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Decision

Matter of: Bering Straits Technical Services, LLC

File: B-401560.3; B-401560.4

Date: October 7, 2009

Thomas A. Janczewski, Esq., and David W. Croysdale, Esq., Michael Best & Friedrich LLP, for the protester.

William A. Roberts, III, Esq., Richard B. O’Keeffe, Jr., Esq., John R. Prairie, Esq., Trayce Winfrey Howard, Esq., and Nicole P. Wishart, Esq., Wiley Rein LLP, for Chugach World Services, Inc., an intervenor.

Richard J. Huber, Esq., and Julio Ocampo, Esq., Naval Facilities Engineering Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably evaluated protester’s proposal as good, rather than excellent, under technical approach factor where offer contained weaknesses indicating a lack of understanding including proposal of services under incorrect work area, start of services in base year when not required until option years, and lack of clarity on required inspections.
2. Evaluation of protester’s past performance as neutral was reasonable where only past performance information submitted concerned protester’s parent firm and affiliates, and agency reasonably found that proposal failed to demonstrate that resources of those entities would affect contract performance.
3. Agency reasonably assigned risk to protester’s proposal based on low fixed burden rate for indefinite-quantity items, where it determined that proposed rate was insufficient to profitably perform the work, and proposal failed to explain how protester could realize sufficient revenue by performing work more efficiently than estimated standards.
4. In fixed-price procurement, awardee’s failure to provide price information called for by solicitation for purposes of assessing offerors’ understanding of requirement did not preclude award, where agency was able to calculate the missing information

from other aspects of awardee's price proposal and reasonably concluded the awardee understood contract requirements.

DECISION

Bering Straits Technical Services, LLC (BSTS), of Anchorage, Alaska, protests the award of a contract to Chugach World Services, of Anchorage, Alaska, under request for proposals (RFP) No. N40192-09-R-9000, issued by the Department of the Navy for housing operations and maintenance services for military facilities at various locations in Guam.¹ BSTS challenges the agency's technical and price evaluations.

The RFP, a section 8(a) set-aside, consolidates the existing housing operations and maintenance and change of occupancy maintenance (COOM) services requirements for the Navy and Air Force in Guam. The RFP contemplated award--on a "best value" basis--of a contract with fixed-price and indefinite-quantity line items for a base period of 6 months, with 4 option years. Proposals were to be evaluated under four factors--technical approach, past performance, contractor experience, and price. Non-price factors were weighted equally and, combined, were considered equivalent to price. Proposals were to receive adjectival ratings (excellent, good, satisfactory, marginal, poor, or--for past performance only--neutral).

Eight offerors, including BSTS and Chugach, submitted proposals, which were evaluated by the technical evaluation board (TEB). The TEB's consensus evaluation rated Chugach's proposal excellent under all three non-price factors, for an overall rating of excellent. The TEB rated BSTS's proposal good overall based on a good rating under the technical approach factor, neutral under the past performance factor, and excellent under the experience factor. BSTS's price (\$122.7 million) was the third lowest proposed and Chugach's (\$133.9 million) was fourth lowest. The source selection board (SSB) reviewed the evaluations and recommended award, without discussions, to Chugach based on its excellent proposal ratings, significant technical strengths, and other advantages associated with its teaming agreement. The SSB considered BSTS's lower price, technical ratings, and strengths, but found that Chugach had a higher-rated proposal and lacked the risks identified in BSTS's proposal. Based on his own review of the proposals and prior evaluations, the source selection authority concluded that Chugach's proposal, with the highest non-price rating, represented the best value to the government over BSTS's (and other offerors') lower-rated, lower-priced proposal, and thus made award to Chugach. After a debriefing, BSTS filed this protest.

BSTS challenges the evaluation on numerous grounds. In BSTS's view, had the agency properly evaluated its proposal under the past performance and technical

¹ This protest is related to earlier protests by other offerors against the award to Chugach. AMI-ACEPEX, Joint Venture, B-401560, Sept. 30, 2009, 2009 CPD ¶ ____; GFS Group, LLC, B-401560.2, Sept. 14, 2009, 2009 CPD ¶ ____.

factors, its proposal would have been rated excellent. It further claims that Chugach's proposal should have been rejected as unacceptable based on its failure to furnish required pricing information. BSTS concludes that, but for these evaluation errors, its lower-priced proposal would have been in line for award.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. We have considered all of BSTS's arguments and find that they provide no basis to object to the evaluation or award. We address BSTS's most significant arguments below.

BSTS TECHNICAL APPROACH EVALUATION

BSTS challenges the agency's consensus rating of its proposal as good, rather than excellent, under the technical approach factor, citing the fact that three of the four evaluators rated its proposal as excellent and only one rated it good on their individual worksheets. BSTS Comments at 12.

This argument is without merit. It is not unusual for individual evaluator ratings to differ from one another, or to differ with the consensus ratings eventually assigned; a score reasonably may be determined after discussions among the evaluators. See Veterans Tech., LLC, B-310303.2, Jan. 7, 2008, 2008 CPD ¶ 31 at 6 n.4; Andrulis Corp., B-281002.2, June 2, 1999, 99-2 CPD ¶ 105 at 5. The overriding concern for purposes of our review is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of the proposals. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1.

The TEB's consensus evaluation was consistent with the RFP's requirements and BSTS's proposal. The agency explains that all members of the TEB reviewed and evaluated the proposals, taking individual notes, before meeting on multiple occasions to reconcile their ratings. Contracting Officer's Supplemental Statement ¶ 6. The TEB's consensus discussions were not recorded; however, all TEB members agreed to the final evaluation before the TEB report was completed and signed. Id. In this regard, in rating BSTS's proposal good under the technical approach factor, the TEB found various strengths, including an organization tailored to meet the requirements, a comprehensive management program, and experienced personnel. Agency Report (AR), Tab 4A, at 8, 20-21. However, the TEB found that the identified strengths did not outweigh various weaknesses in the proposal that indicated a lack of understanding of some work requirements. Id. at 8. For example, the TEB found that the proposal included housekeeping services under bachelor housing when they properly belonged under the Navy Gateway Inns and Suites work area. Id. at 21; RFP, Annex 1104000, Item 3.21. The proposal also mentioned that services for Andersen Air Force Base would commence during the base year, when they were not required until the second option year. AR, Tab 4A, at 8; RFP,

Annex 1401000, Item 1. Further, the proposal was found to be unclear as to whether required inspections would be conducted to ensure suitability of rental units in accordance with applicable instructions and family housing desk guides. AR, Tab 4A, at 8; Annex 1401000, Item 3.1.1.3. The TEB concluded that BSTS's lack of understanding of these requirements could increase the risk of unsuccessful performance. AR, Tab 4A, at 8. While BSTS asserts that its proposal deserved an excellent rating rather than the good rating it received, it does not challenge these evaluated weaknesses. We conclude that there is no basis for questioning the evaluation of BSTS's proposal as good in this area. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

BSTS PAST PERFORMANCE EVALUATION

BSTS asserts that the agency's evaluation of its past performance as neutral was improper because its proposal included past performance information on contracts performed by its affiliated companies, which, it claims, should have been attributed to BSTS in the evaluation. BSTS Comments at 11. For example, BSTS cited the performance of Inuit Services, Inc. (ISI) on a dormitory/temporary lodging maintenance/management contract at Elmendorf Air Force Base (rated excellent) and two Navy installation support contracts (rated good to very good) performed by a joint venture that included Bering Straits Aerospace Services (BSAS).

An agency properly may consider the experience or past performance of an offeror's parent or affiliated companies where the firm's proposal demonstrates that the resources of the parent or affiliated company will affect the performance of the offeror. See, e.g., Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company—its workforce, management, facilities or other resources—will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. Id. at 5. We find the agency reasonably determined that this was not the case here.

While BSTS claims credit for the past performance of its affiliated companies, the agency found that its proposal did not demonstrate how these companies would be involved in a way that would affect performance of the contract. BSTS's proposal stated that it was a wholly-owned subsidiary of Bering Straits Native Corporation (BSNC) and that the BSNC family of companies held some 50 federal contracts, including some covering family housing maintenance and base operations support services. BSTS Proposal at 179. However, apart from including experience and past performance descriptions for ISI's and BSAS's prior contracts, the proposal did not otherwise specifically identify these companies as providing workforce, management, facilities or other resources for the performance of this contract; indeed, the proposal was silent on any connection between BSAS and BSTS as it applied to this contract. Further, although BSTS proposed a deputy project manager who had been the project manager on ISI's Elmendorf contract, there was no

explanation or description of this employee's duties on the former contract, how long he had performed, or how his involvement under the former contract warranted past performance credit for BSTS. In any event, that contract was valued at less than \$2 million per year--below the \$5 million threshold the agency established for a contract to be deemed relevant in the evaluation--and thus would not have been considered relevant for past performance purposes. Supplemental Agency Report at 7. In view of the small size of the Elmendorf contract and the limited information provided in BSTS's proposal regarding the application of resources and personnel from its affiliated companies, the agency reasonably concluded that there was no basis to credit BSTS with the past performance of either of those companies.²

In a related argument, BSTS asserts that the agency treated it and Chugach unequally in the evaluation because the agency did consider the past performance record of Chugach's parent and sister companies in the evaluation. BSTS Comments at 10. This argument is without merit. Implicit in the agency's differing treatment was its recognition that Chugach's proposal provided sufficient information connecting the past performance of its parent and sister companies, while BSTS's proposal did not. In this regard, Chugach's proposal explained the provision of and reliance on its affiliated companies' workforce, management, key personnel, facilities and performance strategies in the performance of the Guam contract. Chugach Proposal at 2, B-1, C-1--C-4. For example, Chugach's proposal explained how it would transition key personnel from the current Guam COOM contract, which was performed by two Chugach sister companies; these same companies had performed other contracts considered by the agency in the past performance evaluation. Chugach also explained its planned reliance on an identified subject matter expert--the project manager on two contracts performed by named Chugach sister companies. Chugach Proposal at C-3, C-4. This explanation included a detailed description of the former project manager's responsibilities on the prior contracts

² BSTS asserts that it should have received past performance credit for the involvement of its parent, BSNC, based on references to BSTS's president's involvement in BSNC management; reach-back capability for personnel; the inclusion of a BSNC vice president on the transition team; and the fact that the proposed project manager would report to this same officer. BSTS Supplemental AR Comments at 5. Similar to its treatment of BSTS's sister companies, the agency found that this information was insufficient to establish that BSTS's parent would provide resources having any significant impact on contract performance. In any case, even if we agreed with the protester that sufficient information was provided, its proposal identified only one BSNC contract--worth approximately \$3 million per year--and the agency received no past performance information for that contract; the only past performance references available for evaluation involved BSTS's sister companies. Thus, BSTS was not prejudiced by any possible evaluation error. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7 (prejudice is an essential element of every viable protest).

and their relevance to the new contract. Id. In contrast, while BSTS noted that its proposed deputy project manager had performed as project manager on the Elmendorf contract, it did not make clear that it was for a sister company--instead identifying him as working for "Bering Straits"--and only identified his areas of expertise and proposed duties; it did not explain his prior work or how his performance made the sister company's past performance relevant to the work under the protested contract. BSTS Proposal at 4, 14, 38, 64. Based on the difference in specificity and detail between the two proposals, we think the agency reasonably considered the past performance of Chugach's affiliated companies, while finding the past performance of BSTS's affiliated companies not relevant.

BSTS PRICE EVALUATION

Under the price factor, the RFP provided that proposals would be evaluated for completeness and reasonableness, including whether prices were fully justified, supported, and reasonable to the offeror and government. RFP § M, at 19. Prices could be evaluated by comparison to the government estimate and/or other offers received. Id. For all indefinite-quantity work, offerors were expected to propose a fixed burden rate (FBR) that included "all overhead and indirect costs, fringe benefits, profit, taxes and so forth." RFP ex. B. As part of its price evaluation, the agency calculated an independent government estimate (IGE) for the indefinite-quantity work that included an FBR of 38.85% and was based on applicable rates for Federal Insurance Contributions Act (FICA) (7.65%), federal and state unemployment insurance (8.9%), health and welfare (20%), and workers compensation (2.3%). AR, Tab 4B, at 35-36. The agency set caps for each indefinite-quantity line item and required offerors to propose an FBR to be applied to the caps to calculate the maximum cost for these requirements. RFP amend. 9, Item 7. BSTS proposed an FBR of [deleted] and explained that the rate was comprised of applicable labor burdens, fringe benefits, employee-related other direct costs and equipment, taxes, and overhead expenses. BSTS Price Proposal at 5. However, instead of using the RFP-mandated caps, BSTS proposed higher caps for each indefinite-quantity line item. First Declaration of Price Evaluation Board (PEB) Chair at 2. In evaluating BSTS's pricing, the agency expressed concerns and identified risks based on the firm's low FBR. The agency was concerned that BSTS might not understand the FBR application for this contract and concluded that BSTS would lose money on every indefinite-quantity labor unit ordered. AR, Tab 4B, at 38-39.

BSTS asserts that the agency failed to meaningfully analyze its price proposal, specifically, that the agency unreasonably ignored the possibility that BSTS could perform more efficiently than applicable estimating standards, and thus perform profitably. BSTS Comments at 5.

The evaluation was unobjectionable. Payment for indefinite-quantity work, including the COOM, was to be based on the contractor's proposed labor rate and

FBR, multiplied by the government's estimated number of labor hours, rather than actual hours worked; an FBR too low to cover all required expenses thus represented a risk that the contractor would not be able to cover its labor costs. The agency's evaluation was based on a comparison of BSTS's rates with the IGE of 38.5% and other offerors' rates. This comparison showed that BSTS's FBR was 26% below the next lowest offeror's, and 36% below the mean of all offerors' rates, AR, Tab 4B, at 39. BSTS's proposed FBR of [deleted] also was significantly lower than the combined rate of FICA, unemployment insurance, and worker's compensation, which exceeded 18%. Given that BSTS's proposal identified its FBR as including applicable labor burdens, fringe benefits, taxes, and overhead expenses, the agency reasonably could question the sufficiency of the FBR. Under these circumstances, the agency reasonably found that BSTS's low proposed FBR was risky and made it questionable whether the firm could profitably perform the indefinite-quantity items.

Our conclusion is not changed by BSTS's assertion that the agency failed to consider whether BSTS could work more efficiently than the estimated number of labor hours as calculated by RS Means.³ While, as acknowledged by the agency, it may be possible to work more efficiently than a given RS Means estimate, the agency found that BSTS did not include any such efficiencies in its proposal. BSTS's protest contains a detailed calculation of how its low FBR could result in sufficient profit based on 20% efficiency over the RS Means estimate (Protest exh. I). However, this example was not included in BSTS's proposal; indeed, the proposal actually stated that the proposed FBR was "predicated on the use of R.S. Means for development of the work as required by the government under the Unit Priced Labor [line items]." BSTS Price Proposal at 5. Since BSTS's proposal stated that its FBR was based on RS Means estimates and did not provide any explanation regarding greater efficiency, there was no requirement that the evaluation take such efficiency into account.

CHUGACH PRICE EVALUATION

The RFP called for offerors to submit pricing information that included a breakdown of direct labor costs, direct material costs, subcontracting costs, overhead costs, general and administrative (G&A) costs, and profit. RFP § L.12. Chugach's proposal did not include a breakdown of overhead, G&A, or profit, and BSTS asserts that Chugach's failure to provide that information rendered its proposal unacceptable. BSTS Comments at 9.

³ According to the agency, the number of hours needed to perform a given indefinite-quantity item would be established by an industry standard such as RS Means. First Declaration of PEB Chair at 3. RS Means is a provider of construction cost information and is used by contractors, engineers, and others to forecast the costs of building and renovation projects and facilities maintenance and repair.

We disagree. Price was to be evaluated for completeness and reasonableness; unrealistically low or high proposals risked elimination as unrealistic or for lack of understanding of the requirements. RFP § M, at 19. The agency explains that the breakout of overhead, G&A, and profit was intended to facilitate its price reasonableness evaluation and to supplement the price realism analysis. Second PEB Declaration at 4. In evaluating Chugach's proposal, the agency found Chugach had included an extensive breakdown of labor, material, subcontractor, and other direct costs for each line item. As a result, while Chugach did not specifically breakout its overhead, G&A, and profit, the agency was able to calculate a combined figure for these items by subtracting the line item totals from the contract price. Upon further analysis, it found that this figure--when expressed as a percentage of total line item pricing--represented a rate comparable to that proposed by the other offerors. For example, offerors' percentage rates ranged from 10% to 26%, with Chugach's rate at [deleted] and BSTS's at [deleted]. Second Declaration of PEB at 5. Based on these calculations, the agency found no financial risk and did not question Chugach's understanding of the requirements, unlike its evaluation of BSTS. AR, Tab 4B, at 31, 38-39. Since the agency was able to obtain sufficient information from Chugach's proposal to perform the price evaluation provided for in the RFP, we find nothing objectionable in the agency's actions.⁴

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁴ BSTS asserts that the evaluation was flawed because the agency's calculated rate of combined overhead, G&A, and profit was significantly lower than Chugach's proposed FBR. BSTS Comments at 9. However, nothing in the RFP required an offeror's FBR (applied to indefinite-quantity items) to be identical to its overhead, G&A, and profit (included in its fixed-price items) and, as noted by the agency, an offeror's FBR could include other labor burdens. In this regard, we note that BSTS's own FBR of [deleted] was not identical to the agency's calculation of a [deleted] combined rate for its overhead, G&A, and profit. BSTS also questions the agency's reliance on a comparison of Chugach's price to other offerors' pricing; however, an agency properly may evaluate pricing by comparison with other proposals. Federal Acquisition Regulation § 15.404-1(b)(2)(i).