuwaiti Dollars (KWD). RFP at 63.

The RFP anticipated award to the offeror submitting the lowest-priced, technically acceptable (LPTA) proposal with an acceptable record of past performance. Id. at 72. In this respect, the solicitation provided for evaluation of three factors: technical capability, past performance, and price. Id. at 75. The technical capability factor consisted of five subfactors. Id. at 69. The RFP advised offerors that the technical capability factor (including its five subfactors) and the past performance factor would be evaluated on an acceptable/unacceptable basis. Id. at 74. If any factor or subfactor was rated as unacceptable, the proposal would be deemed ineligible for award. Id.

In further explaining the agency's evaluation methodology, the solicitation informed offerors that the Air Force would rank proposals by price, and then evaluate the lowest-priced proposals until the agency identified three proposals that were "technically acceptable with an acceptable past performance." Id. at 73. Proposals were due by January 19, 2019. Id. at 1.

In response to the RFP, the Air Force received 67 proposals. Contracting Officer's Statement (COS) at 5. The record reflects that, before ranking proposals according to price, the Air Force first conducted a "responsiveness check," which examined whether the offeror submitted its proposal in accordance with the RFP's proposal submission instructions.[2] Agency Report (AR), Tab 17, Source Selection Decision Document (SSDD), at 2; COS at 5. Any proposal that failed to comply with the instructions was

[1] No protective order was issued in this protest because The Bridge Company elected to proceed without counsel. Accordingly, our discussion of some aspects of the record is necessarily general in order to limit references to non-public information. Nonetheless, in reaching our decision here, we reviewed the entire unredacted record.

[2] The proposal submission instructions were set forth in the addendum to Federal Acquisition Regulation (FAR) provision 52.212-1, which was included in the RFP. RFP at 67.

deemed "non-responsive," and was excluded from the competition.[3] Agency Resp. to GAO Third Request for Information (RFI), May 30, 2019, at 1. Twelve proposals, including the proposals of the awardee and the protester, were determined by the Air Force to be responsive. Id. at 2. The Air Force ranked the remaining 12 proposals from lowest to highest according to price. COS at 5.

Next, the Air Force evaluated the proposals, starting with the lowest-priced proposal, until it identified three technically acceptable proposals. Id. at 5-6. The record reflects that the agency identified three technically acceptable proposals prior to reaching The Bridge Company's proposal.[4] Memorandum of Law (MOL) at 2. Accordingly, the protester's proposal was not evaluated. Debriefing, Apr. 12, 2019, at 3.

On March 25, the source selection authority concluded that Al Qabandi's proposal represented the lowest-priced, technically acceptable proposal with acceptable past performance. AR, Tab 17, SSDD, at 18. Accordingly, on April 10, the Air Force awarded the contract to Al Qabandi. Agency Req. for Dismissal, Apr. 24, 2019, at 2. The Air Force provided a written debriefing to the protester on April 12, in which The Bridge Company was informed that its proposal was not evaluated because its price placed it outside the group of "offerors whose proposals were evaluated based on the ranking of price." Debriefing at 3.

This protest followed on April 17, 2019. The protester subsequently filed two supplemental protests on April 22 and 23, respectively.

DISCUSSION

The Bridge Company raises four main grounds of protest. First, the protester argues that the Air Force improperly determined the awardee's proposal to be technically acceptable. Second, the protester contends that the agency erred by not evaluating the protester's proposal. Third, the protester claims that the agency's methodology for calculating offerors' total prices was unreasonable. Finally, the protester alleges that the awardee colluded with other offerors to engage in bid rigging.[5]

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[3] The agency states that the solicitation contemplated this "responsiveness check." Agency Resp. to GAO Third RFI at 1 (quoting RFP at 67) (pointing out that the RFP provided that "[p]roposals not structured in accordance with these instructions may be considered incomplete and may not be evaluated.").

[4] After identifying three technically acceptable proposals, the agency also determined that the prices proposed by these three offerors were fair and reasonable and that the offerors possessed acceptable records of past performance. AR, Tab 17, SSDD, at 9, 12, 15.

[5] The Bridge Company raises other collateral arguments that our decision does not address. We have considered these arguments and concluded that none provides a basis upon which to sustain the protest.

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 and applicable procurement statutes and regulations. MacAulay-Brown, Inc., B-417205 et al., Mar. 27, 2019, 2019 CPD ¶ 129 at 3. For the reasons discussed below, we deny The Bridge Company's first protest ground and dismiss the remaining three protest grounds.

Evaluation of the Awardee's Proposal

The Bridge Company challenges the Air Force's evaluation of the awardee's proposal as technically acceptable. Specifically, the protester claims that the awardee cannot comply with section 4.1.2 of the PWS, which the protester alleges requires delivery of 75 14-passenger vans within a 30-day period. See e.g., Protest at 2; Second Supp. Protest at 2, 11; Protester's Resp. to GAO First RFI, May 6, 2019, at 2. According to The Bridge Company, the awardee cannot comply with this requirement because there are currently no such vans available for purchase in the marketplace, and any new vans ordered from dealers require a lead time of four-to-six months.[6] Protest at 2. We deny this ground.[7]

As an initial matter, contrary to the protester's allegations, section 4.1.2 of the PWS did not require the contractor to deliver 75 vans within a 30-day period. See PWS at 3. Instead, the RFP provided, in pertinent part, that to be deemed technical acceptable, the offeror must "detail[] and break[] out by vehicle type, how it intends to provide all vehicles required, whether owned, subcontracted, leased, procured, or any combination thereof." RFP at 76. We have reviewed the awardee's proposal and conclude that it complied with this requirement in that the awardee explains how it intends to provide each type of vehicle, including the 14-passenger van. See AR, Tab 19, Al Qabandi's Proposal, at 28-29. Moreover, we find the Air Force's evaluation of this aspect of the awardee's proposal to be unobjectionable. see AR, Tab 16, Source Selection Evaluation Board Report, at 11. Thus, we deny this protest ground.[8]

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[6] For its part, the protester claims that it currently possesses an inventory of such vans and can meet the RFP's requirements. Second Supp. Protest at 11.

[7] In its protest filings, The Bridge Company raised this argument with respect to those offerors submitting the three lowest-priced, technically acceptable proposals. See e.g., Second Supp. Protest at 2; Protester's Resp. to GAO First RFI at 2. Thus, we conclude that The Bridge Company is an interested party to raise this argument. Because we find no basis to sustain the protester's challenge to the technical acceptability of the awardee's proposal, we need not examine the proposals of the other offerors.

[8] To the extent The Bridge Company believes that the awardee will be unable to deliver a 14-passenger van in response to a future task order request, we have consistently stated that whether an offeror actually delivers a product in accordance with the solicitation's specifications presents a matter of contract administration, which our Office

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Other Protest Grounds

As noted above, The Bridge Company raises three additional protest grounds, which we dismiss. First, the protester contends that the agency erred by not evaluating the protester's proposal. See e.g., Second Supp. Protest, Apr. 22, 2019, at 10, 11, 13. In this regard, the protester contends that the solicitation required the Air Force to evaluate all proposals. We dismiss this ground for failure to state a valid basis of protest. 4 C.F.R. §§ 21.1(f), 21.5(f).

As explained in detail above, the solicitation required the agency to: (a) rank proposals according to price, and (b) evaluate proposals starting with the lowest-priced proposal and continuing until the agency identified three technically acceptable proposals. RFP at 73. The agency identified three technically acceptable proposals before reaching The Bridge Company's proposal. Accordingly, pursuant to the evaluation methodology set forth in the solicitation, the agency was not required to evaluate The Bridge Company's proposal.[9] Thus, this allegation fails to state a valid basis of protest. See Glacier Technical Solutions, LLC, B-412990.3, Mar. 15, 2017, 2017 CPD ¶ 91 at 6 n.9.

Next, the protester challenges the agency's methodology for calculating offerors' total prices. See e.g., Second Supp. Protest at 7; Protester's Resp. to GAO's Third RFI, May 31, 2019, at 3. In this respect, the protester alleges that, in order to calculate offerors' total proposed prices, the Air Force should have multiplied an offeror's proposed monthly rate for each type of vehicle by the estimated quantities provided in the PWS.[10] Id. We dismiss this protest ground as an untimely challenge to the terms

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does not consider as part of our bid protest function. Bid Protest Regulations, 4 C.F.R. § 21.5(a); Roco Rescue, Inc., B-416382, Aug. 9, 2018, 2018 CPD ¶ 277 at 3-4 n.3.

[9] The Bridge Company's argument is based entirely upon language contained in Amendment 006 to the RFP. Second Supp. Protest at 11 (citing Protest, Exhibit 1-10, RFP Amend. 0006); Comments at 9. Through this amendment, the Air Force extended the deadline for submission of proposals. RFP, Amend. 006, at 1. In doing so, the Air Force included the following note: "[C]hanges to a proposal already submitted are permitted but are not required. If changes are unneeded your proposal will be evaluated as previously submitted." Id. at 2 (emphasis added). The Bridge Company relies upon the underlined language to argue that the Air Force was required to evaluate all proposals. The protester's reliance upon this language is misplaced--this language does not alter the RFP's evaluation methodology or impose any requirement upon the agency to evaluate all submitted proposals.

[10] The PWS listed estimated quantities of each type of vehicle with the caveat that the estimated quantities "do[] not reflect the required quantity of vehicles for the contract." PWS at 14. Rather, "the actual number of vehicles will be indicated in the subsequent Task Orders." RFP at 74. In this respect, the PWS advised offerors that the list of estimated quantities reflected "vehicles that are normally used on a monthly basis [but
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of the solicitation and the ground rules under which the competition was conducted, which The Bridge Company was required to raise prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

The RFP advised offerors regarding the agency's methodology for evaluating offerors' prices, which did not include multiplication of the monthly rate by the estimated quantifies listed in the PWS. See RFP at 75 ("Price will be evaluated based on the proposed monthly rate."). To the extent there was any ambiguity in the RFP regarding how the agency intended to evaluate price, the agency subsequently clarified its methodology through its responses to questions submitted by offerors during the solicitation process. Of note, one offeror explicitly asked whether the agency intended to calculate total price by multiplying the monthly rate for each vehicle by the PWS's estimated quantities, and the Air Force answered in the negative. Agency Response to Question No. 42, Nov. 16, 2018. Instead, the Air Force explained that it would multiply the monthly rate for each vehicle by 12 months to determine the total price for that year. Id. ("We will be evaluating price by multiplying the unit price [for] 1 vehicle with the quantity of 12 months. For example: 1 vehicle at 100.000 KWD per month x 12 months = 1,200,000 KWD for the year."); see also Agency Responses to Question Nos. 3, 10 ("The quantity of 1 vehicle for 1 month was chosen to standardize pricing for evaluation purposes. The actual number of vehicles provided will differ on each task order that will be awarded from this IDIQ contract."). To the extent the protester disagrees with the agency's selected methodology for calculating total price, the protester was required to raise such objections prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

Finally, the protester contends that the awardee violated the Procurement Integrity Act and antitrust laws by submitting a proposal "in collusion with 3 to 6 different companies to increase the probability of obtaining contracts." See e.g., Protest at 2; First Supp. Protest at 1, 4; Second Supp. Protest at 7. The protester also contends that the alleged collusion constitutes an "organizational conflict of interest" between these companies. See e.g., Second Supp. Protest at 14. We have reviewed these allegations of collusion and conclude that the protester is alleging potential violations of antitrust laws, which are not within our Office's purview to review. Office Design Grp., B-415853.3 et al., July 16, 2018, 2018 CPD ¶ 265 at 9 n.6. Rather, such allegations are primarily matters for the contracting agency and the Department of Justice. Id. We therefore dismiss these allegations as outside our purview.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

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that] fluctuations in quantities can and do occur from month to month." PWS at 14. Estimated quantities ranged from zero to over 100, depending on the type of vehicle. Id. at 14-15.