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Decision

Matter of: Perimeter Security Partners, LLC

File: B-417591

Date: August 19, 2019

David A. Rose, Esq., Rose Consulting, LLC, for the protester.

Maureen A. McAndrew, Esq., and Raymond Schlee, Esq., Department of the Army, for the agency.

Christopher Alwood, Esq., Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the cancellation of an invitation for bids after bid opening and conversion to a negotiated procurement is denied where the agency reasonably found that the sealed bid prices were unreasonable where the low bid exceeded the government's independent estimate by 23.5 percent.

DECISION

Perimeter Security Partners, LLC (PSP), a small business, of Brentwood, Tennessee, protests the cancellation of invitation for bids (IFB) No. W912DR-18-B-0005, issued by the Department of the Army, Corps of Engineers (Corps), for the construction of an access control point in Fort Meade, Maryland. PSP contends the Corps improperly concluded the bid prices received were unreasonable, cancelled the IFB, and converted the procurement to a negotiated procurement pursuant to Federal Acquisition Regulation (FAR) § 14.404-1(e)(1).

We deny the protest.

BACKGROUND

The Corps issued the IFB on June 15, 2018, pursuant to the two step sealed bidding procedures of FAR part 14, as a small business set-aside that contemplated the award of a fixed-price contract for construction of the Reece road access control point in Fort Meade, Maryland. The deadline for submission of bids for step one was July 24.

Agency Report (AR), Tab 3, IFB amend. 2, at 1-2. The agency received five timely step-one bids, and the contracting officer subsequently determined that three bidders

would advance to step two. AR, Tab 4, Down Select Memorandum, at 3. The deadline for submission of bids for step two was March 20, 2019 at 2:00 p.m. AR, Tab 7, IFB amend. 5, at 1.

The agency received three timely step-two bids, including from PSP. Combined Contracting Officer's Statement/Agency Memorandum of Law (COS/MOL) at 1. The bids, and the agency's independent government estimate (IGE), were as follows:

Bidders	Total Bid
Perimeter Security Partners	\$26,505,208
Akima Construction Services	\$26,508,587
AMG JV	\$26,520,611
IGE	\$21,460,936

AR, Tab 11, Bid Abstract.

On April 23, the contracting officer concluded that all of the bids were unreasonably high because they exceeded the IGE by between 23.5 and 23.58 percent. AR, Tab 13, Memorandum for Record, at 2. The contracting officer also decided that it was in the best interest of the government to cancel the IFB and complete the procurement through negotiation in accordance with FAR § 14.404-1(e)(1). Id. The Corps sent a letter to PSP dated May 10, which advised that all three bids had been determined to be unreasonable since they exceeded the IGE by "25.0% or more." AR, Tab 14, Letter Cancelling Invitation for Bids, at 1. The letter also informed PSP that the Corps was cancelling the IFB and would attempt to complete the procurement through negotiation. Id. PSP submitted this protest to our Office on May 20.

DISCUSSION

PSP argues that the contracting officer improperly concluded that the bid prices received were unreasonable, and therefore lacked a compelling reason to cancel the IFB as required by FAR § 14.404-1(a)(1). Protest at 6. For the reasons that follow, we find no basis on which to sustain the protest.¹

¹ PSP raises other collateral issues. While our decision does not address every issue, we have considered the arguments and find that none provide a basis to sustain the protest. For example, PSP argues it was improper for the contracting officer, rather than the agency head, to make the determination required to cancel the IFB and continue the procurement through negotiation pursuant to FAR §§ 14.404-1(c) and 14.404-1(e)(1). Protest at 5-6. The Corps provided a detailed response to this protest allegation, noting that Department of Defense FAR Supplement § 214.404-1 delegates the authority to make the determinations in question to the contracting officer. COS/MOL at 3. PSP did not rebut or respond to the agency's argument on this issue in its comments. Accordingly, we dismiss this protest allegation as abandoned. See Tec-Masters, Inc., B-416235, July 12, 2018, 2018 CPD ¶ 241 at 6.

Once bids have been opened, award must be made to the responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB. FAR § 14.404-1(a)(1). One such compelling reason an IFB may be canceled after bid opening is when the prices of all otherwise acceptable bids are unreasonable. FAR § 14.404-1(c)(6). An agency may complete the acquisition through negotiation, after cancellation of an IFB, where all otherwise acceptable bids are unreasonably priced. FAR § 14.404-1(e)(1). The determination that prices are unreasonable is a matter of administrative discretion, which we will not disturb unless the determination is unsupported, or there is a showing of fraud or bad faith on the part of contracting officials. G. Marine Diesel Corp., B-238703, B-238704, May 31, 1990, 90-1 CPD ¶ 515 at 3.

PSP argues the Corps' cancellation letter set a standard that a bid would be unreasonably high in this procurement if it exceeded the IGE by 25 percent or more. Protest at 6. PSP contends that its low bid, which exceeded the IGE by 23.5 percent, should therefore have been found reasonable. Id. The protester's reliance on the 25 percent language in the cancellation letter is misplaced, however, since the record does not indicate that the 25 percent threshold identified in the letter was the standard for price reasonableness used by the agency. Rather, the record reflects that the contracting officer's written determination considered that the PSP's bid was in fact only 23.5 percent higher than the IGE when finding it to be unreasonably high. AR, Tab 13, Memorandum for Record, at 2. Accordingly, the disconnect between the cancellation letter and the actual bids reflects a clerical error that did not affect the substantive validity of the agency's price reasonableness evaluation.

More importantly, we find no basis to disturb the agency's determination that bids in excess of 23 percent of the IGE were unreasonable. A determination that a price is unreasonable may be based upon a comparison with the government estimate. Hawkins Builders, Inc., B-237680, Feb. 5, 1990, 90-1 CPD ¶ 154 at 2. We have found that an agency may reject a bid as unreasonably priced when the bid exceeds the government estimate by as little as 7.2 percent. Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233 at 4; see also Norfolk Dredging Co., B-417213, B-417213.2, March 26, 2019, 2019 CPD ¶ 127 at 5 (finding bid reasonably rejected as unreasonable when it exceeded the IGE by 24 percent). Since the low bid submitted by PSP exceeded the IGE by 23.5 percent, and the record does not demonstrate that the IGE is unreasonable² or that the agency acted in bad faith³, we

² A protester's disagreement with an agency's basis for developing an estimate, without more, provides no basis to sustain a protest. See Quantech Servs., Inc., B-408227.8, B-408227.9, Dec. 2, 2015, 2015 CPD ¶ 380 at 8. Here, PSP argues only generally that "the Government never really says how it arrived at the IGE," Comments at 5, but the protester does not state with any specificity what part of the detailed, 196 page IGE is allegedly flawed. See AR, Tab 9, IGE. Accordingly, PSP has not provided a basis for our Office to conclude that the IGE was defective.

see no basis to object to the contracting officer's determination that PSP's price was unreasonable. We therefore conclude that the agency, after finding all bids to be unreasonably priced, reasonably decided to cancel the IFB and convert the acquisition to a negotiated procurement.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

³ PSP generally alleges the decision to cancel the IFB and continue the procurement through negotiation was made in bad faith. Comments at 5, 7. PSP's bare assertions, without more, are insufficient to meet the high bar necessary to establish bad faith or bias on the part of government personnel. Government officials are presumed to act in good faith, and to establish bad faith, a protester must present convincing evidence that agency officials had a specific and malicious intent to harm the firm. See Trailboss Enters., Inc., B-415812.2 et al., May 7, 2018, 2018 CPD ¶ 171 at 12. Our Office will not conclude that an agency's actions are motivated by bad faith merely because they are adverse to the protester's interests. Id. Here, PSP submits no convincing evidence supporting its allegations that the agency acted in bad faith, and, therefore, we find no merit to this protest ground.