



Decision

Matter of: Sigma InterAlbanian Vienna Insurance Group

File: B-420850

Date: October 3, 2022

Genond Mesareja for the protester.
Kathleen D. Martin, Esq., Department of State, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably excluded protester's proposal from the competitive range where the agency determined that, due to its high price, the proposal had no reasonable chance of being selected for award.

DECISION

Sigma InterAlbanian Vienna Insurance Group, of Pristina, Kosovo, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 19KV4222R0001, issued by the Department of State to provide employee health insurance at the U.S. Embassy in Pristina, Kosovo. Sigma asserts that the agency's decision to eliminate Sigma's proposal on the basis of its high price was unreasonable because Sigma is the incumbent contractor; the other offerors' prices are unrealistic; the agency did not consider the financial status of offerors by requiring submission of financial statements; and the agency did not provide Sigma with a "negotiation letter" prior to excluding it from the competitive range. Protest at 2-5.

We deny the protest.

BACKGROUND

On March 2, 2022, the agency issued RFP No. 19KV4222R0001, seeking proposals to provide health insurance for locally employed staff and their eligible dependents at the U.S. Embassy in Pristina, Kosovo. Agency Report (AR), Tab 1, RFP at 1-3. The solicitation stated that award would be made on the basis of the lowest-priced, technically acceptable (LPTA) proposal. *Id.* at 58.

With regard to evaluation of technical acceptability, the solicitation provided that the agency would consider whether a proposal: offered to meet the minimum mandatory requirements; contained an acceptable management approach; demonstrated an acceptable understanding of the solicitation requirements; demonstrated the offeror was “licensed/certified/accredited” by the government of Kosovo; and demonstrated relevant and acceptable experience/past performance. *Id.* at 58-59. With regard to evaluation of price, the solicitation required offerors to propose fixed-price premiums for the type and estimated quantities of services identified in section B of the solicitation; stated that total evaluated price would be calculated as “the cumulative total of the base year insurance plus all option years” for the estimated quantities; and did not provide for a price realism analysis. *Id.* at 3-11, 58-59.

Offerors were also advised that the agency “intend[s] to award a contract based on initial proposals, without holding discussions.”¹ RFP Cover Letter, Mar. 2, 2022, at 1; see also RFP at 58, 59. Finally, the solicitation provided that, “[i]f asked by the Contracting Officer, the offeror shall provide a current statement of its financial condition,” and explained that the agency would consider this information in making a responsibility determination for the apparent successful offeror. RFP at 56-58.

On or before the March 21 closing date, proposals were submitted by five offerors, including Sigma. In evaluating the proposals, the agency determined that Sigma’s proposal was technically acceptable; however, the agency also determined that Sigma had proposed an “extremely high price” that was considerably higher than the agency’s independent government cost estimate (IGCE) and the prices proposed by the other offerors.² Debriefing Letter to Sigma, June 30, 2022 at 1; Contracting Officer’s Statement (COS) at 4. Based on its evaluation of initial proposals, the agency established a competitive range consisting of the most highly rated offerors and, in light of Sigma’s high price, concluded that Sigma’s proposal did not have a reasonable chance of being selected for award and excluded it from further consideration; thereafter, Sigma was notified of its elimination. *Id.* This protest followed.

DISCUSSION

Sigma makes various arguments related to the exclusion of its proposal from the competitive range. Among other things, Sigma asserts that exclusion was unreasonable because: Sigma is the incumbent contractor; the other offerors’ lower-priced proposals “do not present a realistic prospect for fulfilling the terms and conditions of this long-term contract”; the agency did not consider the financial status of

¹ Nonetheless, offerors were advised that the agency “may hold discussions with companies in the competitive range if there is a need to do so.” RFP Cover Letter, Mar. 2, 2022, at 1.

² Because Sigma did not retain counsel in connection with this protest, no protective order was issued; accordingly, our discussion of the IGCE and the prices proposed by other offerors is necessarily general in order to avoid disclosing non-public information.

offerors by requiring submission of financial statements before establishing the competitive range; and Sigma expected to receive a “negotiation letter” prior to being excluded from the competitive range. Protest at 2-5; Sigma Comments at 1-3.

The determination of whether a proposal is in the competitive range is principally a matter within the judgment of the procuring agency, and contracting agencies may properly exclude from the competitive range proposals that are not among the most highly rated or that the agency concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation (FAR) 15.306(c)(1); *Avar Consulting, Inc.*, B-410308, Dec. 8, 2014 2014 CPD ¶ 362 at 4-5; *D&J Enters., Inc.*, B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2. In this context, an offeror’s high price may properly form the basis for exclusion from the competitive range. See *Regency Enterprises Services, LLC*, B-418448, B-418448.2, May 6, 2020, 2020 CPD ¶ 165 at 4-5; *Environmental Restoration, LLC*, B-413781, Dec. 30, 2016, 2017 CPD ¶ 15 at 3-5; *National Medical Staffing, Inc.*, Mar. 6, 1995, 95-1 CPD ¶ 503 at 3; *Motorola, Inc.*, B-247937.2, Sept. 9, 1992, 92-2 CPD ¶ 334 at 9; *Systems Integrated*, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114 at 3-4; *Jack Faucett Assocs.*, B-224414, Sept. 16, 1986, 86-2 CPD ¶ 310 at 2.

Here, we have considered all of Sigma’s complaints and find no basis to sustain its protest. First, with regard to Sigma’s incumbency, the solicitation did not provide for a comparative assessment of offerors’ experience/past performance. Rather, the solicitation stated that an offeror’s experience/past performance would be one consideration in assessing the technical acceptability of a proposal--and Sigma’s proposal was evaluated as technically acceptable. Thus, it would have been improper for the agency to accord greater weight to Sigma’s proposal based on its incumbency.

Next, with regard to Sigma’s complaint that the agency did not perform a comparative assessment of the offerors’ financial status by requesting submission of financial statements before establishing the competitive range, the solicitation did not require such analysis. Specifically, as noted above, the solicitation stated: “if asked by the Contracting Officer, the offeror shall provide a current statement of its financial condition,” and further explained that the agency would use this information in making its responsibility determination with regard to the apparent successful offeror. RFP at 56-58. Accordingly, Sigma’s assertion that the agency was required to assess each offeror’s financial status prior to establishing the competitive range is not consistent with the terms of the solicitation.

Next, with regard to Sigma’s complaint that the other offerors’ lower-priced proposals “do not present a realistic prospect for fulfilling the terms and conditions of this long-term contract,” see Sigma Comments at 2, Sigma fails to recognize that the solicitation did not provide for a price realism assessment. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required, nor permitted to conduct one in awarding a fixed-price contract. See, e.g., *Lynxnet, LLC*, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 4. Accordingly, Sigma’s assertion that the lower prices proposed by the other offerors were unrealistic fails to state a valid basis for protest.

Finally, with regard to Sigma's complaint that the agency did not send Sigma a "negotiation letter" prior to establishing the competitive range, the solicitation expressly warned offerors that the agency intended to award a contract based on initial proposals, and further provided that, if discussions were necessary, they would be conducted only with competitive range offerors. See RFP at 56-58. Accordingly, Sigma's expectation that the agency would conduct negotiations with Sigma prior to establishing the competitive range is contrary to the terms of the solicitation.

In summary, we find no basis to question the exclusion of Sigma's proposal from the competitive range on the basis of its high price. As noted above, an agency may properly exclude a proposal from the competitive range where it concludes that it does not have a realistic chance of being selected for award, and an offeror's high price may properly form the basis for the agency's determination in this regard. As discussed above, Sigma's proposed price was substantially higher than the agency's IGCE and the prices proposed by the other offerors in this LPTA procurement; accordingly, Sigma's protest challenging its exclusion from the competitive range is without merit.

The protest is denied.

Edda Emmanuelli Perez
General Counsel