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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Legacy Management Solutions, LLC

File: B-299981.2; B-299981.4

Date: October 10, 2007

Kevin P. Mullen, Esq., and David E. Fletcher, Esq., Cooley Godward Kronish, LLP, for the protester.

Joseph P. Hornyak, Esq., and Allison V. Feierabend, Esq., Holland & Knight, for The S.M. Stoller Company, an intervenor.

H. Jack Shearer, Esq., and Young H. Cho, Esq., Department of Energy, for the agency. Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation contemplated award of fixed-price contract, agency's comparing proposed prices to government estimate and other proposed prices and ensuring that prices reflected labor categories and hours specified in solicitation constituted reasonable price realism analysis.
 2. Protest of alleged unbalanced pricing among awardee's proposed labor rates is denied where agency evaluated challenged rates as reasonable and realistic; record shows that rates were within range of all offerors' proposed rates, so that there was no basis to find them significantly overstated or understated, and thus no basis to find them unbalanced.
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DECISION

Legacy Management Solutions, LLC protests the award of a contract to The S.M. Stoller Co. under request for proposals (RFP) No. DE-RP01-07LM00060, issued by the Department of Energy (DOE) for support services. Legacy complains that the agency improperly evaluated the technical proposals and failed to perform an adequate price realism analysis.

We deny the protest.

DOE's legacy program is responsible for managing land structures and facilities that were associated with nuclear weapons production during the cold war and are now closed. The RFP sought support services for this program, and provided for award

of a contract on a time-and-material basis, with provision for a base fee and award fees. The RFP indicated that the award would be made on a “best value” basis considering technical factors—technical approach, management approach, personnel qualifications and staffing, corporate experience, and past performance—and price; the technical factors were more important than price. RFP at 88-92. Regarding price, the RFP, as amended, included a list of 15 labor categories, with multiple experience levels and the estimated number of hours that each level could be expected to perform annually. RFP at 381. The RFP also specified a dollar amount that each offeror was to include in its proposal for other direct costs. RFP at 383. Offerors were to propose a loaded, fixed, hourly rate (minus fee) for each labor category, as well as a base fee and an award fee. RFP at 78-79. Price was to be evaluated for reasonableness, realism, and completeness. RFP at 92.

The agency received five proposals, including Legacy’s and Stoller’s. A technical evaluation committee (TEC) reviewed and scored the proposals under each factor. Stoller’s proposal was ranked first, with a technical score of 920 (of 1,000 available) points—320 (of 400) for technical approach, 250 (of 250) for management approach, 200 (of 200) for personnel qualifications and staffing, 100 (of 100) for corporate experience, and 50 (of 50) for past performance. AR at 7. Legacy’s proposal was ranked second, with a score of 615 points—200 for technical approach, 125 for management approach, 160 for personnel qualifications and staffing, 80 for corporate experience, and 50 for past performance. Id. Stoller’s proposed price was the lowest, at \$167,656,172, and Legacy’s the second lowest, at \$184,943,641. AR at 8. Based on its highest technical score and lowest price, Stoller’s proposal was ranked first overall; Legacy’s was ranked second. Id. Based on the technical evaluation report, the source selection authority (SSA) determined that Stoller’s proposal represented the best value, and thus selected Stoller for award. Legacy protests the award decision.

PRICE REALISM ANALYSIS

Legacy challenges the reasonableness of the agency’s price realism analysis. In this regard, section M of the RFP stated that proposals would be evaluated for realism, reasonableness and completeness in order to establish a probable cost. The RFP further specified regarding price realism that proposals

will be evaluated to determine if the proposed costs are realistic and consistent with the Technical Proposal with regard to the nature, scope, and duration of the work to be performed. Inconsistencies between the Cost/Price Proposal and other portions of the proposal could raise concerns regarding the offeror’s understanding of the requirements and ability to perform the work for the proposed price.

RFP at 92.

Where a fixed-price contract—including a fixed-rate contract such as the one here—is to be awarded, a solicitation may provide for a price realism analysis for such purposes as measuring an offeror’s understanding of the solicitation requirements and assessing the risk inherent in an offeror’s proposal. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶189 at 4. The Federal Acquisition Regulation (FAR) identifies a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including comparison of the prices received with each other and with the independent government estimate, and analysis of pricing information provided by the offeror. FAR § 14.404-1(b)(2). The nature and extent of a realism analysis ultimately are matters within the sound exercise of the agency’s discretion, unless the agency commits itself to a particular methodology in the solicitation. Id. We will review an agency’s price realism evaluation only to determine whether it was reasonable and consistent with the solicitation requirements. Id.

DOE’s realism analysis consisted of comparing the proposed rates for the specified labor categories to both the government estimate and the other proposed prices, and the use of statistical analysis techniques to analyze the information. Technical Evaluation Report (TER) at 37-46, and attach. 4. As a result of its analysis, the agency concluded that all offerors’ total prices were realistic, including Stoller’s, which was approximately 11.6 percent lower than the government estimate. AR at 40. In this regard, the agency found that, while some of Stoller’s and other offerors’ labor rates were lower than the government estimate and that some were higher, overall, all offerors’ proposed rates were consistent with the government estimate. AR at 40. In addition, DOE verified that each offeror’s prices reflected the estimated number of labor hours for each labor category specified in the RFP.¹

Legacy complains that DOE’s analysis was inadequate because the agency did not determine whether offerors’ proposed hours were consistent with the nature, scope, and duration of the efforts described in their technical proposals, or perform a reasonable probable cost analysis, as required by the RFP. We find nothing objectionable in the agency’s evaluation methodology. As noted above, the solicitation, as amended, included the labor categories, the levels within the labor categories, and the exact number of hours for each level that offerors were required to use to prepare their proposals. RFP at 381. Since offerors thus were not responsible for proposing their own required hours, it obviously would have served no purpose—the RFP language aside—for the agency to separately consider whether Stoller’s hours were sufficient. The agency’s failure to conduct this analysis thus

¹DOE notes that a substantial part of the difference in Stoller’s and Legacy’s proposed prices was due to [DELETED]. AR at 40.

does not render the evaluation unreasonable.² Similarly, since the number of hours and other direct costs were specified in the RFP, once the agency determined that the proposed rates were realistic, its calculating probable cost by multiplying the proposed rates by the estimated hours, and totaling the results, was reasonable.

Legacy also objects to the price realism analysis on the ground that it was based on an unreasonable government estimate. In this regard, following receipt of proposals, DOE revised the estimate to correct errors and to take into account inapplicable and likely inaccurate assumptions. Among other things, DOE reduced the overhead rate from 100 percent to 50 percent because the lower rate was more consistent with contracts, such as this one, that will be performed on government property, and also reduced the profit rate to reflect the rates actually proposed. AR at 52. Legacy argues that, instead of a 50 percent overhead rate, the estimate should have incorporated a [DELETED] percent overhead rate, which allegedly is the rate Stoller applied under its incumbent legacy contract. According to Legacy, had the higher rate been included in the estimate, the comparison with the estimate would have shown that Stoller's price was unrealistically low.

We find no basis to question the government estimate. Legacy has not shown that the basis for the agency's decision to include the lower overhead rate in the estimate was unreasonable. Specifically, Legacy has not shown that the agency incorrectly determined that, Stoller's overhead rate notwithstanding, the lower rate is consistent with the rate typically experienced under contracts performed on government property. Thus, Legacy's argument that the agency should have used the higher rate constitutes no more than disagreement with DOE's approach, which is insufficient to demonstrate that the agency's approach was unreasonable. See UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7. In any case, the agency's analysis also was based on a comparison of Stoller's overall prices to the other offerors' proposed prices, which analysis the protester does not challenge. See generally Fiserv NCSI, Inc., B-293005, Jan. 15, 2004, 2004 CPD ¶ 59 at 10 (price evaluation was reasonable, notwithstanding that it was based in part on flawed government estimate, where agency also had a separate valid basis for its evaluation conclusion).

UNBALANCED PRICING

Legacy argues that Stoller's labor rates are unbalanced between the experience levels in certain labor categories, and that its proposal should have been rejected on this basis. Specifically, Legacy points out that, for the administrative specialist position, Stoller proposed a rate of [DELETED] for level 4, [DELETED] percent

²We recently resolved this precise issue in deciding a protest by another unsuccessful offeror under this procurement. See Navarro Research and Eng'g, Inc., B-299981, B-299981.3, Sept. 28, 2007, 2007 CPD ¶ ____.

higher than the [DELETED] rate it proposed for level 3; similarly, for the records management specialist position, Stoller proposed a rate for level 4 more than [DELETED] percent higher than the rate for level 3; and, for the beneficial reuse specialist position, Stoller's rate for level 3 was [DELETED] percent higher than its rate for level 2. According to Legacy, the differences in experience requirements between the levels--for example, a level 3 administrative specialist must have at least 8 years of experience, while a level 4 must have at least 12 years--are not sufficient to explain the extreme differences in the proposed rates.³

Unbalanced pricing exists where the prices of one or more contract line items are significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). Ken Leahy Constr., Inc., B-290186, June 10, 2002, 2002 CPD ¶ 93 at 2; see FAR § 15.404-1(g)(1).

Legacy has not established that Stoller's labor rates for the more experienced personnel were overstated, and our review does not indicate that this is the case. In reviewing the labor rates, the agency found that Stoller's rates were both reasonable (that is, not too high), and in line with the other offerors' rates. In this latter regard, Stoller's rate of [DELETED] for the level 4 administrative specialist position was within the \$30.38 to \$38.56 range of rates among all offerors; its [DELETED] rate for the level 4 records management specialist position was within the \$48.17 to \$66.07 range of rates; and its [DELETED] rate for the level 3 beneficial reuse specialist position was within the \$42.50 to \$116.73 range among all offerors. Since there thus is no basis for us to find that Stoller proposed overstated rates for higher-level personnel, there is no basis for us to find unbalanced pricing.⁴

³Legacy also argues that DOE did not consider the only obvious explanation for the extreme variation in rates from one level to another within the same labor category--that Stoller violated the RFP by including profit in its labor rates. Legacy has not supplied any evidence to support this argument. Accordingly, we find that it is based on speculation and will not consider it.

⁴We note that, in any case, the concept of unbalanced pricing has only limited application in the context of a procurement where the government's primary objective is the best value, not the lowest price. USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 6; we apply the concept of unbalancing in such cases only where price ultimately is the basis for the source selection. MG Indus., B-283010.3, Jan. 24, 2000, 2000 CPD ¶ 17 at 7. Here, while the award was made to the low-priced offeror, price was the least important award factor. In addition, while in the source selection decision the SSA recognized that Stoller's price was low, it is clear that price was not the basis for her award decision. Source Selection Document at 3, 4.

EVALUATION OF STOLLER'S TECHNICAL PROPOSAL

Under the personnel qualification and staffing factor, offerors were required, among other things, “to demonstrate [their] ability to recruit, retain, and provide highly skilled qualified personnel . . . over wide spread geographic locations, and under widely fluctuating workloads,” RFP at 75, to “. . . discuss their plan for providing the non-key personnel required for this contract. . . ,” *id.* at 76, and to “. . . include . . . for each non-key labor category, (1) the number of personnel . . . currently employed by the offeror; (2) the number . . . to be provided from the current employees of a proposed subcontractor . . . ; and (3) the number . . . to be provided from new hires including incumbent staff.” *Id.* The RFP informed offerors that they would be evaluated on, their “demonstrated ability to recruit, retain and provide qualified key and non-key personnel to ensure sufficient staffing . . .” and “. . . for demonstrated ability to provide non-key staff at the necessary skill levels, whether by new hire or retention of current or incumbent staff.” *Id.* at 90.

In its proposal, Stoller, the incumbent contractor, proposed to provide non-key personnel by restructuring its current staff; it would fill approximately [DELETED] percent of its requirements with new staff who either would be in new positions at new localities or would replace staff currently paid more than their duties demand.⁵ The agency found that Stoller adequately addressed the solicitation requirement to recruit, retain and provide qualified personnel to ensure successful performance. AR at 31, 32.

Legacy argues that Stoller's personnel plan should have been assigned a weakness under each technical factor. Among other things, Legacy believes the evaluators should have considered the negative effect Stoller's approach could have on the morale and effectiveness of the remaining incumbent workforce, the unlikelihood of a smooth transition to the new contract, and the probable decline in the overall quality of performance associated with the [DELETED] of personnel who were responsible for Stoller's favorable past performance rating. Supplemental Protest at 3.

In reviewing a protest challenging an agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation, and applicable statutes and regulations. Phillips Med. Sys. N. Am. Co., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2.

⁵ Stoller addressed DOE's need for possible short-term or specialized staffing by proposing to supply [DELETED], but indicated it would consider whether [DELETED] to meet these needs. Stoller Proposal at 89. Legacy's argument also applies to this aspect of Stoller's proposal.

The evaluation here was unobjectionable. Offerors' staffing plans were submitted in response to the requirements under the personnel qualifications and staffing factor, as discussed above, and the evaluation scheme provided for evaluating the staffing plans under that factor. Thus, while the protester asserts that Stoller's staffing plan should have been evaluated as a weakness under all factors, doing so would have been inconsistent with the terms of the solicitation. With respect to the evaluation under the personnel qualifications and staffing factor, offerors were not required to provide a plan that was based on using 100 percent of the incumbent employees; they were only required to submit a plan that demonstrated that they would be capable of staffing the contract. DOE found that Stoller's plan demonstrated its ability to staff the contract, TEC Report at 31, and Legacy has not demonstrated otherwise. Accordingly, we have no basis to question this aspect of the evaluation.

PREJUDICE

Legacy protests the evaluation of its own proposal under the technical and management approach factors on several grounds. However, we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). There is no basis to find that Legacy was prejudiced by these alleged evaluation errors.

In evaluating the technical proposals, the TEC assigned a base score of 0 to 10 for each factor; a proposal was assigned 10 points if, among other things, it was evaluated with significant strengths and no weaknesses, and 8 points if, among other things, it was evaluated with one or more strengths and no significant weaknesses. AR at 6. The TEC then applied multipliers to the base scores, reflecting the different relative weights of the factors—40 for technical approach, 25 for management approach, 20 for personnel qualifications and staffing, 10 for corporate experience, and 5 for past performance—to arrive at the weighted scores discussed above. Legacy's total weighted score of 615 included scores of 125 for management approach and 200 for technical approach, the factors in question. Stoller's proposal was selected for award based on its evaluated strengths, as reflected in its total weighted score of 920 points.

Applying the agency's methodology, it is clear that Legacy's proposal would not be in line for award even if we found merit to its evaluation challenges. Under the management factor, Legacy's proposal received a base score of 5 points based on the TEC's assessment of one strength and one weakness; this base score was multiplied by 25 for a weighted score of 125 points. Legacy challenges the assignment of the one weakness; if we agreed with Legacy, its proposal would merit, at most, a base score of 8 points, since it was evaluated as having no significant strengths under the factor. AR at 6. This would increase Legacy's score under the management

approach factor by 75 points, to 200 points (8 multiplied by 25). Under the technical approach factor, Legacy's proposal received a base score of 5 points based on, among other things, two significant strengths and three significant weaknesses; this base score was multiplied by 40, resulting in a weighted score of 200 for the factor. Legacy has challenged each of the significant weaknesses; if we found all of Legacy's arguments meritorious, Legacy's base score would increase to the maximum of 10 points, and its weighted score for the factor would increase by 200 points, to the maximum of 400 points. Based on these two changes, the record shows that Legacy's total score would increase by a total of 275 points, from 615 to 890. Since this would leave Legacy's proposal with a lower rating than Stoller's, and Stoller's lower price would remain unchanged, there is no basis in the record for concluding that Legacy's proposal would be selected for award over Stoller's, even with the higher score that could result if we found its challenges meritorious. It follows that Legacy was not competitively prejudiced by the alleged errors in the evaluation of its technical proposal, and we therefore need not consider them.

The protest is denied.

Gary L. Kepplinger
General Counsel