



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Ocean House Builders

File: B-283057

Date: September 21, 1999

Rex K.C. Kim, Esq., White & Tom, for the protester.
Paralee White, Esq., and Brian A. Darst, Esq., Gadsby & Hannah, for Landmark Construction Corporation, an intervenor.
Sharon A. Jenks, Esq., John E. Lariccia, Esq., and Lt. Col. Clifford J. McKinstry, Department of the Air Force, for the agency.
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DIGEST

Protest of technical and price evaluation is denied where evaluation was reasonable and consistent with solicitation's evaluation criteria.

DECISION

Ocean House Builders (OHB) protests the award of a contract to Landmark Construction Corporation (LCC) under request for proposals (RFP) No. F45603-99-R8002, issued by the Department of the Air Force for simplified acquisition base engineer requirements. OHB challenges the evaluation of its proposal and the agency's award determination.

We deny the protest.

The RFP, issued on February 16, 1999, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base period and four 1-year option periods. RFP cover sheet. The RFP, as amended, provided that the award would be made to the offeror whose proposal was determined most advantageous to the government, technical/management evaluation factors and price considered. RFP amend. 2, at 63.

More specifically, the RFP provided that the technical/management evaluation factors were significantly more important than price and would be afforded primary

emphasis in the evaluation. Id. The technical/management evaluation factors, which each included two or more subfactors (for a total of 14 subfactors), were listed in descending order of importance as follows: (1) project management ability; (2) project development/planning and minimal design; (3) subcontracting support capability; (4) experience/past and present performance; and (5) project execution and technical capability. Id. at 64-65. The RFP stated that these factors would receive a color rating (showing how well the offeror's proposal met the evaluation standards and solicitation requirements) and a proposal risk rating (assessing the risk associated with the offeror's proposed effort to accomplish the solicitation requirements). Id. at 63.¹

The RFP provided that although price was second in importance, it would contribute substantially to the source selection decision and would be evaluated for completeness, realism, and reasonableness. Id. at 63. Offerors were required to submit a fixed-price coefficient/price multiplier (representing contractor overhead, contingencies, and profit) for military family housing (line item No. 2) and other real property (line item No. 1); these coefficients would be used by the agency to determine the price of work for each task order. Id. at 3. Essentially, standardized unit prices in the current RS Means® Computerized Pricing Guide, a trade publication which provides cost information on various construction projects, would be multiplied by an offeror's relevant fixed-price coefficient to determine the actual price for a unit of work. Contracting Officer's (CO) Statement at 1.²

Six firms submitted proposals by the closing time on March 29. As relevant here, technical proposals were evaluated by the agency's four-member technical evaluation team. Basically, for each of the 14 subfactors, the evaluators individually rated each proposal and prepared narratives of the proposal strengths and weaknesses, which supported the assigned color/adjectival ratings, and prepared narratives explaining the assigned proposal risk ratings. The evaluators subsequently met as a group, discussed the proposals and individual ratings, and assigned consensus ratings. The agency included three proposals, including those of OHB and LCC, in the competitive range. During discussions, clarification requests and deficiency reports were presented to each competitive range offeror. Responses to these items were considered by the individual evaluators who added or deleted information from their respective narratives as deemed appropriate based on an offeror's responses. The evaluators then reconvened as a group in order to reach

¹The color ratings, as well as corresponding adjectival ratings, were: blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable. The proposal risk ratings were: high, moderate, and low. Agency Report, Tab 13, Source Selection Evaluation Guide, at 9, 11. These specifics were not disclosed in the RFP.

²The RS Means publication is updated yearly; as stated in the RFP, the update will provide the only economic price adjustment under the contract. In other words, an offeror's coefficients will remain the same over the term of the contract. Id.

what became final consensus ratings. While each competitive range offeror was provided an opportunity to submit final proposal revisions for both technical and price areas, each offeror submitted final price (coefficient) revisions only. Id. at 1-2.

For the 14 technical/management evaluation subfactors, OHB received 13 acceptable/low risk ratings and 1 exceptional/low risk rating (for the warranty subfactor under the project management ability evaluation factor). LCC received 11 acceptable/low risk ratings and 3 exceptional/low risk ratings (for the initial startup/management of contingency situation and warranty subfactors under the project management ability evaluation factor and for the number of proposed design alternatives subfactor under the project execution and technical capability evaluation factor). LCC's price, based on its fixed-price coefficients, was approximately 17 percent less than OHB's price. Agency Report, Tab 15, Final Consensus Abstract.

Based on his integrated assessment of proposals and the stated evaluation factors, the source selection authority (SSA) selected the proposal of LCC for award. The SSA concluded that LCC's proposal clearly provided the best effort in terms of project management ability, project execution, and technical capability. The SSA viewed LCC's proposal as superior in terms of startup/contingency management and warranty considerations. The SSA noted that LCC provided outstanding alternatives in project execution and technical capability and that LCC had a very good to exceptional track record on other construction projects. In addition, the SSA noted the price savings associated with LCC's proposal. Accordingly, the SSA awarded the contract to LCC, whose highest technically rated, lowest priced proposal was determined to represent the best overall value to the government. Agency Report, Tab 21, Source Selection Decision Document.

OHB maintains that its proposal exceeded the RFP requirements in the following areas, and therefore, should have received exceptional ratings: key staff and quality control plan subfactors under the project management ability evaluation factor; development and planning subfactor under the project development/planning and minimal design evaluation factor; project execution and technical capability evaluation factor; and experience/past and present performance evaluation factor.

In reviewing an agency's evaluation of proposals, we will question the agency's evaluation only where it lacks a reasonable basis or is inconsistent with the stated evaluation criteria for award. Suddath Van Lines, Inc.; The Pasha Group, B-274285.2, B-274285.3, May 19, 1997, 97-1 CPD ¶ 204 at 5.

The source selection evaluation guide for this procurement defines the relevant color/adjectival ratings as follows: blue/exceptional--"[e]xceeds specified performance or capability in a beneficial way to the Air Force, and has no significant weakness" and green/acceptable--"[m]eets evaluation standards and any weaknesses are readily correctable." Agency Report, Tab 13, at 11. The record shows that in evaluating OHB's initial proposal, the evaluators identified and documented several

areas where the proposal failed to meet the RFP requirements. These areas were the subject of discussions for which OHB submitted responses to clarification requests and deficiency reports. In evaluating OHB's responses, the evaluators assigned acceptable, as opposed to exceptional, ratings as they did not believe that OHB's proposal after discussions contained any notable advantages that would be beneficial to the agency. The evaluation narratives were revised to reflect that OHB's proposal after discussions satisfied the RFP requirements and was considered technically acceptable. Agency Report, Tab 14, Technical Evaluation Narratives for OHB Proposal. Except for one aspect of the evaluation, as discussed below, we believe there is no basis on this record to question the reasonableness of the agency's evaluation of OHB's proposal.

With respect to the project management ability evaluation factor, OHB complains that it should have received exceptional ratings for the key staff and quality control plan subfactors because it proposed the same organizational structure and quality control plan which it successfully implemented on three job order contracts for the Army and Navy. However, under this evaluation factor, an offeror's proposed technical approach, not how successful the offeror performed other contracts using the same approach, was the appropriate focus of the evaluation in accordance with the terms of the RFP. Although OHB believes that its proposed organizational structure and quality control plan offered benefits to the agency, it was within the agency's discretion to conclude that OHB's proposed approach was acceptable, but not exceptional. OHB has not demonstrated that the agency's evaluation in this respect was unreasonable.

For the development and planning subfactor under the project development/planning and minimal design evaluation factor and for the project execution and technical capability evaluation factor, OHB complains that some of the individual evaluators assigned exceptional ratings, yet its final consensus rating in these areas was only acceptable. (We note that even for the areas in question, OHB did not have a majority of the individual evaluators rating its proposal exceptional. See Comments at 14, 17.)

Agency evaluators may discuss their individual evaluations with each other in order to reach a valid consensus score since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5-6. Here, proposals and offeror responses to clarification requests and deficiency reports were individually evaluated by the four members of the technical evaluation team and the individual evaluations were then discussed among the entire team in order to reach final consensus ratings. While OHB objects to the acceptable consensus ratings, we point out that a consensus score need not even be the score the majority of the evaluators initially awarded; a different score may reasonably be determined after discussions among the evaluators. The overriding concern in these matters is whether the final scores assigned reflect reasonable judgments about the relative merits of the proposals. See id. at 6. Other than OHB's disagreement with the acceptable ratings

finally assigned, OHB has not shown that the agency's evaluation in the referenced areas was unreasonable or inconsistent with the evaluation criteria.

However, as indicated above, there is one aspect of the agency's evaluation where we cannot conclude, based on the record, that the evaluation was reasonable. This aspect involves the evaluation of OHB's experience/past and present performance under the fourth most important evaluation factor. The record shows that the agency had for consideration 2 past and present performance surveys for OHB covering 3 job order contracts for the Army and Navy. One reference rated OHB "exceptional" in all 20 categories, noting that OHB "exceeded [the agency's] expectations," and the other reference assigned 10 "exceptional" and 8 "very good" ratings (plus 2 "not applicable" ratings), noting "contractor performs extremely well on high priority, high profile jobs." Agency Report, Tab 27, Past and Present Performance Surveys for OHB. In its supplemental report, the agency explains that it "did not find that the manner in which [OHB] managed their past efforts deserved an exceptional rating. The information provided demonstrated that [OHB] performs acceptably and the rating assigned reflects that assessment." Supplemental Agency Report at 5. Given the highly favorable information reported in these performance surveys, we believe the agency's explanation that OHB merely demonstrated that it "perform[ed] acceptably" is inconsistent with the record.

Nevertheless, we conclude that, even if there was error in this area, it did not affect OHB's competitive standing. In this regard, even if OHB's proposal had received an exceptional rating for the experience/past and present performance evaluation factor, OHB would have had only two exceptional ratings versus three exceptional ratings each for LCC and Offeror A (whose proposal was ranked second overall in terms of both technical and price). Moreover, LCC and Offeror A each had one of these ratings in evaluated areas more important than experience/past and present performance. Agency Report, Tab 15, Final Consensus Abstract. Thus, even if OHB's proposal received an exceptional rating for the experience/past and present performance evaluation factor, its proposal would have retained its third overall ranking.

OHB next challenges the agency's price realism evaluation of LCC's proposal.³ For example, OHB complains that LCC's coefficients were incomplete, unrealistic, and unreasonable because the firm omitted certain cost elements in calculating its coefficients, thereby resulting in unreasonably low coefficients. OHB also questions whether LCC can perform at the coefficients proposed.

The manner in which a price realism analysis is conducted is a matter subject to a contracting agency's sound discretion, which we will not disturb unless it lacks a

³By notice dated July 9, GAO dismissed, among other issues, OHB's challenge of the evaluation of LCC's technical proposal, as this issue was raised 11 days after OHB's debriefing. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1999).

reasonable basis. OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 8. The record shows that in arriving at fixed-price coefficients, LCC (as well as OHB) made certain assumptions based on prior construction experience about the costs of performing the RFP requirements. Agency Report, Tab 19, Final Proposal Revisions for LCC and OHB. Even if OHB is correct that LCC omitted certain cost elements in calculating its coefficients, OHB's complaint amounts to no more than a challenge of LCC's alleged submission of a below-cost proposal. However, such a complaint does not provide a basis for protest as there is no prohibition against an agency accepting a below-cost proposal on a fixed-priced contract. Ventura Petroleum Servs., Inc., B-281278, Jan. 21, 1999, 99-1 CPD ¶ 15 at 6. To the extent OHB is arguing that LCC cannot perform at its fixed-price coefficients, this matter concerns LCC's responsibility, which we will not review absent a showing of possible bad faith by government officials, or that definitive responsibility criteria were not met, neither of which is present here. 4 C.F.R. § 21.5(c). On this record, we have no basis to question the reasonableness of the agency's price realism evaluation of LCC's proposal.

In its comments on the agency report, OHB also complains that its price proposal, which included all required cost elements, was compared against an allegedly defective government estimate and ultimately found too high in comparison to this estimate. OHB contends that the government estimate was defective because certain costs were excluded, resulting in an unreasonably low estimate used for evaluation purposes.

Under our Regulations, a protest based on other than alleged improprieties in a solicitation must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). By letter dated July 23, OHB acknowledged receiving the agency report, including a copy of the government estimate, on July 22; in this letter, OHB also requested additional documents and an extension of time to file its comments. By notice of July 26, GAO responded to OHB's supplemental document request and granted a 1-day extension to file comments. In its comments filed on August 3, 12 days after receiving the agency report, OHB raised for the first time the issue of the evaluation of its price proposal against an allegedly defective government estimate. Since a time extension for purposes of filing comments on an agency report does not waive the timeliness rules with regard to new grounds of protest, we conclude that this new basis for protest is untimely. See, e.g., Abre Enters., Inc., B-251569.2, Mar. 16, 1993, 93-1 CPD ¶ 239 at 5.

In any event, the record shows that the agency gave little (if any) weight to the government estimate in evaluating price proposals. Rather, the agency compared the coefficients proposed by OHB, LCC, and Offeror A to each other, and the agency considered the coefficients at six other Air Force bases. Agency Report, Tab 15, Revised Prices with Market Survey. See FAR § 15.404-1(b)(2) (examples of price analysis techniques, including comparison of prices received in response to a solicitation; comparison of previously proposed prices and contract prices with

current proposed prices; and comparison of proposed prices with prices obtained through market research). OHB proposed the highest coefficients among the three offerors who remained eligible for award, and its proposed coefficients were higher in all but one category when compared to the coefficients at the other Air Force bases.

Finally, OHB challenges the agency's tradeoff decision resulting in the award to LCC. OHB complains that the SSA placed too much emphasis on LCC's low proposed coefficients, and believes that the SSA disregarded what OHB characterizes as its technically superior and more realistically priced proposal.

OHB's argument assumes the technical superiority and more realistic pricing of its proposal. Because, as discussed above, the agency found that LCC's proposal was technically superior to OHB's proposal and that LCC's lower price was realistic, the selection of LCC's proposal is unobjectionable.⁴

The protest is denied.

Comptroller General
of the United States

⁴OHB's complaint that the evaluation record was not sufficiently documented is without basis. As indicated from the discussion above, the record, including the original and revised evaluation narratives and the source selection decision, reasonably support the agency's position that OHB's proposal was not exceptional and did not represent the best value to the government.