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Decision

Matter of: East Silk Route Logistics, LLC

File: B-408308.22

Date: August 18, 2014

Heather A. James, Esq., Whiteford, Taylor & Preston LLP, for the protester.
Paul W. Bowen, Esq., Robert J. Sherry, Esq., Sheila A. Armstrong, Esq.,
Kirstin D. Dietel, Esq., and Amy M. Conant, Esq., K&L Gates LLP, for an intervenor.
Christopher S. Cole, Esq., Department of the Air Force, and
Richard A. Hopkins, Esq., U.S. Transportation Command, for the agency.
Glenn G. Wolcott, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's price evaluation is denied where record shows that agency performed a reasonable and comprehensive price realism analysis that was consistent with the terms of the solicitation.

DECISION

East Silk Route Logistics, LLC (ESR), of Kabul, Afghanistan, protests the U.S. Transportation Command's (USTRANSCOM) award of multiple contracts pursuant to request for proposals (RFP) No. HTC711-13-R-R002, for commercial trucking services in Afghanistan.¹ ESR asserts that the agency failed to properly perform a price realism evaluation in connection with the contract awards.

We deny the protest.

¹ USTRANSCOM is one of nine unified commands within the Department of Defense (DOD). The mission of USTRANSCOM is to provide air, land, and sea transportation for the DOD, both in peace and wartime. This procurement is a follow-on to USTRANSCOM's prior national Afghanistan trucking contract (NAT I), and is generally referred to as NAT II.

BACKGROUND

The agency issued the solicitation in February 2013, seeking proposals for commercial transportation of various cargoes throughout Afghanistan.² The solicitation was divided into three “suites,” reflecting three different types of cargo--bulk fuel, dry cargo, and heavy cargo--and offerors were advised that the agency anticipated awarding “approximately twelve” indefinite-delivery/indefinite-quantity contracts for each suite.³ Agency Report (AR), exh. 1, RFP at 81-85. Following the awards, task orders will be issued under the various contracts. Id. Offerors were permitted to submit proposals for each of the three suites, or for any combination thereof. RFP at 5, 78.

The solicitation contemplated contract awards for a 1-year base period with two 1-year option periods, and provided that proposals would be evaluated on the basis of two factors: technical capability⁴ and price. The solicitation further provided that technical proposals would be evaluated only on an acceptable/unacceptable basis, with awards made to responsible offerors submitting the lowest-priced, technically acceptable proposals. RFP at 82-83.

With regard to proposed price, the solicitation identified the various types and minimum numbers of trucking assets that would be required for each contract suite,⁵ listed three security environments for which pricing was required;⁶ and

² The solicitation provided that contractors must provide all personnel (drivers, dispatchers), equipment (trucks, straps, binders), tools (winch, self-recovery or repair assets), materials (dunnage, tarps), supervision (managers, accountants), and other items necessary to provide safe, timely, and reliable transportation. AR, exh. 3, Performance Work Statement, at 2.

³ The solicitation provided that the agency could award fewer than, or more than, 12 contracts for each suite if it was determined to be in the government’s best interest to do so. RFP at 85.

⁴ There were six technical subfactors: (1) minimum number of assets; (2) in-transit visibility requirements; (3) key personnel; (4) private security company services; (5) contractor management plan; and (6) information assurance/cyber security. RFP at 82.

⁵ For example, for Suite I (bulk fuel) offerors were required to offer a minimum of 50 five-thousand-gallon tanker trucks and 30 ten-thousand-gallon tanker trucks. For Suite II (dry cargo), offerors were required to offer a minimum of 380 flatbed trucks, 10 refrigerated trucks, 10 freezer trucks, 75 container trucks, and 5 refrigerated container trucks. For Suite III (heavy cargo), offerors were required to offer a minimum of 165 lowboy trailers and 10 heavy equipment transports. AR, exh. 4, Asset Capability Matrix.

provided estimated “mission units” (MU) for each type of asset and security environment, by contract period.⁷ RFP Schedule B, at 1-3. Offerors were required to submit fixed MU prices for each identified asset/security classification for each contract performance period. An offeror’s total evaluated price was calculated by multiplying its proposed unit prices by the applicable estimates, and summing all of the extended prices. RFP at 84.

With regard to evaluation of price proposals, the solicitation provided as follows:

The Government shall conduct an evaluation of the offerors’ prices, at the unit price level and then at the Total Evaluated Price (TEP) level. . . . Each offeror’s proposed prices will be evaluated for fairness, reasonableness, and realism [in accordance with] FAR 15.305(a)(1) using one or more of the techniques set forth in FAR 15.404-1(b)(2). Reasonableness shall be determined based on prices submitted by competition, current market conditions, and comparison to the Government estimate. Realism shall be based on an evaluation of prices to determine if the offeror clearly understands the requirements as demonstrated in its proposed approach.

RFP at 84.

Initial proposals were submitted in April 2013.⁸ In July 2013, the agency established a competitive range, excluding ESR’s proposal from further consideration based on its high prices. Agency’s Legal Memorandum/Contracting Officer’s Statement (ALMCOS), June 9, 2014, at 4. ESR subsequently filed a

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⁶ Pricing was required for each type of trucking asset pursuant to each of the following security environments: (1) no security or U.S. government security (provided at no cost to the contractor); (2) private security company; or (3) Government of the Islamic Republic of Afghanistan (GIROA) security. AR, exh. 2, RFP Schedule B, at 1. GIROA-provided security is synonymous with Afghan Public Protection Force (APPF)-provided security, since APPF is a GIROA state-owned enterprise. Agency Legal Memorandum/Contracting Officer’s Statement, June 9, 2014, at 3.

⁷ The solicitation defined an MU as a 25 kilometer increment, and provided that contractors “will be paid based on the number of MUs between the origin and destination.” RFP Schedule B, at 3.

⁸ The agency reports that there was a “tremendous level of competition,” AR at 25, noting that there were 74 proposals submitted for Suite I; 113 proposals submitted for Suite II; and 105 proposals submitted for Suite III. AR at 25; exh. 134, Source Selection Decision, at 1.

protest with our Office challenging the exclusion; thereafter, that protest was withdrawn when the agency included the proposal in the competitive range as corrective action. B-408308.7, Sept. 27, 2013.

In October 2013, the agency conducted discussions with the competitive range offerors, specifically advising ESR that [redacted] of its proposed unit rates for each of the three suites appeared to be high and could not be determined to be fair and reasonable. ALMCOS at 5. Thereafter, the agency conducted two additional rounds of discussions, again advising ESR that [redacted] of its proposed rates appeared to be high. Id.

In November 2013, the agency requested submission of final proposal revisions (FPR). Upon submission, the agency evaluated the FPRs, determining that, for each of the three contract suites, over 30 offerors had submitted technically acceptable proposals that offered fair, reasonable, and realistic prices. Id. at 5-7.

For each of the three suites, ESR's proposal was not among the lowest-priced proposals and, in fact, was the highest priced, or nearly the highest priced, for each suite. Specifically, with regard to Suite I (bulk fuel), ESR's total price was \$31,697,945; there were 26 technically acceptable proposals that offered prices lower than ESR's price, and the ultimate Suite I awardees' prices ranged from \$25,775,453 to \$31,286,148.⁹ ALMCOS at 8; AR, exh. 134, Source Selection Decision, at 24-25. With regard to Suite II (dry cargo), ESR's total price was \$129,848,382; there were 19 technically acceptable proposals that offered lower prices than ESR's price, and the ultimate Suite II awardees' prices ranged from \$105,701,737 to \$117,355,655.¹⁰ ALMCOS at 8; Source Selection Decision, at 43-44. With regard to Suite III (heavy cargo), ESR's total price was \$49,954,375; there were 24 technically acceptable proposals that offered prices lower than ESR's price, and the ultimate Suite III awardees' prices ranged from \$38,442,324 to \$43,098,591.¹¹ ALMCOS at 8; Source Selection Decision, at 61-62.

In April 2014, ESR was notified that it had not been selected for any award. This protest followed.

⁹ For Suite I, ESR's price was ranked 29th highest of 33. ALMCOS at 8.

¹⁰ For Suite II, ESR's price was ranked 31st highest of 35. Id.

¹¹ For Suite III, ESR's price was ranked 34th highest of 34. Id.

DISCUSSION

ESR protests that the agency failed to conduct a proper price realism analysis. In this regard, ESR challenges the agency's comparison of offerors' prices to each other and maintains that it was improper for the agency to compare prices to those under the previous NAT I contract. None of ESR's assertions provides a basis for sustaining its protest.¹²

Where a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. Nonetheless, a solicitation may provide for a price realism analysis for purposes of measuring an offeror's understanding of the solicitation requirements or assessing risk. See, e.g., The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 4; Ameriko, Inc., B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. The nature and extent of an agency's evaluation are matters within the agency's discretion, and our Office will not reevaluate proposals; rather, we will examine the agency record to determine consistency with the solicitation's stated provisions and reasonableness in the context of the goods or services being acquired. See, e.g., Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13-15; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2-3. In this regard, an agency is not required to evaluate each and every item to a scientific certainty. See Raytheon Tech. Servs. Co., LLC, B-406136, B-406136.2, Feb. 15, 2012, 2012 CPD ¶ 99 at 3.

Here, the procurement record establishes that the agency performed a comprehensive price realism analysis that scrutinized multiple elements of each offeror's proposal.¹³ Among other things, the agency compared each offeror's unit prices and total evaluated price (TEP) to the independent government cost estimate (IGCE); compared each offeror's prices to the average unit rates and average TEP of the competitive range offerors; and considered each offeror's technical approach,

¹² In pursuing this protest, ESR has raised arguments in addition to those discussed below. We have considered all of ESR's arguments and find that none furnish a basis to sustain its protest.

¹³ Although ESR asserts that there was "little documentation" supporting the agency's price realism evaluation, Protester's Comments on AR, June 23, 2014, at 9, the contemporaneous record includes a 516-page price evaluation report for Suite I, a 1123-page price evaluation report for Suite II, and a 1007-page price evaluation report for Suite III. See AR, exhs. 129, Price Analysis Report (Suite I) at 1-516; exh. 130, Price Analysis Report (Suite II) at 1-1123; exh. 131, Price Analysis Report (Suite III) at 1-1007.

comparing offerors' prices to prices proposed by other offerors with similar technical approaches. Price Analysis Report (Suite I) passim; Price Analysis Report (Suite II) passim; Price Analysis Report (Suite III) passim. In evaluating the offerors' price proposals, the agency also considered the various "security premiums" proposed.¹⁴ Price Analysis Report (Suite I) passim; Price Analysis Report (Suite II) passim; Price Analysis Report (Suite III) passim.

In considering offerors' technical approaches, the agency reviewed the number of assets an offeror proposed, the number of truck yards managed by the offeror, and the offeror's approach to providing in-transit visibility services, explaining that it considered these aspects of technical approach to create the greatest potential for deviation in offerors' pricing. The agency also considered the offeror's knowledge of transiting through Afghanistan as demonstrated in its proposal; the maintenance schedules proposed for vehicles and equipment; the staff employed (including finance professionals, operations staff, quality assurance staff, and administrative staff); staff training; organizational structure; and quality control. See, e.g., Price Analysis Report (Suite I) at 2-3; Price Analysis Report (Suite II) at 2-3; Price Analysis Report (Suite III) at 2-3.

In performing its analysis, the agency recognized that rates varied between offerors, specifically noting that some of the offerors' proposed prices appeared to reflect costs for Afghan Public Protection Force (APPF) security which were below the APPF's stated rates. Nonetheless, based on its comprehensive evaluation of all the offerors' proposals, along with consideration of the magnitude of the differences,¹⁵ the agency concluded that, overall, the lower prices were not unrealistic but, rather, reflected the increased competition being experienced in the Afghan trucking market.¹⁶ See, e.g., Price Analysis Report (Suite I) at 87, 90. More specifically,

¹⁴ The agency explains that, although the solicitation did not require offerors to separately price security, the agency calculated "security premiums" by comparing an offeror's proposed rates for the same asset under differing security environments. For example, the difference between an offeror's proposed rate for a 5,000 gallon tanker truck with U.S. government security (provided at no cost to the contractor) and that same offeror's proposed rate for a 5,000 gallon tanker truck with PSC security or GIRoA security, constituted the offeror's "security premiums" for PSC security or GIRoA security.

¹⁵ The agency's contemporaneous evaluation documentation included comparison of the percentage over/under that an offeror's prices were as compared to the average of offered prices, and also as a percentage over/under the IGCE. See, e.g., Price Analysis Report (Suite I) at 87.

¹⁶ In this regard, the agency explained that the offerors' submission of prices below the NAT I contract prices reflected "[i]ncreased competitive forces in the marketplace, primarily attributable to the US Government withdrawal from

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with regard to “security premiums,” the agency noted with respect to the APPF line items, which account for the majority of the solicitation’s security requirements, “[t]he expected higher volume for APPF line items allows offerors to reduce the per unit fixed costs which have the dual effect of reducing the cost premium between line items requiring USG [U.S. Government] or [n]o security and line items requiring APPF security.” Id. at 483.

Based on our review of the entire record, we find no basis to question the reasonableness of the agency’s price analysis. As noted above, the solicitation advised offerors that proposed prices would be evaluated for realism, using “one or more of the techniques set forth in FAR 15.404-1(b)(2).” RFP at 84. That section of the FAR lists various price analysis techniques, including “[c]omparison of proposed prices received in response to the solicitation”; [c]omparison of proposed prices to historical prices”; and “[c]omparison of proposed prices with independent Government cost estimates.” FAR §§ 15.404(b)(2) (i), (ii) & (v).

Here, the record reflects an agency price evaluation that went well beyond the solicitation requirement to “use one or more” of the listed price evaluation techniques. As discussed above, the record includes the agency’s comparison of both unit rates and total evaluated rates to the prices proposed by other offerors,¹⁷

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Afghanistan, leading to reduced overall demand for trucking services as well as intensified competition.” Id.

¹⁷ ESR complains that the agency’s price comparisons incorporated the prices proposed by offerors that were ultimately deemed ineligible, asserting that this renders the agency’s price evaluation invalid. See Lifecycle Constr. Servs., LLC, B-406907, Sept. 27, 2012, 2012 CPD ¶ 269. ESR’s complaint furnishes no basis to question the price evaluation. First, we note that the agency’s calculation of average prices was based only on the competitive range proposals--not the substantially higher number of initial proposals submitted. Further, in addition to comparing each offeror’s price against those proposed by the other competitive range offerors, the agency compared proposed prices to its own IGCE, and also performed an assessment of each offeror’s technical approach as it might affect pricing. Price Analysis Report (Suite I) passim; Price Analysis Report (Suite II) passim; Price Analysis Report (Suite III) passim. On this record, we decline to sustain ESR’s protest challenging the agency’s nonselection of ESR’s proposal--which offered prices ranked 29th highest out of 33 for Suite I, 31st highest out of 35 for Suite II, and 34th highest out of 34 for Suite III--on the basis that one part of the agency’s evaluation reflected consideration of prices proposed by a limited number of offerors that were ultimately deemed ineligible for award.

and to the prices reflected in the IGCE.¹⁸ Price Analysis Report (Suite I) passim; Price Analysis Report (Suite II) passim; Price Analysis Report (Suite III) passim. Further, the agency's evaluation considered the technical approach proposed by each offeror, concluding that the awardees understood the contract requirements. Neither the FAR nor the terms of the solicitation required the agency to do more, and ESR's disagreement with the agency's assessment does not provide a basis to sustain its protest. See Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 6.

The protest is denied.

Susan A. Poling
General Counsel

¹⁸ ESR also complains that the IGCE was flawed in that it incorporated consideration of data from the predecessor NAT I contract, arguing that the requirements of the NAT II contract are different. The record, however, shows that, in developing the IGCE, the agency considered not only the NAT I prices, but also: "the fluid environment of an occupying force with unresolved issues involving partial/full withdrawal"; "under-execution of NAT I projections"; "adjustments to the mission units [MU changed from 50 km to 25 km]"; consideration of in-transit visibility requirements; the increase in security costs; a margin of error due to regional instability; and application of an annual price increase of 3% for each option year. ALMCOS at 24; AR, exh. 8, IGCE Cost Analysis; exh. 9, IGCE. Thus, the record indicates that the agency in developing the IGCE considered both the prior pricing under the incumbent contracts as well as the relevant changes in requirements and in the contracting and security environment. We see nothing unreasonable in this approach.