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Decision

Matter of: Societe Anonyme Belge de Constructions Aeronautiques--Costs

File: B-419673.4

Date: August 31, 2022

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DIGEST

GAO recommends reimbursement of protest costs where protester raised a clearly meritorious supplemental protest ground that could have been identified had the agency conducted a reasonable inquiry into the merits of a related initial protest ground.

DECISION

Société Anonyme Belge de Constructions Aéronautiques (SABCA), of Brussels, Belgium, requests that our Office recommend that it be reimbursed the reasonable costs of filing and pursuing its protest challenging the award of a contract to AAR Government Services, Inc., of Wood Dale, Illinois, under request for proposals (RFP) No. FA8232-20-R-0002. The solicitation was issued by the Department of the Air Force for depot-level maintenance and modification requirements for primary support of the U.S. Air Force Europe (USAFE) F-16C/D mode aircraft. The requester contends that the agency failed to take prompt corrective action in response to clearly meritorious protest grounds.

We grant the request.

BACKGROUND

The RFP, issued on February 4, 2020, contemplated the award of an indefinite-delivery, indefinite-quantity contract with a 5-year base period, and an option for an additional

5-year ordering period with a ceiling value of \$365,000,000. Agency Report (AR), Tab 5, RFP at 2.¹

The award was to be made to the offeror determined to provide the best value to the agency, considering four factors: technical capability, technical risk, past performance, and price.² AR, Tab 11, RFP amend 6 at 6.³ Regarding the weight of the evaluation factors, the solicitation provided that the technical capability factor was more important than the past performance factor, and the past performance factor was more important than the technical risk factor. *Id.* The technical capability, technical risk, and past performance factors combined were significantly more important than the price factor. *Id.* However, the solicitation also provided that price would contribute substantially to the selection decision. *Id.*

Of relevance to this request, the total evaluated price (TEP) was to be calculated in accordance with RFP section M 4.4.1, which stated:

The TEP is the sum of CLIN [contract line item number] totals as specified below. The TEP will be calculated for evaluation of offers and will be the price used in making the award decision.

Id. at 18. The agency received and evaluated proposals from offerors, including SABCA and AAR, and selected SABCA for award. COS at 7. AAR then protested the award to our Office on March 16. *Id.* On April 7, the agency notified our Office that it would take corrective action by reevaluating proposals, reopening discussions with offerors, and making a new award decision. COS at 7; AR, Tab 66, Agency Notice of Corrective Action (Apr. 7, 2021). GAO then dismissed the protest as academic on April 12. AR, Tab 67, *AAR Govt. Servs., Inc.*, B-419673, Apr. 12, 2021 (unpublished decision).

The agency reevaluated the offerors' original proposals, pre-corrective action evaluation notice (EN) responses, and final proposal revisions. COS at 7. The agency stated that

¹ Citations to the agency report are to the report produced in the underlying protest and supplemental protest, docketed as B-419673.2 and B-419673.3.

² The technical capability factor was comprised of the following four subfactors: technical acceptability, program management plan, quality management plan, and country-specific concerns. RFP amend. 6 at 6. The agency was to assign ratings of outstanding, good, acceptable, marginal or unacceptable for each technical capability subfactor and assign a technical risk rating of low, moderate, high or unacceptable to those same subfactors. *Id.* at 8. In this way, the subfactors applied to both the technical capability and the technical risk factors. Under both factors, the four subfactors were of equal importance.

³ Unless otherwise noted, references to RFP section M in this decision are to the section M version in solicitation amendment 6. AR, Tab 1, Contracting Officer's Statement (COS) at 4 n.1; AR, Tab 11, RFP amend 6.

during the course of this reevaluation, it discovered a mistake in the methodology used to calculate the offerors' TEPs caused by an incongruity between section M 4.4.1.1 (AR Tab 10, RFP amend 5 at 161) and the pricing sheet provided to the offerors (*Id.* at 94-95). In response, the agency issued amendment 6 on May 22, 2021, which updated the language in the solicitation and explained that the agency would calculate a new TEP for each offeror by multiplying the best estimated quantities by the offeror's proposed price for the CLINs listed in section M 4.4.1.1. AR, Tab 11, RFP amend 6 at 2-3, and 18. On June 8, the agency prepared the corrective action source selection evaluation board (SSEB) initial evaluation report. AR, Tab 47, Corrective Action SSEB, Interim Evaluation Report.

After the corrective action, the agency reopened discussions with all offerors and issued five rounds of ENs. COS at 8. Following discussions, the agency evaluated proposals as follows:

| | AAR | SABCA |
|--|-----------------------------|------------------------|
| Technical Capability & Technical Risk | | |
| Technical Acceptability | Acceptable Moderate Risk | Good Low Risk |
| Program Management Plan | Acceptable Moderate Risk | Acceptable Low Risk |
| Quality Management Plan | Good Low Risk | Acceptable Low Risk |
| Country-Specific Concerns | Acceptable Low Risk | Acceptable Low Risk |
| Past Performance | Satisfactory Confidence | Substantial Confidence |
| Total Evaluated Price | \$299,420,356 | \$377,318,484 |
| Reasonable/Balanced | Yes/Yes | Yes/Yes |

COS at 14.

Based on this evaluation, the agency determined that AAR's proposal represented the best value to the agency. On December 9, the Air Force awarded the contract to AAR. AR, Tab 55, Awarded Contract No. FA8232-22-D-0005; COS at 15.

On December 22, SABCA filed a protest of the award with our Office in which it argued, among other things, that the agency failed to properly determine whether AAR's pricing was balanced.⁴ B-419673.2 Protest at 36-38.

⁴ In addition to the price balancing argument, SABCA also argued that the agency unreasonably and disparately evaluated SABCA and AAR's proposals under the technical capability and technical risk factors, misled SABCA during discussions, unreasonably evaluated AAR's proposal under the past performance factor, improperly

The agency filed its agency report in response to SABCA's protest on January 28, 2022, contesting each of the protest allegations, including SABCA's allegation regarding unbalanced pricing.⁵

On February 7, SABCA filed a supplemental protest arguing, among other things, that the agency conducted a flawed price evaluation and incorrectly calculated the offerors' TEPs. Supp. Protest at 3. Specifically, SABCA contended that the Air Force calculated the TEP using a spreadsheet formula that omitted certain CLINs (CLINs 0009, 0010, 0013, 0016, and 0040). *Id.* The protester also separately filed comments on February 10.

On February 14, the agency filed a notice of corrective action, representing that "there were errors in the pricing spreadsheet used to calculate the offerors' [TEPs]." Agency Notice of Corrective Action at 3. The Air Force stated that it would recalculate the offerors' TEPs after making the necessary corrections to the pricing spreadsheet, and make a new award selection decision in accordance with the terms of the solicitation. *Id.*

We dismissed the protest because the agency's corrective action rendered it academic. On March 3, this request followed.

DISCUSSION

SABCA requests that our Office recommend that it be reimbursed the costs associated with filing and pursuing its protest. The protester contends that its unbalanced pricing ground in its initial protest was clearly meritorious because the methods on which the Air Force relied to evaluate unbalanced pricing were undermined by errors in the Air Force's pricing spreadsheet and TEP calculation. SABCA Comments on Agency Resp. to Req. for Costs at 2-3. The protester also contends that a reasonable inquiry into its original protest ground challenging the agency's unbalanced pricing analysis would have led the agency to conclude that its calculation of offerors' TEPs was clearly erroneous. Request for Costs at 2-3. The agency would then have taken corrective

relaxed solicitation requirements, and conducted a flawed best-value tradeoff. B-419673.2 Protest at 20-44.

⁵ The agency requested and was granted two extensions to the filing date of the agency report, which resulted in the due date of the agency report being extended from January 21, 2022, to 5:30 pm Eastern Time (ET), January 28. Electronic Protest Docketing System (Dkt.) No. 13, Agency Req. for Extension of the AR; Dkt. No. 23, Agency Req. for Further Extension of the AR. The agency did not file the entire report by 5:30 p.m. ET on the extended due date, however, as it submitted its legal memorandum and COS at 5:48 p.m. ET. Based on this late filing, we deemed the complete agency report to have been filed on the next business day, *i.e.*, January 31. See Dkt. No. 28 (permitting comments to be filed 10 days after January 31).

action before the protester was required to incur the costs of filing a supplemental protest and submitting comments. *Id.*

The agency contends that it promptly took corrective action because the Air Force “decided to take corrective action based on SABCA’s supplemental protest allegation,” challenging the Air Force’s calculation of total evaluated prices, and did so “before the due date and time established for its response to the supplement protest.” Agency Resp. to Req. for Costs at 4. The Air Force also contends that SABCA’s supplemental protest allegation, that the agency conducted a flawed price evaluation and incorrectly calculated offerors’ TEPs, “is not sufficiently related” to its initial protest allegation challenging the agency’s evaluation of unbalanced pricing. *Id.* Therefore, the agency contends that a reasonable investigation of SABCA’s initial protest would not have led the Air Force to find the pricing evaluation errors asserted in SABCA’s supplemental protest. *Id.*

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs where, based on the record, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. 4 C.F.R. § 21.8(e); *AAR Aircraft Servs.--Costs*, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5-6.⁶ While we consider corrective action to be prompt if it is taken before the due date for the agency report responding to the protest, we generally do not consider it to be prompt where it is taken after that date. *Alsalam Aircraft Co.--Costs*, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 at 3. We will also recommend costs where a protester raises a clearly meritorious supplemental protest ground that could have been identified by an agency’s reasonable inquiry into the merits of a related initial protest ground—even where the agency takes corrective action prior to filing a report on the supplemental arguments. *Hughes Coleman JV--Costs*, B-417787.4, Apr. 15, 2020, 2020 CPD ¶ 250 at 6 (citing *Vane Line Bunkering, Inc.--Costs*, *supra.*).

As an initial matter, we note that the agency does not contest the calculation errors outlined in exhaustive detail in the supplemental protest. Accordingly, we conclude that the agency has not disputed that the supplemental protest ground correctly identified TEP calculation errors, and was therefore clearly meritorious. The question remaining, however, is whether the agency’s evaluation of proposals in response to SABCA’s unbalanced pricing allegation should have alerted the agency to its price per CLIN calculation errors.

⁶ We will recommend reimbursement only where the underlying protest is clearly meritorious, *i.e.*, not a close question. *InfraMap Corp.--Costs*, B-405167.3, Mar. 26, 2012, 2012 CPD ¶ 123 at 3. A protest is clearly meritorious where a reasonable agency inquiry into the protester’s allegation would reveal facts showing the absence of a defensible legal position. *Vane Line Bunkering, Inc.--Costs*, B-416033.2, July 5, 2018, 2018 CPD ¶ 299 at 5; *First Fed. Corp.--Costs*, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2.

Responding to SABCA's unbalanced price challenge, the agency stated the following in its agency report:

With respect to balanced pricing, the Air Force evaluated each offer in accordance with Section M 1.2 and M 4.3 (AR Tab 11 at 6 and 18). Unbalanced pricing was evaluated using three methodologies. Each offeror's proposed pricing per CLIN for each year of the Solicitation was reviewed to see if there were any CLINs that increased from year to year by more than a typical escalation factor. In addition, unbalanced pricing was evaluated by comparing each offeror's pricing per CLIN for all years of the contract to the independent government estimate (IGE) pricing per CLIN for all years of the contract, to determine if any CLIN prices were overstated or understated within each year based on the IGE. (AR Tab 45, IGE Comparison Tab). The third methodology was multiplying each offeror's proposed price per CLIN times 10 (number of years of pricing requested and proposed) and comparing that to the IGE pricing per CLIN times 10. There were no CLINs in any proposal which increased by more than an expected escalation factor across all years of the contract, and there were no CLINs in any proposal which were either overstated or understated when compared against the CLIN pricing from the IGE, either individually per CLIN per year or per CLIN multiplied by 10. Accordingly, no offeror's proposal was determined to be unbalanced. (AR Tab 46 at 92, 134, 176 respectively).

COS at 45.

SABCA maintains that a reasonable inquiry into its unbalanced pricing protest ground would have revealed multiple errors in the agency's TEP calculation. In this respect, in its supplemental protest, SABCA noted that the agency did not accurately calculate the price per CLIN after CLIN 0008 because the Air Force's price evaluation spreadsheet omitted CLINs 0009, 0010, 0013, 0016 and 0040, and the Microsoft Excel formula that the Air Force used did not recognize that those CLINs were omitted. Supp. Protest at 3. As a result, the price per CLIN calculations for each of the offerors, for nearly all of their fixed-price CLINs, were "wrong." *Id.* The protester provided the following examples:

CLIN 0058: AAR's proposed price for CLIN 0058 ("remove/replace of wing box") was \$466,998.00 for October 1, 2021 through September 30, 2022. [AR, Tab 40, AAR Corrective Action Final Proposal Revision at 2]. The Air Force estimated that the quantity for CLIN 0058 during that year would be 5 [AR, Tab 45, Corrective Action Pricing Evaluation, Sheet 4, Evaluation TEP Final Proposal Revision per CLIN], which should have produced a price of \$2,334,990 (*i.e.*, \$466,998.00 multiplied by 5). The Air Force, however, calculated AAR's price for CLIN 0058 during that year as \$42,620. Thus, the Air Force's calculation of AAR's proposed price for

CLIN 0058 was understated by \$2,229,370 for just the first year of performance.

CLIN 0066: AAR proposed price for CLIN 0066 (“Lower Bulkhead FS341 16B5253; Fuel Shelf Web 16B5141/16B5142, Model C, Blk 40/42s”) was \$272,231 for October 1, 2021 through September 30, 2022. [AR, Tab 40, AAR Corrective Action Final Proposal Revision at 2]. The Air Force estimated that the quantity for CLIN 0066 during that year would be 5 [AR, Tab 45, Corrective Action Pricing Evaluation, Sheet 4, Evaluation TEP Final Proposal Revision per CLIN], which should have produced a price of \$1,361,155. The Air Force, however, calculated AAR’s price for CLIN 0066 during that year as \$243,150, which understated AAR’s price by \$1,118,005.

Id. at 3-4. The protester noted that the agency’s computational errors described above apply to all offerors’ fixed-price CLINs after CLIN 0008 (i.e., CLINs 0011-0047 and 0050-0082) for all ten years of the contract. *Id.* at 4.

SABCA also argued that the agency erred by applying prices to additional line items that were not included in offerors’ price proposals.⁷ *Id.* The protester stated that the agency failed to include CLINs 0013, 0016, and 0040 in the TEP calculations. *Id.* Finally, the protester noted that the agency’s TEP calculations failed to accurately price the fixed-price labor rate CLINs (i.e., CLINs 0003 and 0007). *Id.* at 4-5.

The protester contends that a review of the price evaluation spreadsheet “utilized to evaluate unbalanced pricing” (AR, Tab 45, Corrective Action Pricing Evaluation) should have led the agency to identify these TEP calculation errors, since they were both relevant to the unbalanced pricing analysis and apparent from the face of the spreadsheet. SABCA Supp. Briefing at 4. The protester notes that all three of the methodologies that the agency stated that it employed to evaluate unbalanced pricing relied on the “proposed pricing per CLIN.” SABCA Comments on Agency Resp. to Req. for Costs at 2.

As explained above, our Office will recommend the reimbursement of costs where a protester raises a clearly meritorious supplemental protest ground that could have been identified by an agency’s reasonable inquiry into the merits of a related initial protest ground—even where the agency takes corrective action prior to filing a report on the

⁷ The protester further contends that lines 80-84 in the agency TEP calculation sheet identified five tasks that were not included as line items, as well as the estimated quantities for those tasks. AR, Tab 45, Corrective Action Pricing Evaluation, Sheet 4, Evaluation TEP Final Proposal Revision per CLIN. The protester contends that the agency multiplied the estimated quantities for these additional five tasks by offerors’ proposed prices for the last five CLINs (i.e., CLINs 0078-82) for all ten years of contract performance, and then included the resultant amounts in the TEP calculations. Supp. Protest at 4.

supplemental arguments. *Hughes Coleman JV-Costs, supra*. Based on our review, we agree with the protester that a reasonable investigation into SABCA's initial protest argument challenging the agency's unbalanced price analysis should have led the agency to discover the significant errors, noted above, in the agency's TEP calculation.

In this regard, the RFP provided that the agency would use various price analysis techniques, "such as those defined in [Federal Acquisition Regulation section] 15.404-1," to determine whether "the unit price of one more CLINs are significantly overstated or understated." AR, Tab 11, RFP amend. 6 at 18. As noted above, the agency's unbalanced price analysis employed such techniques by conducting three separate analyses, including an analysis comparing CLIN prices to an independent government estimate. See COS at 45. These analyses were documented, in part, in the same price evaluation spreadsheet containing the glaring errors noted above. Despite using these methods, and then receiving a protest challenging them, the agency failed to recognize the basic computational errors discussed above, including errors to the computed CLIN prices that were the subject of comparison. We find this to be unreasonable. Had the agency meaningfully reviewed the price per CLIN calculations relied upon in its balancing analysis, it would have discovered the price calculation errors identified above.

RECOMMENDATION

In light of the foregoing, we recommend that the agency reimburse SABCA the costs, including reasonable attorneys' fees, associated with filing and pursuing both its initial protest, as well as its supplemental protest. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The request is granted.

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General Counsel