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Decision

Matter of: Chromalloy Component Services, Inc.

File: B-417362.2

Date: November 6, 2019

William M. Weisberg, Esq., Law Offices of William Weisberg, for the protester.
Colonel Patricia S. Wiegman-Lenz, Esq., Michael J. Farr, Esq., and Waynette L. McKay, Esq., Department of the Air Force, for the agency.
Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging requirement in solicitation as impossible to meet is denied where the record shows that the agency reasonably expected that offerors would be able to meet the requirement.

DECISION

Chromalloy Component Services, Inc. (Chromalloy), of San Antonio, Texas, protests the terms of request for proposals (RFP) No. FA8122-19-R-0001, issued by the Department of the Air Force, for the remanufacture of F108 low pressure turbine assembly modules. The protester contends that the solicitation includes a requirement that no offeror can meet and is structured in a manner that will result in offerors submitting unbalanced pricing.

We deny the protest.

BACKGROUND

The RFP, issued on January 16, 2019, under Federal Acquisition Regulation (FAR) parts 12 and 15, contemplates the award of a fixed-price, indefinite-delivery, indefinite-quantity contract, to be performed over a 1-year base period and four 1-year option periods. Agency Report (AR), Tab 25, RFP amend. 8 at 1, 3-5. The Air Force's requirement concerns the remanufacture of Air Force module 13/15 for use in the F108 engine. Id. at 73; Contracting Officer's Statement (COS) at 2. This module, part of the low pressure turbine (LPT) major module in the F108 engine, converts hot gas pressure and velocity into mechanical power to drive the fan rotor and booster assembly, and

also provides support for rear engine installation mounting to the aircraft. COS at 2. The awardee will be required, as part of the remanufacture process, to perform inspections, replacement of parts, remanufacture, reassembly, adjustments, calibrations, approved modifications, testing and operational checks, correct discrepancies and malfunctions, and verify adequate and proper condition of any component, system, or subsystem. RFP amend. 8 at 75. As pertinent to this protest, one of the components of module 13/15 is the LPT Stage 1 rotor blade, of which there are 174 within each module. COS at 2. The awardee will be required to acquire LPT blade components from approved vendors to complete an agency-issued order. RFP amend. 8 at 75. If blades cannot be returned, as part of the remanufacture process, to fully serviceable and like new condition by the contractor, they “shall be replaced with new manufacture (OEM) blades.” Id.

The solicitation advises that award will be made to the offeror with the lowest total evaluated price. Id. at 38. Price will be evaluated for reasonableness, balanced pricing, realism, and total evaluated price. Id. at 42. As relevant here, the solicitation states that an offeror’s “price may be rejected, if the determination is made that it contained unbalanced pricing to the extent it poses an unacceptable risk to the Government.” Id.

On March 6, prior to the initial due date for proposals, Chromalloy, the incumbent contractor, filed a pre-award protest with our Office, challenging the terms of the solicitation. AR, Tab 7, Chromalloy Component Services, Inc., B-417362. Chromalloy withdrew its protest on March 12. AR, Tab 8, Withdrawal of Protest.

Subsequently, the Air Force amended the RFP to revise the contract line item number (CLIN) structure, specifically as it relates to LPT blades. Following the eighth amendment to the RFP, the solicitation includes three categories of CLINs: (1) X001, for each remanufacture project ordered, inclusive of all labor, indirect rates, and all materiel, except LPT blades; (2) X001AA, for each LPT blade ordered per remanufacture unit; and (3) X002, for required data. RFP amend. 8 at 5-18. For CLIN X001, the agency provides its best estimate of the number of remanufacture projects for each contract year, with the base year identified as requiring an estimated 112 remanufacture projects. Id. at 4. For CLIN X001AA, the agency identifies its best estimate of the number of LPT blades to be replaced for each contract year, with 7,840 LPT blades identified for the base period. Id. The agency advised offerors that the LPT blades estimate is calculated based on the number of remanufacture units in CLIN X001 and a blade replacement factor of approximately 40 percent. Id. at 5. The agency also advises that the actual quantity of blades will be identified based on individual purchase/delivery orders issued to the contractor. AR, Tab 28, RFP Questions and Answers at 9, question 43. The solicitation also establishes overall maximum and minimum ordering quantities over the life of the contract. Specifically, the solicitation states a maximum ordering quantity of 720 for remanufacturing projects and 50,400 for LPT blade replacements, and a minimum ordering quantity of 10 remanufacturing projects and 700 for LPT blade replacements. RFP amend. 8 at 4.

The solicitation provides that only CLINs X001 and X001AA are priced and are included in the total evaluated price. Id. at 39-40. The RFP instructed offerors to price CLIN X001 for the base and option periods and CLIN X001AA for the base period only. Id. at 39. Under the option periods for CLIN X001AA, the solicitation provides that prices are to be determined, or “TBD”, advising that “[u]pon exercising an option, the Government reserves the right to negotiate option year unit pricing or provide new blades as Government Furnished Material (GFM).” Id. at 8-16.

Chromalloy filed this protest with our Office on August 5, prior to the solicitation’s closing date of August 9.

DISCUSSION

Chromalloy argues that the solicitation’s requirement for LPT blades is impossible for any offeror to meet. Protest at 5-6. In this regard, the protester contends that given the limited available inventory of LPT blades, coupled with the long lead time necessary for their production, no offeror will be able to meet the solicitation’s required quantity of LPT blades. Id. at 2-5; Comments at 2-5. Chromalloy also argues that the terms of the solicitation will result in offerors submitting unbalanced pricing proposals. Protest at 6. For the following reasons, we find no basis to sustain the protest.¹

As described above, the solicitation requires the awardee to provide a certain quantity of new LPT blades to perform the contract. For the base period, the agency identified its best estimate for the number of new LPT blades as 7,840, with a maximum order quantity over the life of the contract of 50,400 blades. Chromalloy, however, argues that following its discussions with the original equipment manufacturer’s exclusive distributor for the LPT blades, Aviall, the “solicitation’s required quantities [of LPT blades] are not available, and will not be available” during the base period. Protest at 3.

¹ Although we do not address every argument raised by the protester, we have reviewed them all and find that none provides a basis to sustain the protest. For example, Chromalloy argues that the agency has created a de facto sole-source procurement because “one of the likely offerors is a joint venture partner of the [original equipment manufacturer] parts supplier and is likely, based on historical practice, to receive preferential pricing. . . .” Protest at 1, 4-5. Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. Here, Chromalloy has not provided any information to suggest that any offeror will receive preferential pricing, beyond its speculative assertion concerning the “likelihood of related-party pricing discounts.” Protest at 5, 7 n.3. Indeed, the protester does not provide any evidence of the “historical practice” of such discounts, or any other information that would otherwise support its protest allegation. Protest at 1. As this protest ground does not include sufficient information to establish the likelihood that the agency, in this case, violated applicable procurement laws or regulations, this protest ground is dismissed.

The protester further contends that given the lead times necessary to manufacture the blades, the sparsity of currently-available blades, and that the Air Force is not the only consumer for LPT blades, the agency's requirements under the RFP are impossible to meet. Id.; Comments at 4. Accordingly, Chromalloy argues that the Air Force's requirement for LPT blades, as provided in the RFP, constitutes a defective specification. Protest at 5.

The agency argues that its market research established a reasonable likelihood that sufficient LPT blades would be available to meet its requirements. COS at 14-18. The Air Force acknowledges that the commercial availability of new LPT blades has decreased in recent years. Id. at 14. Nevertheless, the Air Force maintains that it had a reasonable expectation that new LPT blades would be available in sufficient quantities to fulfill the estimated solicitation requirements based on the results of additional market research. COS at 15-16.

A contracting agency has the discretion to determine its needs and the best method to accommodate them; the responsibility for drafting proper specifications that reflect the government's needs rests with the contracting agency. Pride Mobility Products Corp., B-405371, Oct. 25, 2011, 2011 CPD ¶ 227 at 4-5. Where a protester alleges that performance is impossible, we will not substitute our judgment for that of the agency, or sustain the protest in the absence of clear and convincing evidence that the specifications are in fact impossible to meet or unduly restrict competition. Instrument Control Serv., Inc.; Science & Mgmt Resources, Inc., B-289660, B-289660.2, Apr. 15, 2002, 2002 CPD ¶ 66 at 6. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. See Gallup, Inc., B-410126, Sep. 25, 2014, 2014 CPD ¶ 280 at 5.

Our review of the record supports the Air Force's conclusion that it had a reasonable expectation that offerors will be able to supply the necessary number of LPT blades to satisfy the agency's estimated requirements. The Air Force, in response to questions from potential offerors concerning LPT blade availability, conducted market research to determine if sufficient quantities were, or could be made, available to satisfy the agency's estimated yearly requirements. The record demonstrates that the agency confirmed there were 1,800 new blades available from the original equipment manufacturer's exclusive distributor, Aviall. AR, Tab 22, Market Research Memorandum, at 1.

The Air Force also contacted the original equipment manufacturer of the LPT blades, CFM, to enquire about future availability and production. Id. CFM advised that it planned to deliver approximately 3,600 new LPT blades by the end of 2019, and 12,000 new blades during the first quarter of 2020. Id. The agency confirmed the future

availability of the LPT blades with a subsidiary of CFM, General Electric Aviation (GE).² See AR, Tab 31, Email from GE to Agency, Aug. 15, 2019, at 1-2. GE stated that it expected CFM to produce additional blades in future years, to include an expected 12,000 new blades in both 2020 and in 2021, and provided that it was confident sufficient blades could be produced to meet the Air Force's contractual needs. Id.

While the Air Force acknowledges that there may be other consumers of LPT blades, the agency maintains that its market research confirmed that sufficient blades would be available to meet its needs. Id. at 1 ("GE is confident that CFM can produce sufficient LPT blades to meet the Air Force's requirements."). Because the expected levels of new blade production identified in the agency's market research exceeds the estimated requirements stated in the solicitation (e.g., the agency identified current availability of 1,800 new blades, and future production of 3,600 blades by the end of 2019 and 12,000 new blades during the first quarter of 2020, as compared to a base period estimated requirement of only 7,840 blades), we cannot conclude that the Air Force was unreasonable in expecting that sufficient LPT blades would be available to meet its needs.³ See RFP amend. 8 at 3 (establishing a 12-month base ordering period).

Chromalloy also contends that the terms of the RFP will result in unbalanced pricing. Protest at 6. Because it will be impossible for firms to deliver the LPT blades for the base period, Chromalloy argues, and because the LPT blades will "almost certainly" be provided as government-furnished material in the option years, "various line item pricing is likely to be both under and overstated." Protest at 6. The agency counters that the

² CFM is the parent company of Safran Aircraft Engines and General Electric Aviation. AR, Tab 22, Market Research Memorandum, at 1.

³ The protester, for the first time in its comments on the agency report, argues that the agency "create[d] a patently ambiguous solicitation" by establishing ordering maximums, minimums, and estimated quantities of LPT blades. Comments at 3; Supp. Comments at 2. This argument constitutes a piecemeal presentation of issues; the timeliness requirements of our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. See Battelle Memorial Institute, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 24 n.32; 4 C.F.R. § 21.2(a)(1). Here, the solicitation clearly provided the ordering maximums, minimums, and estimated quantities of LPT blades, and the agency's explanation of these amounts is wholly consistent with the plain language of the RFP. Compare COS at 16-17 with RFP amend. 8 at 4-18. To the extent Chromalloy believed that the Air Force was "providing offerors with multiple, different total blade numbers that they 'might' have to provide," such an argument was required to have been raised in Chromalloy's initial protest. Comments at 2; 4 C.F.R. § 21.2(a)(1). Because the untimely filing of this protest ground was not due to compelling reasons beyond the protester's control, or raise issues of significance to the procurement system, we decline Chromalloy's request to consider this argument under our "good cause" exception to the timeliness requirements in our Bid Protest Regulations. 4 C.F.R. § 21.2(c). This protest ground is dismissed.

RFP includes provisions that allow the Air Force to identify and evaluate unbalanced pricing. Moreover, the agency asserts that this protest ground “merely anticipate[s] an improper evaluation without any basis” and that “until offerors’ proposals are submitted in response to the RFP, there is no way to know whether any of the offerors’ proposals will contain unbalanced pricing. . . .” Memorandum of Law at 7.

As a general matter, unbalanced pricing may increase risk to the government and can result in payment of unreasonably high prices. FAR § 15.404-1(g); Semont Travel, Inc., B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3. Unbalanced pricing exists where, despite a proposal’s low overall price, individual line item prices are either understated or overstated, as indicated by the application of cost or price analysis techniques. FAR §15.404-1(g); Semont Travel, Inc., *supra*. An offer may be properly rejected if the contracting officer determines that the lack of balanced pricing poses an unacceptable risk to the government. *Id.*; L.W. Matteson, Inc., B-290224, May 28, 2002, 2002 CPD ¶ 89 at 3.

Here, we reject the protester’s assertion that the solicitation’s pricing structure will necessarily result in unbalanced pricing. First, the protester’s argument is based on the mistaken notion that it will be impossible for offerors to meet the government’s delivery requirements for the base year. As discussed above, the government reasonably concluded that the contractor will be able to provide its estimated delivery requirements for LPT blades. Second, the RFP includes express provisions requiring the Air Force to identify and evaluate unbalanced pricing, and then reject proposals with unbalanced pricing where it presents risk to the government. Thus, we fail to see how the solicitation encourages, or otherwise allows for the submission of unbalanced prices. To the extent the protester suggests that the agency will not enforce these provisions, we agree with the Air Force that Chromalloy’s unbalanced pricing argument is premature since it anticipates improper action by prospective offerors and the agency. See South Atlantic Constr. Co., LLC, B-286592.2, Apr. 13, 2001, 2001 CPD ¶ 63 at 2 n.1; Jim Cooley Construction, Inc., B-221629, Apr. 7, 1986, 86-1 CPD ¶ 341 at 3.

The protest is denied.

Thomas H. Armstrong
General Counsel